ACE NY

ALLIANCE FOR CLEAN ENERGY NEW YORK

Promoting Clean Energy, ... For The Empire State.

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Honorable Jaclyn A. Brilling
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

May 29, 2009

Re: *Case Number 03-E-1088: Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*

Dear Secretary Brilling,

The Alliance for Clean Energy New York respectfully submits the enclosed comments regarding the *New York Main Tier RPS Impact & Process Evaluation* prepared by KEMA Inc. and the *New York Renewable Portfolio Standard Market Conditions Assessment Final Report* prepared by Summit Blue Consulting, LLC. We will also serve all active parties to this case via the electronic list serve.

Sincerely,

Carol E. Murphy

Carol E. Murphy, Executive Director
Alliance for Clean Energy New York

Enc.

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New York State
Public Service Commission
Case 03-E-1088 — Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard

COMMENTS OF THE ALLIANCE FOR CLEAN ENERGY NEW YORK (ACE NY)

On the RPS 2009 Evaluation Reports

I. Introduction

The Alliance for Clean Energy New York (ACE NY) respectfully submits the following comments on the Renewable Portfolio Standard (RPS) program. ACE NY is a non-profit organization whose mission is to promote the use of clean, renewable electricity technologies and energy efficiency in New York State in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Members of the Alliance for Clean Energy New York (ACE NY) include non-profit environmental, public health and consumer advocacy organizations, educational institutions, and private companies that develop, produce and sell renewable energy and renewable energy technologies as well as energy efficiency services in New York.

The reports prepared by NYSERDA consultants KEMA and Summit Blue support our previously stated view that wise state policies in support of investment in clean energy technologies are vital to our environmental well-being and our economic future.

The report's findings document the enormous success of the RPS while correctly noting that there is room for improvement. We concur with the Report's findings and suggest that the State must make an even firmer commitment to the RPS and to aggressive. yet achievable goals for deployment of renewable energy resources. We firmly believe that the RPS is crucial to realizing New York's goal of protecting our climate. reducing our dependence on out-of-state fuels. and promoting economic development in the "cleantech" industries of the future.

Our comments here are substantially the same as those submitted to the Commission in November of 2008 as well as in February of 2009 in response to requests for comment. We believe the findings of the reports support those comments and action by the Commission is clearly overdue. The Commission should immediately increase the RPS goal and authorize additional collections to ensure it is fully funded. The Commission also should begin consideration and implementation of the recommended changes to the structure of the RPS as discussed in the evaluation reports and as recommended below.

II. BENEFITS FROM RENEWABLE ENERGY ARE SIGNIFICANT

The KEMA and Summit Blue reports clearly and unequivocally show that the RPS program provides benefits to New Yorkers. The reports focus on the direct and indirect economic benefits and find these to be substantial. However. additional benefits accrue to New Yorkers from increased energy security and environmental and public health benefits. which should not be overlooked.

The reports found that the RPS is highly cost effective with a benefit-cost ratio exceeding 6 to 1 and estimated economic impacts of $4.2 billion over the life of the facilities as well substantial price suppression effects. The latter mirrors what the New York Independent System Operator has found as well. Investment in renewable energy helps stabilize and reduce wholesale energy prices and promotes economic development. New York has managed, through its RPS, to attract most of the nation's major wind energy developers as well as increased interest from solar energy companies. Wind plant development in New York represents a substantial investment in our energy production by the private sector. The market for renewable distributed generation resources, likewise, has spawned private investment from manufacturing companies employing significant numbers of New Yorkers from fuel cell manufacturers to small companies installing solar systems on people's homes.

Furthermore, as these companies advance through the development, permitting and construction processes of siting new renewable facilities, they are literally investing millions of dollars into our communities. Wind energy development in upstate New York is helping to support local restaurants, motels, law firms, stores, copy centers, paving contractors, construction workers and a plethora of other businesses and supporting communities through taxes or payments in lieu of taxes.

The environmental and public health benefits are also numerous. The American Wind Energy Association has calculated that to generate the same amount of electricity as today's U.S. wind turbine fleet (approximately 20,000 MW) would require burning 29 million tons of coal (a line of 10-ton trucks over 11,000 miles long) or 92 million barrels of oil *each year*. Increased reliance on clean energy provides real benefits to the global climate, future generations and our immediate economy. Wind and solar projects can offer the important advantage of *fixed-price* energy supply over a period as long as 20 years since they do not have fuel costs. New Yorkers currently reap the benefits of past investments in hydropower made years ago. In these uncertain times, investing in additional environmentally sound, price stable power sources is a sound investment in our future.

