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April 22, 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:

In accordance with the *Notice of Comment Period for Staff White Paper and Cost Study* issued by the New York State Public Service Commission on April 8, 2016 in the above-referenced proceeding, attached for filing is Multiple Intervenor's Initial Comments on White Paper.

Respectfully submitted,

MULTIPLE INTERVENORS

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MBM/dep
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

**MULTIPLE INTERVENORS'
INITIAL COMMENTS
ON
WHITE PAPER**

Dated: April 22, 2016

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PRELIMINARY STATEMENT

Pursuant to the (i) *Notice Soliciting Comments and Providing for Technical Conference and Public Statement Hearings* issued on January 25, 2016 (“January 25th Notice”), (ii) *Notice Extending Comment Period* issued on March 8, 2016, and (iii) *Notice of Comment Period for Staff White Paper and Cost Study* issued on April 8, 2016 (“April 8th Notice”), 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 submits to the New York State Public Service Commission (“Commission”) its *Initial Comments on White Paper* in Case 15-E-0302.¹ Multiple Intervenors’ Initial Comments address the *Staff White Paper on Clean Energy Standard* (“White Paper”) issued herein by New York State Department of Public Service Staff (“Staff”) on January 25, 2016.²

On April 8, 2016, Staff issued a *Clean Energy Study White Paper – Cost Study* (“Cost Study”) in this proceeding. Because the April 8th Notice solicits separate comments on the Cost Study, which currently are due on June 6, 2016, Multiple Intervenors will refrain from addressing the Cost Study at length here and, instead, focus these Initial Comments on the contents of the White Paper. Importantly, however, based upon a preliminary review, Multiple Intervenors has numerous, significant concerns regarding the Cost Study, which appears to reflect extraordinary – and questionable – assumptions and omissions intended to minimize artificially the projected costs of the proposed Clean Energy Standard (“CES”), and thereby maximize

¹ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*.

² Parenthetical references to the White Paper are preceded by the notation, “WP.”

artificially its purported benefits. Such assumptions and omissions, if utilized for that purpose, are misguided and cast the usefulness of the Cost Study in an unfavorable light. Customers have the right to know the true, projected economic impacts of the proposed CES mandate. Accordingly, Multiple Intervenors urges the Commission not to rely on the Cost Study concerning the economic costs and the purported benefits of the proposed CES mandate.

This proceeding was instituted initially to consider modifications to the Commission's existing policies for procuring large-scale renewable ("LSR") resources.³ On December 2, 2015, Governor Andrew M. Cuomo issued a mandate directing the Commission and Staff to develop and implement a CES that would: (a) require that 50% of the electricity consumed in New York in 2030 be generated by renewable resources (hereinafter, the "50 by 30 Goal"); and (b) prevent the premature deactivation of nuclear generation facilities located in Upstate New York.⁴ On January 21, 2016, the Commission issued an order expanding the scope of this proceeding to incorporate consideration and implementation of a CES consistent with Governor Cuomo's mandate.⁵ Shortly thereafter, Staff issued the White Paper and, more recently, the Cost Study.

In the White Paper, Staff advances the following key recommendations:

- All electric retail load-serving entities ("LSEs"), including non-jurisdictional entities, should be required to share the obligation of the CES mandate in proportion to their annual retail electricity sales.

³ See Cases 15-E-0302, *et al.*, *supra*, Notice Instituting Proceeding, Soliciting Comments and Providing for Technical Conference (issued June 1, 2015).

⁴ See *Governor Cuomo Directs Department of Public Service to Begin Process to Enact Clean Energy Standard* (issued December 2, 2015), available at <http://www.governor.ny.gov/news/governor-cuomo-directs-department-public-service-begin-process-enact-clean-energy-standard>.

⁵ See Case 15-E-0302, *supra*, Order Expanding Scope of Proceeding and Seeking Comments (issued on January 21, 2016).

- CES tiers should be established that would support a growing quantity of new renewable generation, as well as continued contribution from existing renewable resources and certain zero-emission resources (*i.e.*, qualifying nuclear generation facilities).
- For each tier, a firm set of requirements should be established through 2020, with targets through 2030 to be developed in an “Implementation Plan.”
- Compliance should be demonstrated through the use of tradeable (i) renewable energy credits (“RECs”) procured for qualified renewable energy purchases and (ii) zero-emission credits (“ZECs”) procured for qualified nuclear energy purchases, with such RECs and ZECs being created and tracked by the recently-designed New York Generation Attribute Tracking System (“NYGATS”).
- An alternative compliance payment (“ACP”) mechanism should be established for each CES tier to cap REC and ZEC prices and provide for a flexible, alternative means of compliance.
- Competitive long-term procurements of renewable energy by the New York State Energy Research and Development Authority (“NYSERDA”) and/or the State’s electric distribution companies (“EDCs”) should be implemented, as needed, for specific tiers to support project financing, reduce compliance costs, and provide both generators and customers with price stability.
- A method for disposition of procured RECs and ZECs should be established.
- The Commission should undertake triennial program assessments and approve the development of an Implementation Plan.

(See WP at 6-7.)

Many Multiple Intervenors members support renewable resources and have undertaken renewable generation projects or entered into contracts supporting same, or currently are evaluating one or both of those options. Nevertheless, Multiple Intervenors has numerous, significant concerns regarding (i) the proposed CES, (ii) selected Staff recommendations advanced in the White Paper, and (iii) as will be detailed in comments to be submitted in accordance with the April 8th Notice, the Cost Study.

Multiple Intervenors' concerns regarding the CES and the White Paper are detailed throughout these Initial Comments. While Multiple Intervenors supports and is appreciative of selected recommendations by Staff to hold down costs, certain aspects of the White Paper must be modified because cost considerations appear to be ignored.

Initially, prior to commenting on specific sections of the White Paper, Multiple Intervenors takes exception to the decision to mandate compliance with a CES established prior to – as opposed to at the conclusion of – a Commission proceeding evaluating same. This approach does not constitute sound decision-making. Even if, *arguendo*, the Commission were to determine that the State should increase its reliance on renewable resources over time (subject to, *inter alia*, customer rate and price impact considerations), the most prudent way to consider the possible adoption of a mandatory CES would be to evaluate – and quantify unbiasedly – the benefits and the costs of numerous potential objectives and then determine which standard, if any, made the most sense for the State. That type of rigorous evaluation of numerous potential alternatives is not happening here. Instead, the 50 by 30 Goal is being pursued without any evidence that is a reasonable goal.⁶

For example, this proceeding has failed to examine adequately numerous, important considerations, many of which appear to have been disregarded in whole or large part. Such considerations include, but are not limited to, the following: (a) the economic impacts of forcing captive customers to subsidize existing and new renewable generation facilities and selected

⁶ In fact, it is Multiple Intervenors' understanding that, based on the manner in which the Regional Greenhouse Gas Initiative ("RGGI") is implemented through the auctioning and trading of allowances, the CES may result in zero (or close to zero) net emission reductions in the Northeast. The reason for this potentially-counterintuitive outcome is that because RGGI establishes emission targets on a regional basis, allowances that are not used in New York essentially are reallocated amongst the other RGGI states through the auctioning and trading of allowances.

