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November 14, 2016

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

Dear Secretary Burgess:

Attached for filing in the above-referenced proceeding is the Response of Multiple Intervenors to Petitions for Rehearing. Copies of the attached Response are being served herewith on the active parties to this proceeding.

Respectfully submitted,

MULTIPLE INTERVENORS

Michael B. Mager

Michael B. Mager, Esq.
Counsel to Multiple Intervenors

MBM/dp
Attachment
cc: Active Parties (via E-Mail; w/attachment)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Standard**

Case 15-E-0302

**RESPONSE OF
MULTIPLE INTERVENORS
TO
PETITIONS FOR REHEARING**

Dated: November 14, 2016

**MULTIPLE INTERVENORS
540 BROADWAY, P.O. BOX 22222
ALBANY, NEW YORK 12201-2222**

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby responds to selected petitions for rehearing filed in Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*. This proceeding has focused on issues pertaining to a Clean Energy Standard (“CES”) and, on August 1, 2016, the New York State Public Service Commission (“Commission”) issued an *Order Adopting a Clean Energy Standard* (“Order”).¹ Multiple Intervenors has been very active in this proceeding.

In response to the Order, a number of parties petitioned for rehearing, reconsideration and/or clarification of various aspects of the Order. Parties filing such petitions include: (i) Alliance for Clean Energy New York (“ACE NY”); (ii) Alliance for Green Energy and Nuclear Information and Resource Service (jointly); (iii) Ampersand Hydro, LLC; (iv) Brookfield Renewable (“Brookfield”); (v) Castleton Commodities International LLC, Roseton Generating LLC, and CCI Rensselaer LLC (jointly); (vi) Constellation Energy Nuclear Group, LLC and Exelon Generation Company, LLC (jointly); (vii) Council on Intelligent Energy & Conservation Policy; Promoting Health and Sustainable Energy; Physicians for Social Responsibility, New York; Sierra Club – Lower Hudson Valley Group; Rockland and Sierra Club; Indian Point Safe Energy Coalition; Goshen Green Farms, LLC; Ellen Jaffe, New York State Assemblymember District 97; and Andrew Stewart, Orangetown Supervisor (jointly); (viii) Energy Ottawa Inc.; (ix)

¹ Cases 15-E-0302, *supra*, and 16-E-0270, *Petition of Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants*, Order Adopting a Clean Energy Standard (issued August 1, 2016).

H.Q. Energy Services (U.S.) Inc. (“HQ US”); (x) Independent Power Producers of New York, Inc.; (xi) New York Association of Public Power; (xii) New York State Energy Research and Development Authority (“NYSERDA”); (xiii) Public Utility Law Project of New York; (xiv) ReEnergy Holdings LLC (“ReEnergy”); (xv) RENEW Northeast, Inc. (“RENEW”); (xvi) Taylor Biomass Energy, LLC; and (xvii) Transmission Developers, Inc.

On September 7, 2016, the Commission issued a *Notice with Respect to Requests for Rehearing and Reconsideration* (“Notice”) in this proceeding. In the Notice, the Commission ruled that responses to petitions for rehearing, reconsideration and/or clarification of the Order would be due on November 14, 2016. Multiple Intervenors hereby submits its response to selected petitions filed by other parties.

In this response, Multiple Intervenors advances three primary positions. In Point I, Multiple Intervenors advocates that the Commission refrain from taking any action on rehearing that would exacerbate the already-burdensome cost of the CES on customers. In Point II, Multiple Intervenors advocates that Tier 1 and/or Tier 2 of the CES should not be expanded to provide customer-funded subsidies to renewable generation facilities that already are or were subsidized under the Renewable Portfolio Standard (“RPS”). Finally, in Point III, Multiple Intervenors advocates that the Commission should not preclude the use of new hydropower projects (including but not limited to Canadian hydropower) as a means of satisfying CES renewable targets at a potentially-lower cost to customers.