III. COMMISSION SUPPORT OF AGGRESSIVE GOALS AND FUNDING ARE PAST DUE

The RPS was enacted in 2004 and three main tier solicitations have been held with the last one resulting in signed contracts in early 2008. It has been over a year and a half since the last Main Tier solicitation and yet New York still has not met its interim megawatt-hour targets for procurement of renewable energy and is out of funds to do so. This is despite the fact that there are more than 7,000 megawatts of wind energy in the NYISO interconnection queue. Without progress on continuing the RPS, however, those projects will disappear as companies move their resources to other states.

On the Customer-Sited Tier side, funding for the solar program has run out several times, which has created a boom-bust cycle and a great deal of uncertainty in the market resulting in reduced employment opportunities and installation delays. That the money authorized by the original RPS Order would be insufficient to meet the State's goals is no surprise. The Commission itself acknowledged in 2004 that the collections would be insufficient and that an Order for additional collections would be needed in order to fulfill program goals.

The Commission requested comments on the RPS program in the fall of 2008 and the Commission has reviewed the comments and received interim reports on RPS implementation and funding since that time yet has failed to act to maintain the program.

The lapse in program funding is jeopardizing the State's ability to keep the renewable energy industry thriving within its borders. While this would be true regardless of federal policy, it is made more acute by the passage of the The American Recovery and Reinvestment Act (ARRA). ARRA included financial provisions that can assist renewable energy development in New York, *provided* the state incentives that complement this federal legislation are in place.

ARRA allows renewable energy projects that begin construction prior to the end of 2010 and that go in service by the end of 2012 to qualify for a 30% investment tax credit (ITC) that can then be converted into a grant from the U.S. Treasury Department. Unlike the traditional federal production tax credit (PTC) this enables renewable energy developers to get the full value of the tax incentive rather than sharing some of that value with a tax advantaged investor. Ultimately, this favorable incentive treatment should lower the cost of renewable energy investments compared to financing a project based on the traditional PTC approach. Further, because wind energy projects in New York tend to have higher capital costs relative to their production than wind energy projects in other parts of the country, the investment tax credit/grant formula favors projects in states like New York. Despite these new federal incentives, renewable energy projects still require renewable energy credit (REC) revenue to be viable. New York's Renewable Portfolio Standard (RPS) is the only means to ensure that REC revenue is reliably available to a significant number of renewable energy projects.

New York should not miss this opportunity to encourage investments in new renewable energy generation prior to the 2010 federal deadline for the investment tax credit/grant. This can be done by NYSERDA moving forward with an immediate solicitation for RPS projects using funds unencumbered from prior winning RPS bidders that now are not going forward and from federal stimulus funds. Simultaneously, the PSC should immediately order additional RPS collections so that NYSDERDA can set a defined schedule for RPS procurements that provide investment certainty for developers.

Renewable energy developers make decisions on where to invest based on full revenue considerations, and RECs are a vital component. Investment decisions for 2010 (and where to allocate turbines already under order) are being made over the course of this year and generally sooner rather than later. An immediate RPS solicitation will enable renewable energy developers to price the full value of New York projects and commit investment dollars in time to take advantage of the beneficial federal incentives. In addition, ARRA provided for a number of funding streams that can support customer-sited generation including installations at homes and businesses as well as at municipally-owned structures. However, without additional funding for the RPS rebate program for customer-sited technologies, New York will be unable to take full advantage of these dollars. Combining the favorable federal incentives with the New York RPS will benefit New York ratepayers by encouraging projects that are more cost effective and will enable meaningful progress towards the State's renewable energy goals.

As we can see in the discussions in every community, every state, and at the federal level, investment in our infrastructure and jobs-providing industry sectors is seen as the road to recovery with the clean energy sector figuring prominently. In fact, solar system installers have seen increased demand in recent months despite, or perhaps because of, the economy's downturn. Spending money to stabilize future energy costs is correctly seen as a wise investment by individual consumers. The rebate money provided by the State leverages several times that in private capital. The State should also recognize the value of these investments through increased funding for the RPS program.