existing nuclear generating facilities, both in isolation and in aggregate with numerous other, costly initiatives being undertaken by the Commission; (b) the detrimental impacts of higher electricity prices on New York's economic competitiveness, including the loss of jobs and capital investments in the State, particularly by energy-intensive customers, that likely will result from such higher prices; (c) the cost of the incremental transmission facilities that would be needed to accommodate an enormous increase in renewable generation facilities that are likely to be located outside of high-load regions; (d) the impacts of local opposition to the siting of LSR projects such as wind or solar on the ability of LSEs to comply with aggressive CES mandates, and the cost of such compliance; (e) the impacts of a large increase in intermittent renewable generation facilities on the safe and reliable operation of the bulk power system; and (f) the impacts of a large increase in intermittent renewable generation facilities on the State's Installed Reserve Margin (*e.g.*, it will increase materially, thereby necessitating the development of new non-intermittent baseload generation that most likely will be gas-fired).⁷ The failure to address these fundamental concerns amply demonstrate that setting a pre-determined goal, without rigorous and unbiased analysis, is contrary to the public interest.

In its January 25th Notice, the Commission requests that: "commenters organize their comments in accordance with sections and subsections of the Staff White Paper." (January 25th Notice at 1.) Accordingly, the remainder of Multiple Intervenors' Initial Comments track the order of the White Paper.

⁷ Multiple Intervenors does not believe the potential impacts of the proposed CES on grid reliability have been evaluated adequately. The greater the State's reliance on intermittent LSR facilities, the more challenging it becomes to meet system peaks (especially on a hot summer afternoon when contributions from wind power may be very limited).

ARGUMENT

MULTIPLE INTERVENORS' INITIAL COMMENTS ON THE WHITE PAPER

This section sets forth Multiple Intervenors' Initial Comments in response to the White Paper. As requested in the January 25th Notice, these Initial Comments are organized to track the sections and the subsections of the White Paper, and, consequently, should not be interpreted as reflecting any prioritization by Multiple Intervenors with respect to the myriad of issues raised by the proposed CES mandate and Staff's recommendations concerning same.

I. INTRODUCTION, OBJECTIVES, AND SUMMARY OF PROPOSAL

A. Introduction

This section of the White Paper summarizes how on December 2, 2015, Governor Cuomo directed Staff to develop a CES that converts certain aspirational objectives – such as the 50 by 30 Goal – “to mandated requirements that will ensure their achievement, and present the program to the Commission at its June 2016 session.” (WP at 1.) Notwithstanding this directive, the Commission has a responsibility to act independently and in the public interest, and should refrain from taking any action that is contrary thereto, including the pursuit of discretionary goals that result in unacceptable rate and/or price impacts on customers. A failure to do so could lead to higher electricity prices and dire economic consequences, such as job losses, in the State.

B. Objectives

Initially, this section of the White Paper describes four principal policy objectives of the CES: (1) increase renewable electricity supply to achieve the 50 by 30 Goal; (2) support construction of new renewable generation in New York; (3) prevent the premature closure of Upstate nuclear facilities; and (4) promote the progress of Reforming the Energy Vision (“REV”)

market objectives. (WP at 2-3.) Notably, maintaining affordability with respect to electricity does not appear to be a principal policy objective.

The White Paper claims that: “Economic benefits will come from new construction and maintenance jobs as well as from optimizing system efficiency.” (WP at 2.) Importantly, however, to the extent renewable resources are heavily subsidized by electric customers, the resulting price impacts may contribute to the loss of jobs and a decline in capital investment and other economic activity in the State that could be far greater than what may be facilitated by CES-related mandates. Indeed, the relationship between energy prices and economic activity is clear and unambiguous. For instance, the 2002 State Energy Plan noted that:

[A] permanent energy price reduction of \$100 million per year would stimulate, over a ten-year period, the development of approximately 1,600 jobs in New York, increase the State’s gross output of goods and services by about \$119 million, and increase personal income by about \$105 million. Incremental output of goods and services, personal income, and jobs created as a result of lower energy prices would generally be sustained over time because the incremental business profits and consumer purchasing power would be available in each subsequent year, resulting in a continued higher level of business investment and consumer spending.⁸

Significantly, however, while the above figures now are more than a decade old and warrant updating, the converse indisputably is true – permanent energy price increases would lead to reductions in jobs, the State’s gross output of goods and services, and personal income.

Moreover, the purported economic benefits associated with the construction of renewable generation facilities appear no greater than that of other forms of electric generation, and maintenance jobs associated with wind and solar generating facilities probably are considerably fewer in number compared to other generation technologies. Without doubt, the

⁸ 2002 Energy Plan at 2-24.

subsidized construction and maintenance of renewable generation facilities will spur some economic activity. Whether and the extent to which such activity is beneficial really depends on whether the economic benefits exceed the economic costs – a comparison that the Cost Study failed to undertake.

Next, the White Paper identifies six objectives sought to be achieved by Staff. (WP at 3-4.) The objectives stated, while generally laudable, are so generalized that they practically defy meaning or critical evaluation. For instance, the first objective, “Manage Energy Costs,” claims that: “The CES program approach will promote cost-effective renewable energy development and acquisition through multiple aspects of its design including the application of competitive procurement, long-term certainty and compliance flexibility.” (*Id.*) At this time, there is no clear definition for “cost-effective renewable energy development.”⁹ To the contrary, it appears that customers will be forced to subsidize renewable resources sufficient to achieve the 50 by 30 Goal irrespective of the magnitude of dollars required or the resulting price impacts. The timing of the CES mandate is particularly troubling given that wholesale electricity prices in markets administered by the New York Independent System Operator, Inc. (“NYISO”) currently are at or near historic lows. Consequently, the customer-funded subsidies required to spur the development of otherwise uneconomic renewable resources likely will be much-higher than during prior periods when wholesale electricity prices are more robust. As detailed, *infra*, Multiple Intervenors contends that while some of the recommendations advanced in the White Paper may help to moderate the cost of the CES to customers, other recommendations are very likely to have the opposite effect.

⁹ A generation technology that truly is cost-effective would not require billions of dollars in customer-funded subsidies that, at least in New York, started well over a decade ago.

C. Summary of the Proposal

This section of the White Paper contains a summary of Staff's recommendations for achieving the CES goals. Multiple Intervenors has no comments specific to this section. Instead, Multiple Intervenors' positions in response to individual Staff recommendations are advanced, *infra*, in response to the specific sections of the White Paper in which such recommendations are set forth.