ARGUMENT

POINT I

THE COMMISSION SHOULD REFRAIN FROM TAKING ANY ACTION ON REHEARING THAT WOULD EXACERBATE THE ALREADY-BURDENSOME COST OF THE CES ON CUSTOMERS

In their rehearing petitions, a number of parties seek to expand the customer-funded subsidies mandated by the Order. (*See, e.g.*, ACE NY 8-9, Brookfield 7-11, ReEnergy 2-10.) None of those parties, however, advance any proposals that would reduce customer costs associated with the CES or even offset the increased costs they seek to impose. For the reasons set forth below, the Commission should reject any and all arguments that, if adopted, would increase further the costs of the CES on customers. The CES will increase electricity prices in New York State by a material amount, and constitutes perhaps the most-expensive program ever undertaken by the Commission. Accordingly, the Commission should refrain from taking any action on rehearing that would exacerbate the already-burdensome cost of the CES on customers.

A. The Costs of Tier 1 Subsidies

Tier 1 of the CES requires customers to subsidize the owners of new renewable generation facilities in the form of Renewable Energy Credits (“RECs”) that all load-serving entities (“LSEs”) will be forced to procure. In its Order, the Commission specifies the amount of RECs to be procured annually from 2017 through 2021, and in 2029. (Order at 15, 84-85.)²

² The CES mandates achievement of the goal of having 50 percent of the State’s electricity requirements served by renewable resources by 2030 (the “50 by 30” goal). (*Id.* at 2-3.) Thus, 2029 is presumed to be the last year in which customers would be forced to fund new subsidies for the procurement of renewable resources, although 20-year Tier 1 contracts executed in 2029 could bind customers to funding renewable subsidies through as late as 2048.

Annual REC procurement obligations covering the period 2022 through 2028 would be established in a subsequent phase of this proceeding. (*See id.* at 15.)

In its initial recommendations on CES issues, New York State Department of Public Service Staff (“Staff”) indicated in January 2016 that, over the past several years, REC prices in Massachusetts, Connecticut, Rhode Island and New Hampshire have traded in the \$50 to \$60 per MWh range during the past 3-4 years.³ Since the Staff White Paper was issued, wholesale energy prices in New York have declined, thereby raising the possibility of even-higher REC prices being sought by developers of renewable generation.

Set forth below is a table of the potential annual costs of Tier 1 subsidies on customers utilizing hypothetical REC prices of \$30, \$40, \$50 and \$60 per MWh:

Year	RECs to Procure⁴	Annual Cost at \$30/REC	Annual Cost at \$40/REC	Annual Cost at \$50/REC	Annual Cost at \$60/REC
2017	974,000	\$29,220,000	\$38,960,000	\$48,700,000	\$58,440,000
2018	1,741,270	\$52,238,100	\$69,650,800	\$87,063,500	\$104,476,200
2019	3,124,100	\$93,723,000	\$124,964,000	\$156,205,000	\$187,446,000
2020	5,302,371	\$159,071,130	\$212,094,840	\$265,118,550	\$354,142,200
2021	7,530,642	\$225,919,260	\$301,225,680	\$376,532,100	\$451,838,520
2022-2028	?	?	?	?	?
2029	29,200,000	\$876,000,000	\$1,168,000,000	\$1,460,000,000	\$1,752,000,000

Thus, the total costs of Tier 1 subsidies paid by customers will be substantial, with higher REC prices translating into greater customer costs. For instance, by 2029, the annual cost of Tier 1 alone may range from \$876 million (using a \$30/REC price) to \$1.752 billion (using a \$60/REC price). When the likely annual costs of Tier 1 from 2017 through 2029 (and beyond) are

³ *See* Case 15-E-0302, *supra*, Staff White Paper on Clean Energy Standard (“Staff White Paper”) (dated January 25, 2016) at Appendix A, page 3.

⁴ *See* Order at 15, 84-85.

summed, it is clear that the total subsidy obligations imposed on customers will be many billions of dollars.