IV. LONG TERM GOALS AND CONSISTENT FUNDING OPPORTUNITIES ARE ESSENTIAL

The RPS was first adopted in 2004 and used forecasted demand for electricity to determine megawatt-hour targets on an annual basis such that by 2013 the state would be using renewable power to meet 25% of electric load, which meant a 6% increase over the existing base of renewable resources. ACE NY agrees that it is always best to use the most recent and most accurate load numbers as well as the most accurate forecasts for planning purposes. However, we support changing the RPS program's benchmarks from "percentage of load" based goals to the more accurate and easier to implement MWh based goals. Doing so removes the importance of load forecasts since the benchmarks for success would no longer be dependent on such forecasts. ACE NY fully supports the Energy Efficiency Portfolio Standard (EEPS) and believes the goals of EEPS achievable, yet we also acknowledge that the State may very well fall short of the mark by 2015.

Given the importance of having sufficient generation to meet demand, we therefore do not support basing the RPS targets on post-EEPS implementation load forecasts. As the NYISO has also decided in its planning efforts, a more conservative approach is warranted when planning to meet the State's power needs. Moving to a MWh based RPS goal makes this issue moot. We believe it is far preferable to implement both aggressive efficiency programs and aggressive renewable standards rather than to make these efforts essentially compete. Therefore, we believe the calculations used in the Evaluation Reports may underestimate the amount of renewable energy needed for a goal expressed as a percent. In any case, the estimated MWh needed to reach a percentage goal must be considered the minimum to be obtained, regardless of actual load. Companies must invest substantial resources prior to winning a contract under the RPS and they do so based on expectations that the State will meet its megawatt hour targets.

One of the expected outcomes of RPS programs is that they help build a broad renewable energy marketplace with trained workers and a variety of job creating businesses. The renewable energy industry needs consistency and certainty to build the confidence necessary for investment. This also is key to understanding the importance ACE NY places on maintaining separate programs for efficiency investment and renewable power investment. The methods for accomplishing goals in each do differ (with active utility customer participation essential in efficiency) and each set of providers need assurances and certainty with regard to the level of investment that will be made. Aggressive programs for each – renewables and efficiency - rather than competition between them, will create many more environmental and economic benefits for New Yorkers.

Therefore, the RPS goal should be expressed in terms of absolute megawatt-hours (MWh) rather than as a percentage of load. The use of 25% retail sales by 2013 is not meaningful and useful for implementation purposes. If the Commission determines that the percent of load goal will remain, it should be increased to at least 30% by 2015 to ensure New York can meet its demand for energy with as much clean energy as possible with the estimated MWh to meet that percentage target as a minimum.

ACE NY believes the annual targets should be adjusted upwards to allow NYSERDA to "catch up" to the previously stated targets, which have not been met. Given there are over 7,000 MW of wind in the NYISO interconnection queue and increasing interest in and federal incentives for solar electric systems as well as increased use of anaerobic digesters and biofuels, we believe attainment of the goals is technically possible and that adequate incentives and state agency coordination for permitting of these facilities would help the State meet its goals.

As the Pace Energy and Climate Center pointed out in detail in earlier comments in this proceeding, New York is not even in the top ten of all the states with RPS requirements. The largest markets, in terms of capacity growth requirements, are projected to be California, Illinois, Minnesota, Texas, New Jersey, and Arizona. Pace also notes that as a proportion of expected statewide retail sales in 2025 to be met by *new* renewable generation, the standing of New York is even lower – twentieth. New York should adopt a more aggressive RPS so that we can truly claim a leadership role and reap the benefits of investment in these important technologies that will undoubtedly power our future.

V. RPS IMPLEMENTATION SHOULD ADHERE TO BASIC MARKET BUILDING PRINCIPLES

The RPS is structured to help the eligible technologies develop well functioning markets with a goal of eventual grid parity as costs for clean energy come down and costs for polluting, fuel dependent generation rise (through tightening supplies and/or the internalization of externalities). Programs for *customer-sited resources* must also recognize that grid parity alone, as measured by cost/kwh over the life of a system, may not be sufficient *initially* to ensure investment in all sectors – particularly the residential sector - given the necessary upfront capital costs required. ACE NY supports the development of robust markets through adherence to some basic principles as described below:

#1: Long-term Visibility and Consistency

The program should establish deployment targets over a period of 5 years to a decade; growing annual targets must be designed to support the sustained and orderly development of a self-sustaining and diverse market. Targets should be both meaningful (i.e., result in "iron in the ground") and enforceable.

#2: Fairness

The program should support a diversity of business models, developers, system sizes and technologies, with continued growth in all market segments. Programs must promote fair competition by ensuring equal access to information, even-handed interconnection to the grid, and a transparent process.