II. DISCUSSION AND PROPOSALS

A. Renewable Energy

1. 50 by 30 Goal, Obligation, and Compliance Mechanism Calculating the 50 by 30 Mandate

Staff has determined that 33,700 GWh of incremental renewable generation must be added to the State's fuel mix to achieve the 50 by 30 Goal. (WP at 7.) While that calculation is set forth in Appendix B to the White Paper, it is not entirely clear whether Staff intends for the calculation to be updated periodically or fixed now. (See WP, Appendix B.) Multiple Intervenors notes that the calculation is based on numerous assumptions that may turn out to be wildly inaccurate, such as the State's future electric load, how much load will be added due to electric vehicles, energy efficiency savings achieved within the State (including by customers of non-jurisdictional entities), *etc.* The White Paper is silent, however, as to whether the 50 by 30 Goal will be pursued irrespective of the relative accuracy of Staff's assumptions. Multiple Intervenors recommends that, at a minimum, the Commission clarify that maintaining affordable electric prices for all customers is its highest priority, and that the 50 by 30 Goal will be relaxed, if and to the extent necessary, to maintain such affordability.

Appendix B to the White Paper contains a chart that Multiple Intervenors believes is extremely disconcerting with respect to the costs to achieve the 50 by 30 Goal. The chart sets

forth the “Statewide Fuel Mix For Electricity Generation” as of 2014. (See WP, Appendix B at 3.) The Commission adopted a Renewable Portfolio Standard (“RPS”) in 2004.¹⁰ It implemented the RPS by authorizing the annual imposition of hundreds of millions of dollars of surcharges on customers, which surcharges have grown steadily and continue to this day. Notwithstanding the collection of well over a billion dollars in RPS surcharges – the vast majority of which were used to subsidize wind and solar generation projects – such wind and solar generation comprise only 2.4% and 0.4%, respectively, of the State’s electric fuel mix one decade later. (WP, Appendix B at 3.)¹¹ Now, in the White Paper, Staff is recommending that customers prospectively be forced to pay subsidies that on a unitized basis are roughly double the magnitude of RPS subsidies. (See WP, Appendix A at 3-4 [attempting to justify the payment of REC prices in the range of \$50 to \$60 per MWh similar to other Northeastern states, even though such levels are “twice the level paid through NYSERDA long-term RPS Main Tier contracts”].) The Commission should re-evaluate what it has cost to achieve the modest progress to date under the RPS, and then project the magnitude of the subsidies that might be required to achieve 4-5 times the amount of renewable penetration over a comparable period of time.

¹⁰ See Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004).

¹¹ See also NYSERDA, *New York State Renewable Portfolio Standard – Annual Performance Report Through December 31, 2014 – Final Report* (dated March 2015) at F1 (depicting “Specified Collections” from 2004 through 2014 in excess of \$1.2 billion, with collections of approximately \$3 billion anticipated through 2024).

*Incremental Renewable Energy Needed
to Reach the 50% by 2030 Goal*

In order to measure progress toward the 50 by 30 Goal, “Staff proposes that triennial reviews be established so that the program can be adjusted as needed and all market participants have certainty on program goal and target levels.” (WP at 8.) Multiple Intervenors has no objections to this proposal.

Staff then recommends “that the Commission establish the first goal for 2017, the expected first year of the CES. Subsequent triennial goals are recommended for 2020, 2023, 2026 and 2029.” (*Id.*) Multiple Intervenors disagrees and recommends instead that the initial target toward any 50 by 30 Goal adopted herein become effective in 2018, not 2017. Adoption of this recommendation would allow subsequent targets to be set for 2021, 2024 and 2027 and 2030.

Multiple Intervenors is very concerned that Staff is underestimating the complexities and potential customer impacts associated with implementing the proposed CES mandate with respect to the 50 by 30 Goal.¹² The proposed implementation of renewable procurement mandates on LSEs is a dramatic change in State policy and will require time to study and effectuate. Allowing an additional year before the institution of binding obligations would allow implementation issues to be examined thoroughly and resolved in reasoned manner. It also would accord LSEs additional time to satisfy their obligations at the lowest cost to their customers, while also allowing more time for renewable developers to respond to the CES ultimately adopted herein. Furthermore, inasmuch as wholesale electricity prices are at or near historic lows, it would

¹² Because the subsidization of Upstate nuclear facilities is somewhat less complicated and, arguably, more exigent, Multiple Intervenors does not oppose efforts to implement that component of the CES in advance of the 50 by 30 Goal.

behoove the Commission to accord LSEs additional time to respond to any new mandates – to the extent wholesale prices rise, the subsidies paid presumably would reflect such increase.¹³

Triennial Renewable Energy Goals

In this section of the White Paper, Staff advances renewable energy consumption goals for 2017, 2020 and 2030. (WP at 9.) For the reasons detailed above, Multiple Intervenors advocates that (i) the initial goal under an CES be set very conservatively, as opposed to aggressively, and (ii) such initial goal apply to 2018, not 2017. Additionally, Multiple Intervenors sees little purpose to establishing a 2020 goal at this time. Rather, Multiple Intervenors recommends that the Commission set the goal for 2021 (or, alternatively, 2020) in the future. There are no exigent circumstances necessitating the setting of not only the initial goal, but the second stage goal at this time as well. It would be far preferable to establish the second stage goal in a subsequent phase of this proceeding, when additional, updated information (*e.g.*, pertaining to load forecasts, in-State renewable generation forecasts, wholesale electricity prices, the economics of renewable generation technology) would be known to the Commission. Multiple Intervenors recommends that the Commission reject Staff’s recommendation and, instead, rely on the most recent available information when setting the second stage renewable energy consumption goal for 2020 or, preferably, 2021. Such goal should not be set now based on information that likely will be stale well before the year of the goal.

¹³ For similar reasons, Multiple Intervenors advocates that any CES targets adopted by the Commission be extremely gradual in nature. By waiting until the next decade for targets to accelerate materially, the cost of the necessary subsidies may decline due to, *inter alia*, potentially-higher wholesale electricity prices and anticipated technological advancements in renewable generation. In the White Paper, Staff recommends that: “The overall trajectory for achieving the 2030 goal will be the subject of further comment and party participation.” (WP at 8.) Multiple Intervenors will participate in this future process but, for now, urges the Commission to be very conservative – as opposed to aggressive – with respect to the initial targets (which, for the reasons detailed, *supra*, should become effective in 2018, not 2017).

The Role of Energy Efficiency

This section of the White Paper does not advance any proposals specific to the CES. However, for many years and continuing today, the State's electric customers are paying exorbitant surcharges to subsidize energy efficiency programs administered by the State's utilities and NYSERDA pursuant to the Energy Efficiency Portfolio Standard ("EEPS"). Customers will not be able to fund ever-increasing subsidies for energy efficiency and pay for the CES and other State and regulatory mandates.

Additionally, because energy efficiency is an integral component of the State's electric load forecast, which in turn impacts the specific CES target for renewable energy consumption, the Commission needs to evaluate the true economic cost of subsidizing energy efficiency versus the true economic cost of subsidizing renewable generation. For instance, if, *arguendo*, the CES is adopted as proposed, it may be less costly to customers to subsidize more energy efficiency, thereby reducing the amount of renewable energy consumption that is necessary to satisfy a potential CES. Conversely, it may be advantageous to customers to subsidize less energy efficiency and procure additional amounts of renewable energy consumption in furtherance of satisfying CES targets. Accordingly, the Commission needs to evaluate the true economic cost of energy efficiency and renewable resources in order to pursue strategies that minimize customer subsidies and costs. There is no evidence that such evaluation has occurred.