B. The Costs of Tier 2 Subsidies

Tier 2 of the CES is intended to operate similarly to the RPS Maintenance Tier. (Order at 117.) Eligibility for Tier 2 was addressed in the Order, and each facility seeking Tier 2 subsidies will be required to demonstrate that absent such subsidies “the facility will cease operations and no longer produce positive emission attributes.” (*Id.*) The award of Tier 2 subsidies will be evaluated on “a case-by-case basis and relief will be tailored to the situation presented.” (*Id.*)

The cost of Tier 2 is impossible to predict at this time. Compared to Tier 1 and Tier 3, the cost of Tier 2 to customers should be relatively modest. Given the likely magnitude of the costs of Tier 1 (*see supra*) and Tier 3 (*see infra*), it is prudent of the Commission to strive to limit Tier 2 costs to only those actually demonstrated to be necessary to maintain renewable attributes from selected facilities.⁵ Moreover, as detailed in Point II, *infra*, Multiple Intervenors objects to providing CES subsidies under Tier 2 to renewable generation facilities that already are or were subsidized by customers under the RPS.

C. The Costs of Tier 3 Subsidies

Tier 3 of the CES requires customers to subsidize the owner(s) of all existing Upstate nuclear generation facilities in the form of Zero-Emission Credits (“ZECs”) that all LSEs

⁵ Tier 2 is limited to, *inter alia*, selected renewable facilities “that were in commercial operation any time prior to January 1, 2003” (*i.e.*, prior to institution of the RPS). Accordingly, Tier 2 should be largely or entirely limited to those renewable generation facilities that have not previously received customer-funded subsidies under the RPS. Inasmuch as customers already funded the development of certain renewable generation facilities via long-term subsidy contracts, there is no justification for forcing customers to pay again for same facilities.

will be forced to procure. Pursuant to the Order, ZEC prices will be set administratively pursuant to the following formula:

ZEC price *equals* Social Cost of Carbon (“SCC”) *minus* Baseline
Effect of Regional Greenhouse Gas Initiative (“RGGI”) *minus*
Amount Forecasted New York Independent System Operator, Inc.
 (“NYISO”) Zone A Energy and Capacity Prices Exceed \$39/MWh

(Order at 129-131 and Appendix E.)

The SCC is scheduled to increase each two-year tranche of the CES, rising from \$42.87/short ton for Tranche 1 (April 2017 through March 2019) to \$64.54/short ton for Tranche 6 (April 2027 through March 2029). (Order at 131, Appendix E at 2, 4-5.) The Baseline Effect of RGGI is fixed at \$10.41/short ton. (*Id.*, Appendix E at 5-6.) After the Baseline Effect of RGGI is subtracted from the SCC, the difference is converted from nominal dollars per short ton to dollars per MWh using a conversion factor of 0.53846, which is fixed for Tranches 1-3. (*Id.*, Appendix E at 6.) For Tranche 1, the ZEC price will be \$17.48. (Order at 130, Appendix E at 5.) For Tranches 2-6, the ZEC price will rise or fall based predominantly on whether projected NYISO Zone A energy and capacity prices exceed \$39/MWh. As long as the ZEC price does not fall to zero, customers will be forced to purchase a maximum of 27,618,000 ZECs per year, based on the historic output of the subsidized facilities. (Order at 145, Appendix E at 9.)⁶

Set forth below is a table that illustrates the actual cost of the Tier 3 subsidies for Tranche 1, and the potential maximum costs for Tranches 2-6, on customers, assuming that (i) the maximum amount of ZECs associated with the Upstate nuclear facilities are sold, (ii) the factor

⁶ The maximum amount of ZECs required to be procured by LSEs may be modified under certain conditions, such as the possible future decision to force customers also to subsidize the Indian Point Energy Center facility.

for converting nominal dollars per short ton to dollars per MWh fixed for Tranches 1-3 is not changed, and (iii) forecasted NYISO Zone A energy and capacity prices do not exceed \$39/MWh:

