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Via Electronic Filing

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

Re: Case 15-E-0302: Comments of the New York Retail Choice Coalition on the Clean Energy Standard Zero Emissions Credit (ZEC) Implementation Plan

Dear Secretary Burgess,

The New York Retail Choice Coalition (the "Coalition"), a group of small and medium sized energy service companies ("ESCOs"), submits these comments on the New York State Energy Research and Development Authority ("NYSERDA") proposed Zero Emissions Credit ("ZEC") Implementation Plan with respect to two discrete issues: the proposed change to the ZEC compliance payment approach, and; the proposed revision to the Agreement of Purchase and Sale Penalty provision. The Coalition does not submit comments on any other issues at this time, but reserves its right to do so in the future.

### **General Support of Proposed Change to ZEC Compliance Payment Approach**

The Coalition supports the proposed changes to the methodology as to how each Load Serving Entity's ("LSEs") initial ZEC obligation is calculated, and how LSEs remit ZEC obligation payments.

The current payment structure in place today is based on a fixed ZEC quantity obligation calculated using the LSE's historical share of statewide load. The obligations for the initial compliance year (March 31, 2017 – April 1, 2018) were based on LSE's load during the period from April 1, 2015 to March 31, 2016, creating a considerable gap in data for the 2016 compliance year. This approach has created challenges for companies that have seen substantial changes in their load from previous years and has led to cash flow issues for those companies that were making payments based on historic load that was higher than their actual load. While there is currently a reconciliation process that occurs after each ZEC year (scheduled for September 2018, five months after the end of the compliance year), it does not alleviate the cash flow challenges many companies are experiencing. As a result, many ESCOs needed to petition

the Commission for relief.<sup>1</sup> The Coalition supports a change from the current model to the proposed “pay-as-you-go” approach, which will alleviate overpayment and allow companies to make payments based on their actual load.

### **Proposed Revision to Agreement of Purchase and Sale Penalty Provision**

Additionally, the Coalition would like to propose a modification to the Section 2.4.1 Penalty provision of the Agreement of Purchase and Sale. Within the Penalty provisions, the Coalition would like to see a remediation period of 60 days to correct any payment shortfall before a penalty can be assessed. This would allow flexibility to cure any shortfall due to valid cause or clerical error before penalties are assessed.

Regarding the amount of penalty, any penalty assessed should provide a payment schedule, if needed, to allow for the equal payment of the penalty over the duration of the compliance period. This would help alleviate any cash flow issues that a substantial penalty could impose.

The Coalition looks forward to working with NYSERDA and the Commission moving forward on the implementation of this new Zero Emissions Credit payment approach. If you have any questions regarding this filing, please feel free to contact me.

Respectfully Submitted,

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<sup>1</sup> The Commission has recognized the burden that overpayments place on ESCOs, ordering reductions for Liberty Power, Astral Energy, LLC, AP Gas & Electric (NY), LLC, and AP Gas & Electric (TX), LLC. *See* respectively: Case No. 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, *Order Modifying Compliance Payment* (Issued July 14, 2017); Case No. 15-E-0302, *Order Modifying Compliance Payment* (Issued and Effective February 22, 2018); Case No. 15-E-0302, *Order Modifying Compliance Payment* (Issued and Effective July 16, 2018). In its 2018 Petition, Astral Energy pointed out further that its 2017 Petition request for relief was not granted until six months after filing. *See* Case No. 15-E-0302, *Order Modifying Compliance Payment* (Issued and Effective February 22, 2018), at 2.