The Obligation on Load Serving Entities

In this section of the White Paper, Staff proposes that all LSEs will be subject to CES mandates. (WP at 10-13.) Staff's definition of LSE is intended to include, *inter alia*, (i) all investor-owned electric utilities, (ii) jurisdictional municipal electric utilities, (iii) competitive energy service companies, (iv) non-jurisdictional entities such as the New York Power Authority

(“NYPA”), the Long Island Power Authority and the State’s rural electric cooperatives and municipal electric corporations that are supplied entirely by NYPA, and (v) direct customers of the NYISO. (*Id.*) For the reasons set forth below, Multiple Intervenors opposes Staff’s proposal to subject NYPA to CES-related mandates.

The proposed imposition of CES mandates on NYPA, if adopted, would be (i) extremely inequitable to NYPA and its customers, (ii) counterproductive to the State’s critically-important economic development efforts, and (iii) wholly inconsistent with longstanding Commission precedent. Indeed, if there is any entity that should be excluded from new mandates related to renewable generation it is NYPA, which for decades has been the entity (in conjunction with its customers) responsible for the vast majority of the State’s renewable generation. To require NYPA and its customers to subsidize new renewable generation, while essentially ignoring all of their prior and current contributions to New York’s renewable mix (which dwarf the combined contributions of every other entity in the State), would be extraordinarily inequitable.

Moreover, the imposition of mandates on NYPA are likely to impact its customers in a significantly-detrimental manner. Such customers, through existing contracts, already fund NYPA’s generation of electricity from renewable resources. Upon information and belief, that renewable generation accounts currently for roughly 75 to 80 percent of New York’s entire electrical output from renewable resources. Thus, NYPA – and its customers – already are doing more than their fair share toward achievement of any renewable generation consumption goal that may be established in this proceeding.

Multiple Intervenors is extremely concerned that the proposed inclusion of CES mandates on NYPA would increase costs – possibly significantly – to existing NYPA customers, thereby wreaking havoc on the State’s economic development efforts. NYPA’s customers tend to

be large, energy-intensive entities (and employers) for which electricity is a major cost of conducting business. NYPA's customers are amongst the most price-sensitive in New York and, consequently, electricity cost increases to these customers could result in the significant loss of jobs, capital investments and tax base from the State. The White Paper, however, completely ignores any analysis of these likely consequences of its recommendation to impose CES mandates on NYPA.

Application of the proposed CES mandates to NYPA also would be contrary to longstanding Commission precedent. For instance, when the Commission adopted the System Benefits Charge ("SBC") in 1998, it exempted NYPA allocations¹⁴ and, since that time, repeatedly has approved the continuation of that exemption.¹⁵ In 2005, NYPA filed comments advocating that the Commission should affirm and extend the exemption, explaining that "a primary statutory mission of NYPA is to provide low cost power to business and industry ... in order to assist economic development in New York State...."¹⁶ NYPA explained further that the "[i]mposition of SBC charges on NYPA's customers would be counterproductive to achievement of these objectives and would interfere with accomplishment of NYPA's statutory mission."¹⁷ The

¹⁴ Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 98-3, Opinion and Order Concerning System Benefits Charge Issues (issued January 30, 1998) at 6-7.

¹⁵ See, e.g., Case 94-E-0952, *supra*, Order Continuing and Expanding the System Benefits Charge for Public Health Programs (issued January 26, 2001) at 22.

¹⁶ Case 05-M-0090, *supra*, Comments of New York Power Authority (dated October 17, 2005) at 1.

¹⁷ *Id.*

Commission again extended the exemption, holding that it considered the application of such exemption to be a “settled issue.”¹⁸

Importantly, the Commission preserved this exemption when it established the RPS and the EEPS. In so ruling, the Commission acknowledged explicitly with respect to the RPS that the exemption is necessary to promote the public interest in pursuing the State’s economic development objectives.¹⁹ In fact, in a very recent order, the Commission ruled that the NYPA exemptions from the SBC, the RPS surcharge and the EEPS surcharge should be extended to the Clean Energy Fund:

As noted by MI, NYPA exemptions have been in place since each of the existing surcharges were implemented and were instituted for economic development purposes. We shall maintain all current NYPA exemptions for incremental collections approved in this Order.²⁰

The CES mandate, at least with respect to renewable resources, merely is an extension – or redesign – of the RPS. Accordingly, the numerous justifications for exempting NYPA allocations from RPS requirements and surcharges apply with full force and effect to CES mandates. Moreover, a decision to possibly terminate the exemption would have serious, detrimental impacts on NYPA’s large, energy-intensive customers. Such decision also would be inconsistent with the Energy Plan, which explains that the “State needs to maintain its focus on

¹⁸ Case 05-M-0090, *In the Matter of the System Benefits Charge III*, Order Continuing the System Benefits Charge (SBC) and the SBC-funded Public Benefit Programs (issued December 21, 2005) at 30.

¹⁹ Case 03-E-0188, *supra*, Order Regarding Retail Renewable Portfolio Standard (issued September 2, 2004) at 11.

²⁰ Cases 14-M-0094, *et al.*, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) at 94.

affordability, so ... more competitive industrial rates contribute to the growing mix of attributes that will attract new business to, and retain existing businesses in New York.”²¹ The Energy Plan further states that “[m]ore needs to be done to lower rates given utility costs are frequently cited as barriers to business relocation or expansion across the State.”²² Regulatory or other actions that impair the ability of NYPA to fulfill its statutory mission are inconsistent with the Energy Plan, and must be avoided.

In addition to these NYPA-related concerns, Multiple Intervenors hereby advances several additional concerns regarding this section of the White Paper. First, Staff argues that: “The LSE obligation also promotes the REV objective of developing markets at the distribution level, as it encourages ESCOs to develop innovative products to reduce customer costs.” (WP at 11.) This “justification” is without merit. ESCOs already possess – or should possess – an incentive to reduce customer costs because that will help them attract and retain customers. The Commission should not attempt to promote REV objectives and force innovation by adopting policies that increase electricity costs to customers through the imposition of broad-based mandates.

The White Paper then states that: “Each LSE will be required to meet its CES obligation for each tier within each Compliance Year. For each LSE, each tier’s CES obligation would be determined by multiplying the LSE’s load obligation by the percentage CES target for that year.” (*Id.*; footnote omitted.) The White Paper is not clear when an LSE’s obligation would be measured, or how that obligation may be adjusted if the LSE either gains or loses load during the year. Depending on how this issue is addressed, non-utility LSEs, such as energy service

²¹ Energy Plan at 9.

²² *Id.* at 9-10.

companies (“ESCOs”), could be disadvantaged unfairly. For instance, if a utility loses a number of large supply customers without any adjustment to its CES obligation, it presumably still would be allowed to recover all of its commodity costs from captive customers (*i.e.*, in the form of even higher prices). On the other hand, if an ESCO loses a number of large supply customers, it may not be able to reallocate the incremental CES-related costs to its remaining customers due to contractual commitments, thereby increasing ESCO business risks and costs.