Tranche	ZEC Price	Annual Cost	Tranche Cost
1	\$17.48	\$482,762,640	\$965,525,280
2	\$19.59	\$541,036,620	\$1,082,073,240
3	\$21.38	\$590,472,840	\$1,180,946,680
4	\$23.83	\$658,136,940	\$1,316,273,880
5	\$26.45	\$730,496,100	\$1,460,992,200
6	\$29.15	\$805,064,700	\$1,610,129,400

Thus, barring any unforeseen reduction in the output of the Upstate nuclear generation facilities, Tier 3 alone will cost customers close to \$1 billion over the next two years, and possibly in excess of \$7.5 billion through March 2029, depending predominantly on wholesale energy prices.

Thus, there is at least the reasonable possibility that the three tiers of the CES collectively will cost customers well over \$10 billion in subsidies, which will be reflected in the form of higher electricity prices. To be sure, the CES will result in certain perceived customer benefits (*e.g.*, wholesale market price suppression, potential emission reductions), although the aforementioned costs also are not exhaustive. As approved, the CES will result in considerable indirect costs on customers, including, but not limited to, the need for substantial transmission investment to connect future renewable generation to the grid and deliver the output to where the loads are located, and the significant cost of investments (*e.g.*, increased “conventional” generation, currently-uneconomic battery storage) to address the intermittency of many forms of renewable generation, such as wind and solar, particularly during peak periods.

New York already has some of the highest energy costs in the country. For many large employers, and especially energy-intensive businesses, high energy costs place the State at a competitive disadvantage compared to other locations where production (and jobs) can be sited

and capital investments made. Multiple Intervenors is extremely concerned about the very-high cost of the CES, which is likely to exacerbate New York's poor competitive position with respect to electricity costs. While New York strives to be a leader nationally, there is no guarantee that other states will follow suit, thereby creating tremendous uncertainty for many employers considering where best to conduct business, employ labor and invest capital. At this time, the Commission needs to take action to reduce the costs of the CES – and other discretionary policies – on customers and ensure that New York remains a viable place to conduct business. Accordingly, the Commission should refrain from taking any action on rehearing that would increase – as opposed to decrease – the cost of the CES to customers.

POINT II

ARGUMENTS THAT TIER 1 AND/OR TIER 2 OF THE CES SHOULD BE EXPANDED TO PROVIDE CUSTOMER-FUNDED SUBSIDIES TO RENEWABLE GENERATION FACILITIES THAT ALREADY ARE OR WERE SUBSIDIZED UNDER THE RPS SHOULD BE REJECTED

In their petitions for rehearing, several parties seek to expand the scope of renewable generation facilities eligible for subsidies under Tier 1 and/or Tier 2 of the CES.⁷ (*See, e.g.,* ACE NY 8-9, Brookfield 7-11, ReEnergy 2-10, RENEW 3-4.) These parties argue, generally, that renewable generation facilities not qualifying under the Tier 1 or Tier 2 eligibility criteria set forth in the Order provide the same environmental attributes as new renewable generation facilities

⁷ Generally, Tier 1 pertains to “new” renewable generation facilities commencing operations on or after January 1, 2015 (Order at 103), while Tier 2 pertains to selected existing renewable generation facilities that, *inter alia*, “were in commercial operation any time prior to January 1, 2003, and were originally included in New York’s baseline of renewable resources calculated when the RPS program was first adopted” (*id.* at 117).

qualifying under Tier 1 and, therefore, they should be treated comparably in the form of customer-funded REC subsidies. (*See generally id.*) For the reasons set forth below, these arguments should be rejected.