#3: Ability to Finance

The program should provide the stability and certainty necessary to allow developer and installers to build their businesses and obtain financing. Risk should be minimized through programs most able to withstand future changes in regulatory policies and market developments.

#4: Responsiveness

The programs should be able to respond to changing conditions, (e.g. new tax credits or federal financial support). This is most important for the Customer-Sited Tier where it is crucial to avoid "budget burnout" from too-rich incentives and"slack periods" when incentives are too low.

Another crucial component of a solid renewable energy marketplace is the existence of a Renewable Energy Credit (REC) Tracking System. The transparency of the REC market should be strengthened via immediate implementation of a Renewable Energy Credit Tracking system. Immediate adoption of a REC tracking system will be beneficial for both RPS implementation and for continued development of the voluntary green power market. Insufficient information and poor REC liquidity are caused by the lack of a renewable energy tracking system. This component of the State's renewable energy program was the <u>only</u> point on which ALL parties in the original RPS proceeding agreed upon. And yet six years later, the State still does not have a system while its neighboring states, provinces and ISOs do.

VI. PROGRAM CONTINUITY AND PROGRAM IMPROVEMENTS ARE BOTH ESSENTIAL AND ARE COMPATIBLE

ACE NY continues to support the current central procurement structure for now and believes it has been quite successful in generating project development interest. It has not, however, produced the certainty of procurement needed by the marketplace. ACE NY's predecessor and most, if not all, of its members originally supported an RPS model that depends on each load-serving entity procuring a set amount of renewable generation and being subject to penalties for failing to do so. The central procurement model received our support as a compromise during the RPS proceeding. While we believe it has been quite successful in stimulating project development activity, we believe a truly sustainable market for renewable energy will require more active participation by market participants who can develop more flexible and creative approaches toward resource development. In other words, there is ample room for improvement and it may be time to consider a change to the more standard RPS model. However, procurement for the RPS must not be interrupted for any longer, as a new NYSERDA solicitation/RFP is already overdue.

Therefore, we support authorization for continued collections to fulfill the RPS at this time. At the same time, we would support an additional discussion of a change to a more market-based RPS structure. Again, we stress the need for an immediate increase in collections and near term procurement to keep market activity and project development alive while a discussion of potential changes in program structure is undertaken.

Experience in other states with RPS programs has shown us modifications that could make the RPS even more effective. The modifications discussed here apply to the main tier of the RPS, although a REC tracking system and a liquid and transparent REC market would be beneficial for the customer-sited tier resources as well. In the near term, to take advantage of the new federal incentives and to ensure continued investment in renewable energy in New York, it is essential that the PSC approve an order for additional collections to support the RPS, and that NYSERDA issue an RFP as soon as possible, incorporating changes to the procurement process as discussed below.

1. Fulfill the full RPS procurement target: In order for price formation to occur at a level supportive of new renewable energy projects it is essential that RPS demand be fully met. Under-procurement will send a distorted price signal as to the true costs of new renewable energy development necessary to meet the RPS targets and will discourage investment since developers will be unable to forecast the actual quantity of RECs that NYSERDA is going to procure and, therefore, will be unable to estimate whether their project will be "in the money" and ultimately selected as part of the NYSERDA procurement.

   The 2008 RPS main-tier goal was 3,549,000 MWh. NYSERDA procured 75% of this goal or only 75% of the target. In other RPS markets – in which load-serving entities are required to fully comply with the RPS targets – REC prices would form at a level that supports the cost of new development. In this case, NYSERDA is artificially suppressing REC prices. The results are that main tier REC prices have fallen in New York through the first three solicitation periods (first solicitation: $22.50; second solicitation: $15.52; third solicitation: $14.75).[1]

   Thus, the decline in REC prices has not been the result of falling development costs in relation to the RPS targets, but NYSERDA's unwillingness to procure RECs at a higher price to meet the full main tier RPS requirement.

   Current market conditions also will require REC price formation at a level that reflects both increasing capital and development costs and falling energy prices.

   In order for New York to meet its RPS goals, including Governor Paterson's commitment to achieving 45% renewable energy and energy efficiency by 2015, it is

[1] New York State Renewable Portfolio Standard: Performance Report, Program Period ending June 2008. New York State Energy Research and Development Authority. September 2008.

essential that New York's RPS provide the proper price signals. This can only be achieved by NYSERDA procuring RECs equal to the annual RPS targets.