The White Paper then states that:

Certain types of market developments and program initiatives will have the effect of reducing total carbon emissions while increasing electricity demand. These include electric vehicles and geothermal heat pumps. If the adoption of these technologies has the effect of increasing the compliance obligation under the CES, then the CES could potentially have the inadvertent effect of deterring the adoption of beneficial technologies.

(WP at 13.) Multiple Intervenors questions why this concern selectively is limited to electric vehicles and geothermal heat pumps. Attracting new businesses to New York and/or facilitating business expansions within the State – objectives that should be pursued – similarly would (i) increase electricity demand, (ii) increase the compliance obligation under the CES, and, most importantly, (iii) be deterred by the cost of the CES. Furthermore, to the extent such business attraction and/or expansion efforts were to take place in New York, as opposed to a state with a less-clean mix of electricity generation, they also would have the effect of reducing total carbon emissions nationwide. Unfortunately, the White Paper ignores entirely the detrimental impacts of the CES on the State’s economic development activities.

Compliance Mechanism

Renewable Energy Credits

The White Paper posits that: “The REC feature is essential for New York’s market-based CES obligation to have compatibility across systems, policies (i.e., Environmental Disclosure Label Program) and markets.” (WP at 13.) That is not true. For over a decade, New York has subsidized renewable resources under the RPS without reliance on marketable RECs. Furthermore, while the use of RECs may facilitate reliance on the State’s Environmental Disclosure Label Program and NYGATS, the tail should not wag the dog. The focus should be minimizing CES costs on customers.

The White Paper pays scant attention to customer costs and impacts. The next sentence states that: “Generation owners will be able to certify projects for eligibility in multiple states to facilitate their access to the highest value markets.” (*Id.*) Thus, rather than attempting to minimize customer costs, Staff appears more intent on facilitating the recovery by renewable developers of the highest possible subsidies across state lines. The proposed structure is certain to lead to developers chasing the highest-cost RECs, thereby driving-up compliance costs borne ultimately by customers. (See WP, Appendix D at 1 [noting that “when states competing for marginal supply set their ACPs lower than their neighbors, sellers of RECs tend to chase the highest revenue, with REC supply going to markets with higher ACPs rates”].) Engaging in this “race to the top” competition is bad for electric customers, who would be stuck footing the bill for ever-increasing subsidies.

The White Paper envisions RECs in multiple tiers being purchased and/or traded in spot markets and through longer-term transactions, with different market prices, and subject to an ACP mechanism. (*Id.*) Returning to the Staff proposal that CES obligations become mandatory

in 2017, Multiple Intervenors is highly skeptical that the necessary markets and associated infrastructure will be functioning adequately in 2017 (and for some time thereafter). Accordingly, CES obligations should not become mandatory on LSEs until 2018, if at all.

Alternative Compliance Mechanism

Staff recommends utilization of an ACP mechanism – where LSEs remit payments as an alternative means of compliance with the CES – and posits that: “The ACP also serves as a cost cap, because LSEs will have no need or incentive to incur costs higher than the ACP.” (WP at 14.) While that may be true, Multiple Intervenors is concerned that the ACP also will serve as a cost floor and, consequently, care must be accorded to ensure that the cost of purchasing a REC or ZEC through the ACP is capped at an affordable level. Additionally, as advocated, *infra*, the Commission must ensure that revenues realized via the ACP are returned directly and entirely to customers to help offset the substantial costs of the CES.

Staff asserts in the White Paper that the Alternative Compliance Mechanism (“ACM”) approach “is used widely and successfully throughout competitive market states that use an LSE obligation model for RPS.” (*Id.*) No support is provided for that assertion. Although an ACM approach may be used widely in certain regions of the country, success is a relative term, and Multiple Intervenors questions its use here. For instance, it appears that Northeast states reliant on an ACM experience much-higher costs for RECs than those that have been paid historically in other regions, as well as in New York under RPS competitive solicitations. Based on this finding, the Commission needs to evaluate whether reliance on an ACM truly represents the least-cost option.

For instance, the White Paper states that in the Northeast, ACPs range between \$55 and \$67 per MWh. (WP, Appendix D at 1.) In contrast, attributes under the RPS historically have

been sold for less than half that amount. Consequently, under the approach recommended by Staff, customers could experience a more-than-doubling of the unitized cost of attributes, or RECs, compared to the RPS approach, and that is before the impacts associated with procuring massively-greater amounts of renewable resources even are considered. Staff, however, does not evaluate these huge potential financial impacts on captive customers. In fact, Staff suggests that one approach is “to set the ACP at a multiple of at least twice the *expected* long-term REC premium, to encourage investment in developing projects rather than payment of the ACP.” (*Id.*; emphasis in original.) While this approach may be optimal for developers, it is decidedly harmful for customers. Given the enormous uncertainty and challenges associated with essentially doubling the State’s existing reliance on renewable resources, every effort should be undertaken to set the ACP as low as possible.²³

Staff recommends that:

The ACP levels will be established by the Commission based on forecasted REC prices, system needs, and other relevant factors. Changes to the ACP schedule should be reviewed periodically, but not more than once every 3-5 years, and changes should be moderate in magnitude and graduated over time, to provide stability and investor confidence.

(WP at 14-15.) Initially, Multiple Intervenors notes that the “other relevant factors” are not identified. First and foremost among such factors should be customer costs and impacts. It is extremely unfortunate that the CES was mandated before potential compliance costs even were calculated. The Commission should not compound this error by ignoring the interests of captive customers who will be stuck footing the bill. Moreover, while the Commission may adopt a

²³ Multiple Intervenors predicts that at some point – and likely sooner rather than later – the objectives of maximizing reliance on renewable resources and ensuring affordability of electricity for all customers will conflict. The Commission should state now, unequivocally, that affordability “trumps” the subsidization of renewable resources.

preference to minimize the frequency of changes to the ACP schedule, it should retain the flexibility to adjust the ACP cap downward if and when the cost of CES compliance places unacceptable burdens on customers. Barring the need for such intervention, the ACP schedule should be adjusted no less frequently than once every three years, coincident with the adoption and/or effectiveness of new LSE obligations.

Disposition of Alternative Compliance Payments

In the White Paper, Staff identifies how other states employ payments from ACP mechanisms, and then recommends that:

ACP payments should not be oriented toward research and development but rather should be directly applied to reducing the costs of in-state renewable development in furtherance of the 50 by 30 goal. NYSERDA can use the CEF programs to prioritize the use of these proceeds.

(WP at 15.) While Multiple Intervenors agrees that ACP payments should not be used to fund research and development activities, it disagrees strongly with Staff's recommended approach.

ACP revenues should be returned directly and entirely to customers. The economic costs of the CES (*i.e.*, excluding speculative and selected externalities) will be exorbitant and severely impair the State's economic development activities, particularly for energy-intensive businesses such as manufacturing. ACP revenues represent a source of funds that can – and should – be used to offset some of the costs of the CES to customers.