Initially, Multiple Intervenors strongly opposes the subsidizing of renewable generation facilities that already are or were the recipient of customer-funded subsidies under the RPS. In exchange for contractual commitments to develop and operate qualifying renewable generation facilities, many owners of existing facilities received substantial subsidy payments from NYSERDA that were funded by material surcharges imposed on customers. There was no guarantee, or any indication whatsoever, that customer-funded subsidy payments would continue beyond the terms of RPS contracts, which mostly were for ten years. Indeed, the Commission ruled previously that: “The goal of the RPS program ... should be to stimulate and complement voluntary renewable purchases so that competitive markets, not government mandates, sustain renewable activity beyond the term of the RPS program.”⁸ Furthermore, the payments made to many owners of existing renewable facilities were based on bids that they submitted voluntarily to NYSERDA based on a specific contract term. Thus, the bids accepted and contracts executed by NYSERDA already accounted for the anticipated above-market economic needs of the facilities (and those bids presumably were based on the reasonable expectation that customer-funded subsidies would end upon contract expiration, otherwise the bids certainly would have been lower).

Second, in rejecting a Staff proposal for broader Tier 2 eligibility criteria, the Commission recognized that existing renewable generation facilities have “likely already recovered all or most of their initial capital costs and only need to obtain market revenues sufficient

⁸ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 26.

to fund their comparatively low, going-forward operation and maintenance costs. These are primarily wind generation facilities that have no fuel costs unlike other large scale electric generation facilities and should be profitable even under today's lower market prices for energy and capacity." (Order at 116.) Rejecting arguments that existing renewable generation facilities suddenly will seek to sell their attributes into other states, the Commission concluded that "there is no imminent risk of losing the emission attributes associated with these facilities permanently and no concomitant need to provide them with additional New York consumer support for those emission attributes." (*Id.*) Multiple Intervenors concurs.

Third, in order to achieve the CES mandate regarding New York's future reliance on renewable resources, a large amount of new renewable generation facilities will need to be developed. Inasmuch as such development apparently cannot be justified economically absent customer-funded subsidies, at least at this time, it is appropriate for the Commission to focus its efforts on incentivizing new facilities, as opposed to utilizing scarce resources (*i.e.*, customer money) to subsidize facilities that already have been developed and are in operation. There are numerous examples where incentives have been directed solely toward "new" behavior (*e.g.*, developing a new renewable generation facility). For instance, companies locating or expanding within certain economic development zones are eligible for different ratemaking treatment than companies that may have existed in those same zones for decades. Another example are certain standby rate exemptions that are available only to customers that install new on-site generation facilities utilizing certain technologies.

Finally, but perhaps most importantly, the parties seeking to expand eligibility for CES-related incentives at customer expense have failed to address the incremental rate impacts associated with their positions or proffered any recommendations as to how the eligibility criteria

for renewable subsidies could be expanded while reducing – or even merely maintaining – the already-high cost of the CES to customers. Rather, these positions simply seek to add to the enormous financial burden being placed on customers to subsidize electric generation facilities owned by private developers.⁹

For the foregoing reasons, the Commission should refrain from taking any action that increases the cost of the CES to customers, including expanding the eligibility criteria to qualify for renewable subsidies to include facilities that already are or were receiving customer-funded subsidies.

⁹ When the Commission led New York’s transition to competitive wholesale electricity markets and the divestiture of generation from the State’s delivery utilities, a driving motivator was that such transition would shift the economic risks of developing, owning and operating generation facilities away from captive utility customers and onto third-party developers that willingly assumed such risks. *See, e.g.,* Cases 94-E-0952, *et al., In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 96-12, *Opinion and Order Regarding Competitive Opportunities for Electric Service* (issued May 20, 1996) at 30-31 (holding that “competitive providers ... would bear more of the risk of investment decisions, and customers less, than under regulation”); Case 03-E-1231, *Petition of Rochester Gas and Electric Corporation, Constellation Generation Group, LLC, and R.E. Ginna Nuclear Power Plant, LLC for Authority under Public Service Law Section 70 to Transfer by Auction Sale the R.E. Ginna Nuclear Generating Plant and Related Assets and for Related Approvals*, Order Approving Transfer, Subject to a Modification (issued May 20, 2004) at 4-5 (holding that petitioners “state that the plant [*i.e.*, R.E. Ginna Nuclear Power Plant] and its owners will continue to be subject to state and federal regulation, while the risks of owning, operating, and decommissioning the plant will be transferred from [Rochester Gas & Electric Corporation]’s customers to [R.E. Ginna Nuclear Power Plant, LLC], its affiliates and shareholders.” The CES, however, essentially seeks to have customers act as financial guarantors for certain renewable and nuclear generation facilities whose owners previously (and willingly) had assumed the economic risks associated with those facilities.