2. Provide standard RPS procurement schedules with flexible bid terms: Long-term contracts are an essential component for financing new renewable energy projects and the long-term contracting approach of the centralized procurement system is one of its strengths. However, it is also a limitation in that if a project that does not receive a NYSERDA contract has very limited opportunities for REC sales – its options are limited to either the voluntary market or exports to PJM or ISO-NE to serve State RPS programs in those control areas. Thus, there is a meaningful risk in developing a project in New York, since a project that does not receive a NYSERDA contract – either as a result of the timing of development relative to an uncertain procurement cycle, or because price formation occurred at a level lower than expected demand because of under procurement – would have very limited opportunity to sell its RECs. NYSERDA can address this challenge and create a more efficient centralized procurement process in several ways:
    - NYSDERDA should have a standardized procurement schedule. We recommend quarterly procurements, but six-month procurements at a minimum. This will enable RECs from projects on different permitting schedules to be assured of a near-term opportunity to sell RECs.
    - Allow bidders to offer RECs for different terms. All bidders should be able to offer RECs for terms from three to ten years at their discretion.
    - Create a spot-market exchange and allow banking and borrowing. A spot-market REC exchange would allow NYSERDA to fill any annual REC shortfall prior to the end of the year or to take advantage of various long-positions and the willingness of parties to sell RECs at any time at a price that NYSDERDA finds favorable. NYSERDA would periodically be able to make offers on this exchange to get a sense of the spot-market prices and act whenever the pricing is in its favor. At the same time, the spot-market exchange would provide a mechanism to ensure that NYSERDA acquires its full annual RPS target.

3. Procure "products" not "projects: Like all northeastern states, project development and siting in New York presents challenges that result in unexpected delays. Tying REC procurement to specific projects puts great – and unnecessary – pressure on developers to meet the timelines set forth by NYSERDA while facing delays that are outside their control from appeals processes as well as state regulators. These hurdles are a natural part of the project development and siting process but they can be mitigated by allowing the RPS to be met by products instead of projects, which would in turn help the State meet its renewable energy goals.

    To achieve this, NYSERDA would seek RECs that meet certain identified criteria relating to fuel, vintage, and geographic location – just like the current project-based approach, but with much greater flexibility since REC delivery would not be tied to specific projects.

This approach can meaningfully reduce the regulatory risk of developing projects in New York. Should unexpected permitting or legal delays occur, a developer that had bid into and won a NYSERDA contract could much more easily obtain RECs from the secondary market to fulfill its contractual obligations, than through the current project substitution requirement. The risk for meeting the contract would still be on the developer and NYSERDA could still require security as part of the contractual obligation, but this additional flexibility would reduce risk for developers (risk which is otherwise priced into REC bids).

In the interim, the Commission should consider moving toward a more competitive model by adopting procurement not tied directly to a particular project but to RECs from eligible projects (i.e. a product based rather than solely project based approach). This would necessitate a REC tracking system and a few changes in NYSERDA's procurement process to ensure all of the products (RECs) bought by NYSERDA come from eligible projects. This would provide project developers and third party green power marketers greater opportunities and could induce in investment in additional projects. Furthermore, NYSERDA should be encouraged to conduct more frequent competitive solicitations for main tier resources that provide greater flexibility to accommodate varying development schedules. New York's local permitting process does not lend itself to predictable timeframes for project approval. NYSERDA's current approach of annual solicitations limits developers' opportunities for seeking contracts that will help to secure project financing or fully evaluate the economics of projects.

We also believe that NYSERDA should revisit the idea, already authorized by the Commission, to use a standard offer for procurement of certain RPS eligible resources such as smaller projects than may be likely to bid in or be successful winners of the RFP contracts.

We also recognize there are concerns that many of the economic development benefits from RPS supported resources have not been evenly distributed within the State. In so far as the Commission is interested in ensuring RPS dollars support projects downstate, we encourage the Commission and NYSERDA to explore opportunities for solar installations and offshore wind.

VII. CONCLUSION

The Commission should act expeditiously to authorize collections on ratepayer bills to fully fund the RPS. The small incremental cost represents an investment in our energy future from which all consumers will benefit, as the evaluation reports clearly demonstrate. Recent history has shown us that rising and volatile fuel prices challenge all households. Investment in clean, domestically produced power generation helps stabilize prices over time while spurring economic growth and helping to increase energy security and combat global climate change.

Respectfully Submitted,

Carol E. Murphy

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May 29, 2009