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Gavin J. Donohue, *President &
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February 19, 2013

Via email at: secretary@dps.ny.gov and rps@dps.ny.gov

Honorable Jeffrey C. Cohen
Acting Secretary
New York State Public Service Commission
Three Empire Plaza
Albany, New York 12223-1350

Re: PSC Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard (RPS) – New York State Energy Research and Development Authority's (NYSERDA) Petition for Modification of RPS Main Tier Program

Dear Acting Secretary  Cohen:

The Independent Power Producers of New York, Inc. (IPPNY) is a not-for-profit trade association representing the independent power industry in New York. IPPNY's members¹ are companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. IPPNY has been an active participant in the PSC's RPS proceeding, and we represent a number of companies that generate electricity using renewable energy resources. We support the eligibility of both new and existing resources for RPS solicitations.

According to the New York State Public Service Commission's (PSC) January 4, 2013 Notice² establishing a comment and reply schedule on NYSERDA's petition,³ IPPNY submits these initial comments. In particular, our comments focus upon the elements of NYSERDA's petition that seek to limit eligibility under the RPS Main Tier to projects located in New York State. IPPNY cannot support NYSERDA's petition for the reasons outlined below.

¹ All of the views expressed in IPPNY's comments do not necessarily represent the positions of each of our members. Since IPPNY represents a broad spectrum of companies, we anticipate some of our members also may submit comments on their own.

² <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={33288590-F558-41B1-B6AD-CB2722272AE0}>

³ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={98BC8B49-D8FB-4054-A6B5-8F34F9EB5A1C}>

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Participation in New York's RPS

NYSERDA's proposal seems intended to fix a perceived problem that actually may not exist given the level of out-of-state participation in NYSERDA's solicitations under the RPS program. NYSERDA's website⁴ shows that only a few out-of-state projects have received RPS awards since the program began. The RPS program seems to be meeting its objectives without limiting the program's eligibility to in-state resources.

NYSERDA's Proposal May Harm In-State Resources That Sell Renewable Energy Out-of-State

The PSC should continue to retain a structure for the RPS program that preserves market opportunity for in-state renewable energy resources. The PSC should consider carefully the implications of closing New York's program to out-of-state resources. Limiting New York's RPS to only in-state resources may encourage other states to impose similar measures that would impede the ability of New York State to have reciprocity with other states, which maintain open access to their RPS programs, and could restrict opportunities for New York resources to sell their renewable energy products out-of-state.

Risk for Investment

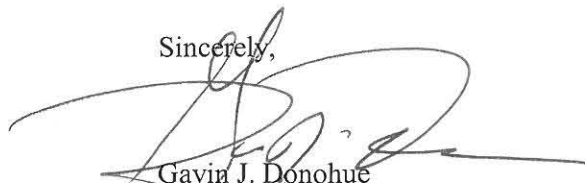
IPPNY is concerned that NYSERDA's petition to limit eligibility under the RPS Main Tier to projects located in New York State creates uncertainty for New York's program in light of litigation in Massachusetts⁵. The revised program that NYSERDA seeks still could be subject to a legal challenge, even though NYSERDA argues that its central procurement role in New York's RPS makes New York's program different than that of Massachusetts. Such an uncertain program environment would increase the risk for investments by generators under New York's RPS program, and those RPS awards given to generators may be invalidated by a court.

Conclusion

IPPNY urges the PSC to consider carefully the potential implications of NYSERDA's petition as submitted. The structure of New York's current RPS program and of NYSERDA's solicitation process fosters the procurement of cost-effective renewable energy to meet the state's renewable energy goals while balancing the policy objective of in-state economic development. That framework helps ensure that in-state renewable resources will continue to be eligible for market opportunities out-of-state. IPPNY suggests that the PSC consider alternatives to NYSERDA's petition for maximizing in-state economic benefit while ensuring a process that provides cost-effective solutions for New Yorkers as part of discussing with stakeholders the broad issue of RPS program eligibility during the upcoming 2013 RPS program review.

Thank you for the opportunity to provide these comments, and IPPNY urges you to incorporate them into your decision-making. If you have any questions or need additional information, please feel free to contact me.

Sincerely,



Gavin J. Donohue
President & CEO

⁴ http://www.nyseda.ny.gov/Program-Planning/Renewable-Portfolio-Standard/Main-Tier-Solicitations.aspx?sc_database=web

⁵ <http://www.lawofrenewableenergy.com/2010/04/articles/renewable/transcanada-challenges-massachusetts-rps/print.html>; the court has not issued a decision, as the case was stayed after Massachusetts suspended the regulation that was the subject of the Commerce Clause challenge.