The best way to reduce customer costs is to refund ACP revenues directly to customers.²⁴ The Commission should not redirect these funds to NYSERDA to supplement CEF

²⁴ Multiple Intervenors has long argued that the costs of subsidy programs such as the RPS and now the CES should not be allocated to or recovered from customers on a volumetric (*i.e.*, per kWh) basis. Unfortunately, based upon the REC and ZEC approaches set forth in the White Paper, it appears that the cost of the CES largely will be borne by customers on a volumetric basis through higher energy prices. Leaving aside the grievous inequity of perpetuating an unfair methodology,

programs that already are well-funded by customers. When the Commission established the CEF, it touted the fact that CEF budgets would be declining gradually as the State purportedly reduced its longstanding reliance on customer-funded subsidies.²⁵ The Commission recently approved the CEF with what presumably was an adequate budget.²⁶ There simply is no reason to redirect customer-funded ACP revenues to NYSERDA. Rather, the far better approach would be to return such revenues to customers to offset the formidable, incremental cost of the CES.

2. Eligibility and Tiers

Theory of Tiers

In the White Paper, Staff discusses the rationale for establishing different tiers as part of the CES. (WP at 16-19.) Numerous characteristics of potential tiers are identified, such as technology, growth versus maintenance, size, emissions, and policy objectives. (WP at 16.) Multiple Intervenors supports the use of tiers in the CES, provided that tiers are established for the purpose of minimizing costs to customers. For instance, Staff notes that new renewable facilities (*i.e.*, growth) often are placed into a different tier than existing renewable facilities (*i.e.*, maintenance) because such “distinction is intended to result in lower cost to ratepayers than

if such an approach is indeed adopted herein, then equity mandates that ACP revenues returned to customers as an offset to CES costs similarly be returned on a volumetric basis. Alternatively, if the approach advanced in the White Paper is modified such that CES costs are not experienced by customers on a volumetric basis, then ACP revenues should be returned directly to customers consistently with how CES costs are being incurred.

²⁵ See Cases 14-M-0094, *et al.*, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) at 15-16 (ruling that “[t]he CEF was envisioned to provide ... the establishment of a transparent upper limit on contributions from ratepayers,” and “[t]he proposed annual collection levels were expected to start below the authorized 2015 total annual collection levels for each year 2016-2020 and beyond”; footnote omitted).

²⁶ See generally *id.*

combining different resources or vintages in a single tier, where pricing necessary to attract RECs from supply that has other potential markets ... would otherwise result in over-paying for supply that does not require such payments.” (WP at 17.) Multiple Intervenors concurs; for instance, there is no legitimate justification for forcing customers to subsidize existing renewable facilities to the same degree as new renewable facilities.

Multiple Intervenors also agrees with Staff’s observation that: “Combining several categories of renewables in a single tier drives head-to-head competition among all eligible renewables, including both mature and emerging technologies.” (WP at 18.) The Commission should refrain from any temptation to choose winners and losers among potential technologies through the configuration of tiers. The competition referenced by Staff should, all else being equal, result in lower costs to customers than, for instance, the creation of multiple tiers based solely on technology types.

Multiple Intervenors, however, does not support the possible use of “co-incentive programs,” which Staff describes as follows:

Staff recognizes that the State may want to provide support for particular technologies due to their ability to advance a public policy interest, such as economic development. One approach that some states have applied is the creation of set-asides or carve-ins for these technologies.

(*Id.*) Initially, Multiple Intervenors questions whether the forced subsidization by customers of uneconomic generation facilities even can be characterized as “economic development.” This rationale completely ignores the detrimental impacts of the enabling subsidies on electricity costs in the State and the concomitant – and often far larger – loss of jobs and capital investments associated therewith. Furthermore, the use of “set-asides” or “carve-ins” would have the effect of further exacerbating the costs of the CES to customers and, therefore, should be avoided.

Staff Proposal for Tiered Approach to Meet Annual Obligation

In the White Paper, Staff recommends that CES objectives be met by mandating LSE compliance with three separate tiers. Tier 1 would encompass all new, incremental renewable generation; Tier 2 would encompass certain existing renewable generation and be divided into two sub-tiers; and Tier 3 would encompass certain eligible nuclear facilities. (WP at 19.) Staff posits that using a limited number of tiers allows for some differentiation between resources, which would aid in attempts to minimize CES costs. (*Id.*)

If, despite the concerns raised herein, the CES is adopted generally as proposed, Multiple Intervenors agrees that there is no need for consumers to subsidize new renewable facilities, existing renewable facilities and existing nuclear facilities in the same amounts. Indeed, Multiple Intervenors – and presumably Staff – assume that the subsidies required for existing renewable and nuclear facilities – if any – would be appreciably less than those required for new renewable facilities. Accordingly, to subsidize existing renewable and/or nuclear facilities to the same extent as new renewable facilities would be unduly – and unnecessarily – costly for customers. If the Commission is going to approve a CES, its overriding goal should be to satisfy the mandated objectives at the lowest possible cost to customers.²⁷

Geographic Eligibility

In the White Paper, “Staff recommends that geographic eligibility and associated delivery requirements be instituted in a manner whereby renewable generation located in control areas adjacent to the NYISO control area will be eligible so long as the generation is accompanied

²⁷ If, based on the use of different tiers or for any other reason, the CES is judged to be illegal or trigger the NYISO’s buyer-side mitigation measures, it should be abandoned, preferably permanently but at least temporarily until the true economic costs of the mandate are ascertained and evaluated rigorously.

with documentation of a contract path between the generator and the purchaser that, among other things, includes provision of transmission or transmission rights for delivering the generation via the NYISO.” (WP at 20.) Multiple Intervenors concurs with this recommendation.

As Staff recognizes: “Adopting such an eligibility provision would expand supply options and provide enhanced competition leading to reduced compliance costs (relative to in-state-only eligibility) for the CES.” (*Id.*) Multiple Intervenors agrees, which is one reason why it opposed the Commission’s prior decision in 2013 to modify the RPS program to exclude out-of-state resources, which reduced competition in that program to the economic detriment of customers.²⁸ Again, Multiple Intervenors anticipates that the CES mandate, if adopted, is going to be exorbitantly expensive for customers. Consequently, in choosing amongst potential design elements of a CES, the Commission should opt for the least-costly approach in all instances, including allowing out-of-state resources to contribute toward the chosen objectives.

Tier 1 – New Renewable Resources

Staff proposes that Tier 1 “be dedicated to new eligible [renewable] energy facilities, beginning commercial operations on or after January 1, 2015, with targets that will escalate over time in order to advance the total to 50% by 2030.” (WP at 21.) Multiple Intervenors supports one aspect of the proposed Tier 1, but opposes another aspect.

Initially, Multiple Intervenors agrees with Staff that Tier 1 should include all renewable resources, with no use of sub-tiers that would favor individual technologies. The Commission should not attempt to pick winners and losers amongst renewable technologies. The

²⁸ See Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Comments of Multiple Intervenors (dated February 19, 2013) and Reply Comments of Multiple Intervenors (dated March 6, 2013) (opposing proposals to exclude out-of-state renewable resources from participating in the RPS because such proposals would reduce competition and increase costs to customers).

most economic – or, in reality, the least uneconomic – technologies should play an integral role in setting the price for RECs. Multiple Intervenors would be opposed to the possible establishment of sub-tiers to provide higher subsidies to even more uneconomic technologies, which likely would increase materially the cost of the CES to customers.