POINT III

THE COMMISSION SHOULD NOT PRECLUDE THE USE OF NEW HYDROPOWER PROJECTS AS A MEANS OF SATISFYING CES RENEWABLE TARGETS AT A POTENTIALLY-LOWER COST TO CUSTOMERS

The Commission includes existing hydropower facilities in New York as part of the State's base amount of renewable resources. Significantly, however, in the Order, the Commission generally precludes the use of new hydropower projects, including, possibly, certain forms of Canadian hydropower, as a means of satisfying Tier 1 of the CES. (*See* HQ US at 5-6; Order at Appendix A, page 3.) For instance, the Order allows "hydroelectric upgrades" and "low-impact run-of-river hydroelectric" to qualify for Tier 1 eligibility, but seemingly precludes, *inter alia*, new hydropower projects of various types. (Order at Appendix A, page 3.) Multiple Intervenors generally agrees with positions advocated by other parties that new hydropower projects should be eligible for Tier 1 of the CES.

As detailed, *supra*, Multiple Intervenors is very concerned that the CES is likely to be exorbitantly expensive for customers, and will place upward pressure on electricity prices while impairing the State's competitive position vis-à-vis other states in terms of energy costs. To the extent the State's policy, and the Commission's policy, is that progress toward the 50 by 30 goal is to be mandated and implemented predominantly via Tier 1, it is incumbent on the Commission to strive to achieve that goal at the lowest possible cost. Therefore, consistent with the goal of increasing the State's reliance on renewable energy, the eligibility requirements for Tier 1 should be broad and inclusive.

Pursuant to the Order, NYSERDA will be conducting regular solicitations for Tier 1 renewable power and RECs. (*See* Order at 111-114.) It is in the public interest to ensure that

competition in those solicitations is robust. Increased competition should result in lower subsidy prices, all else being equal. It is not clear to Multiple Intervenors why various forms of hydropower automatically should be excluded even from consideration as a Tier 1 resource, particularly new hydropower projects, whether developed in New York, Canada or elsewhere (recognizing the deliverability requirement to ensure that subsidized renewable power actually is consumed in the State; *see id.* at 106).¹⁰

In the Order, the Commission concluded that:

Tier 1 is for the procurement of new renewable resources of all types beginning commercial operation on or after January 1, 2015. The use of multiple tiers would reduce the competition with in tiers that is necessary to achieve lower long-term costs. Although numerous parties propose separate tiers for preferred types of new resources, it is more effective to allow all new resources to compete directly with each other.

(*Id.* at 103.) Multiple Intervenors agrees with and supports the Commission’s decision to refrain from creating sub-tiers and, instead, require “all new renewable resources to compete directly with each other.” Toward that end, new hydropower projects that satisfy the applicable deliverability requirement – whether developed in or outside of New York State – should be part of that competition. Again, the Commission should take all reasonable actions to minimize the cost of the CES to customers.

¹⁰ That position being noted, there may be compelling reasons either to include or exclude specific types of hydropower projects from consideration as a Tier 1 resource. The record in this expedited proceeding, however, may not be sufficiently developed to resolve such issues on a comprehensive basis. Rather, it appears that the issue raises numerous, potentially-conflicting objectives that warrant careful consideration. Significantly, a primary objective from Multiple Intervenors’ perspective is minimizing the cost of compliance with the CES on customers.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges the Commission to rule on the pending petitions for rehearing in a manner consistent with the positions advocated herein.

Dated: November 11, 2016
Albany, New York

Respectfully submitted,

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