Multiple Intervenors, however, disagrees strongly with Staff’s recommendation that January 1, 2015 be considered the “cut-off point” for eligibility in Tier 1. Instead, the Commission should utilize January 1, 2017 or some date in late-2016. As described by Staff, Tier 1 is supposed to include “new” facilities. A renewable generation facility should not be considered new, and therefore eligible for higher subsidies, if it commenced commercial operations well over a year ago.

The purpose of Tier 1, as described by Staff and understood by Multiple Intervenors, is to subsidize the development of *new* renewable generation facilities. Tier 2, which presumably will utilize lower-priced RECs, is intended to encompass existing facilities that presumably do not require the same level of customer-funded subsidies merely to continue operations. A facility that commenced commercial operations in the past (*e.g.*, at any point during 2015) already has been developed without reliance on the CES. Consequently, there is no need whatsoever for customers to subsidize such an existing facility at a higher cost as if it were new and developed in response to the CES. The same is true for facilities already in development but not yet operating. Such facilities had no reason to anticipate or rely upon CES subsidies.

The proposed cut-off date for eligibility in Tier 1 of January 1, 2015 is without merit and its proposed adoption would be wastefully costly for customers. Instead, the Commission should limit eligibility for Tier 1 to renewable generation facilities that truly are new, and are being developed because of – and in reliance on – the CES (which excludes facilities

commencing commercial operations prior to a final Commission order on the CES, and certainly all facilities commencing operations in 2015, prior to Staff's issuance of the White Paper on January 25, 2016).

Tier 2 – Existing Renewable Resources

Tier 2 is proposed to encompass “the substantial fleet of non-State owned or contracted renewable energy generators already in operation and available to meet New York’s CES targets from within New York or adjacent control areas.” (WP at 22.) Staff asserts that: “Tier 2 is distinct from Tier 1 as it is designed to supporting operating renewable energy facilities, which do not need the same level of support to attract financing to build new generation facilities.” (*Id.*)²⁹ Staff also proposes, discussed *infra*, that Tier 2 be divided into two sub-tiers – Tier 2A and Tier 2B. (*See* WP at 22-24.)

Initially, Multiple Intervenors questions the need for, and the proposed structure of, Tier 2. Pursuant to the RPS, existing renewable generation facilities were made eligible for financial subsidies if they were able to demonstrate that they were losing money and required such subsidies to maintain operations.³⁰ Nevertheless, under Staff’s proposal for Tier 2, existing, non-subsidized renewable generation facilities automatically would become eligible for customer-funded subsidies irrespective of whether or not they are profitable absent such subsidies. Multiple

²⁹ As detailed, *supra*, for this reason it would be highly inappropriate and unnecessarily-costly to customers to include renewable generation facilities that commenced commercial operations in 2015 within Tier 1 as opposed to Tier 2. Accordingly, the cut-off date for eligibility in Tier 2 should include renewable generation facilities that commenced commercial operations prior to a final Commission order on the proposed CES or, at the very earliest, prior to January 25, 2016 (*i.e.*, the date the White Paper was issued).

³⁰ Case 03-E-0188, *supra*, Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program (issued April 14, 2005) at 30-33 (limiting the subsidization of existing, “maintenance” renewable resources to “the minimum level to assure project solvency”).

Intervenors disagrees with this approach because it is unduly costly to customers. The owners of this subset of renewable generation facilities previously made the decision to develop or purchase their facilities and to commence commercial operations. To the extent they are profitable, Staff's proposal would unjustly enrich them at the expense of customers. For this reason, to become eligible for Tier 2 subsidies, Multiple Intervenors recommends that existing renewable generation facilities be required to make a demonstration that financial subsidies are needed in order to maintain operations. Absent such demonstration, some – and perhaps most or all – facilities in Tier 2 essentially would be “free riders” recouping customer-funded subsidies for doing (*i.e.*, operating) exactly what they would do absent such subsidies.

To the extent Staff's proposed Tier 2 is adopted in whole or large part, Multiple Intervenors does agree with Staff that there is no need whatsoever for customers to subsidize renewable generation facilities that already are being subsidized under the RPS. Those facilities contractually accepted the subsidies extracted from captive customers under the RPS and, therefore, there is no justification for allowing them to simultaneously participate in Tier 2 of the CES and reap additional and/or higher subsidies.

Tier 2A: Competitive Sub-Tier

Staff states that proposed Tier 2A “is intended to provide sufficient revenue to attract supply for which New York must compete with other states, and may be critical to keeping all or most of the supply rolling off NYSERDA Main Tier projects from seeking higher revenues for provision of RECs in neighboring states.” (WP at 23.) Multiple Intervenors is concerned that Staff perceives a need for New York electric customers to fund subsidies to renewable generation projects that already have been subsidized by customers for a decade under the RPS. When these facilities were being developed, they made the business decision to move forward based upon an

expectation of ten years of customer-funded subsidies. It is not acceptable to force customers to provide additional subsidies to these same facilities. Accordingly, Multiple Intervenors recommends that Tier 2A facilities only be eligible for additional financial subsidies upon a showing that (i) such subsidies are needed in order for a facility to remain operational, and (ii) the cost of such subsidies are less than other options available to New York to meet CES objectives.

Moreover, to the extent proposed Tier 2A is implemented, the Commission needs to minimize the costs to customers, irrespective of how much other states may be willing to subsidize renewable generation facilities. The “trap” for New York to avoid is that by actively trying to compete with other states, all states will engage in a “race to the top,” where owners of renewable generation facilities simply will play one state off of others in order to extract the highest possible subsidies. New York should not play this game, especially given the exorbitant cost of RECs in other Northeastern states. (See, WP, Appendix A at 3.) At some point, the retention of existing renewable generation facilities – and the CES itself – simply becomes too expensive for customers. The Commission should be very mindful not to cross this line.

Tier 2A Eligibility

In this section of the White Paper, Staff sets forth its proposed eligibility criteria for Tier 2A. (WP at 23.) Multiple Intervenors commented, *supra*, on several of the proposed criterion and has no additional comments on this section at this time.

Tier 2B: Non-Competitive Sub Tier

Staff describes proposed Tier 2B as “intended to provide sufficient revenue to maintain New York’s renewable baseline which is not eligible for ‘growth tier’ RPS obligations in states with control areas adjacent to New York.” (WP at 23-24.) To the extent proposed Tier 2B is less costly to customers than Tier 2A, Multiple Intervenors supports the distinctions

identified by Staff. Importantly, however, as discussed, *supra*, with respect to proposed Tier 2A, Multiple Intervenors contends that customers should not be required to subsidize Tier 2B facilities absent a showing that (i) such facilities require financial assistance to remain operational, and (ii) the cost of such assistance is less than other options available to New York to meet CES objectives.

3. Cost Management

Cost Control Measures

In this section of the White Paper, Staff posits that: “There are several CES design features that can be implemented to control costs.” (WP at 24.) Staff then provides several examples of design features likely to have an impact on the cost of the CES to customers. (See *id.*) Multiple Intervenors agrees with Staff’s examples and comments, *infra*, on those specific design features. Staff then states, however, that it “will continue to consider how to maximize the cost-effectiveness of the CES through design features such as differentiation by technology.” (*Id.*) Multiple Intervenors disagrees. Differentiating between renewable technologies – instead of adopting a neutral position on such technologies – would not aid in controlling the cost of the CES but, rather, would add to the already-high financial burdens being imposed on captive customers.

If the Commission remains neutral on renewable technologies, then projects utilizing different technologies would be competing against each other, thereby reducing the price of RECs and the cost of the CES. If, however, the Commission favors certain technologies – such as by differentiating technologies through the use of tiers (*i.e.*, establishing quotas) – that would reduce competition, make the market for RECs less liquid, force customers to subsidize certain renewable technologies that even are more uneconomic than other renewable technologies, and drive up the cost of the CES to customers. This approach should not be pursued.

Adjustments of Targets

In this section of the White Paper, Staff recommends that the Commission retain flexibility to adjust CES performance targets under certain circumstances. (WP at 24-25.) Multiple Intervenors generally agrees with this recommendation, particularly if it is used to control the costs of the CES and the associated impacts on customers.

There are many factors that could influence the appropriateness of renewable penetration targets adopted by the Commission. For instance, if electric prices are lower than projected, the cost of the requisite subsidies may be higher than anticipated. Additionally, changes in laws (*e.g.*, local laws on the siting of wind generation facilities), changes in technology, the effectiveness (or lack thereof) of the ACP in controlling costs, all can impact the achievement of what can safely be characterized as extremely aggressive renewable generation goals. Accordingly, the Commission needs to retain an adequate amount of flexibility such that it can modify previously-established targets where necessary to protect customers and serve the public interest. It would be inadvisable for the Commission to bind itself for three-year (or longer) periods when market and other conditions can change so quickly and significantly.

Long-Term Clarity on CES Targets (after 2030)

Staff posits that: “Financing terms will be more attractive if there is clarity that the ultimate targets, once reached, will be maintained for a sufficient period to allow investors to amortize their investments and realize expected returns on their investments over a number of years.” (WP at 25.) Staff then asserts that such clarity could be provided by establishing minimum targets post-2030. (*Id.*)

Multiple Intervenors objects to this recommendation, which places the interests of renewable developers even further above those of captive customers being forced to subsidize a CES. No one, including Staff and the Commission, knows what the market for renewable

resources will be like in 2030 or beyond. Indeed, Multiple Intervenors questions the wisdom of establishing binding targets for anything energy-related in 2016 for a period 14 years into the future. To do so is risky (with customers' money) and unnecessary.³¹ There is absolutely no reason why the Commission, in 2016, should attempt to bind future Commissions beyond 2030, least of all by committing even more customer funds to the CES beyond the date when the mandated objectives presumably will have been satisfied. The Commission should reject Staff's recommendation and refrain from taking any action now that would extend beyond the proposed completion date of the CES.

Banking and Borrowing

This section of the White Paper discusses "provisions that allow flexibility to compliance entities for meeting their RPS requirements." (WP at 26.) The two primary flexibility provisions referred to by Staff are: (a) the banking of excess compliance (*i.e.*, banking RECs from one year for use in a future year, usually subject to limitations on the time and amount of such banking); and (b) the borrowing of RECs from a future period to the current period. (*Id.*) To the extent a CES in the same or similar form as that recommended by Staff is adopted herein, Multiple Intervenors supports the use of these flexibility provisions.

Staff states that: "Banking greatly reduces the uncertainty for LSEs to predict exactly how many RECs will be needed, and helps smooth the fluctuations of REC supply between shortages of RECs in one year and excess RECs in another year." (*Id.*) Staff also identifies

³¹ New York State Legislators presumably thought the Six-Cent Law was a good idea at the time of its enactment, yet that statute cost customers tens of billions of dollars in above-market contract costs prior to its repeal. The similarities between that example of subsidizing a desired form of electric generation (*i.e.*, cogeneration) via long-term contracts and current proposals to subsidize a desired form of electric generation (*i.e.*, renewables) via long-term contracts are unmistakable. Despite this, the State appears to be committed to repeating history.

additional potential benefits, such as “encouraging earlier installation of RPS-eligible facilities ... as well as building larger plants in order to take advantage of banking.” (*Id.*) Multiple Intervenors concurs and supports the ability of LSEs to utilize banking. Further, to the extent banking is deemed beneficial, limitations on its use should be applied narrowly, if at all. For instance, if an LSE is able to accumulate double the RECs it requires by some future date, it is not clear to Multiple Intervenors why such behavior should be discouraged.

The borrowing of RECs also makes sense because it moderates an LSE’s need to produce an exact amount of RECs, and “also smooths the year-to-year fluctuation of REC supply [and] allows LSEs to avoid or defer compliance payments or noncompliance penalties.” (*Id.*) Multiple Intervenors supports the use of borrowing because it provides additional flexibility to LSEs and, in so doing, should help to moderate the costs of the CES. Limitations on borrowing, to the extent needed, should not be unduly restrictive, especially in the early years of the program and/or when program costs appear prohibitive in the near-term.

Distribution-Level REV Implications

In this section of the White Paper, Staff asserts that the CES will be assisted by efforts in the Reforming the Energy Vision (“REV”) proceeding, and *vice versa*. (WP at 27.) Multiple Intervenors is concerned that both initiatives will increase the cost of electricity in New York to non-competitive levels. Pursuant to REV and the proposed CES, customers now will be required to subsidize, *inter alia*, energy efficiency, renewable generation facilities, other forms of distributed energy resources (“DERs”), selected nuclear generation facilities, and retail demand response programs.³² At this time, the State is benefitting substantially from historically-low

³² Multiple Intervenors has no objections to activities such as energy efficiency and demand response, but is troubled by the State and the Commission’s reliance on forced, customer-funded subsidies to incentivize such activities.

natural gas prices. If and when those prices rebound, the economic impacts of the decisions being made today will have severe consequences, and Multiple Intervenors is extremely concerned that the State's energy prices will become massively non-competitive, resulting in significant reductions in jobs and capital investments, particularly in the already-overburdened manufacturing sector and other energy-intensive enterprises.³³

B. Nuclear Facilities

1. Nuclear Market Conditions

In this section of the White Paper, Staff recounts how historically-low natural gas prices are placing economic pressures on nuclear generation facilities located in New York and elsewhere. (WP at 27-29.) Multiple Intervenors agrees that low gas prices have impacted the near-term economic viability of nuclear generation facilities. That being noted, Staff is assuming that absent customer-funded subsidies, New York's nuclear fleet would close permanently, never to be sold, reopened or replaced. Moreover, while some economic assistance to selected nuclear facilities may make some sense under certain circumstances (*e.g.*, when needed to preserve reliability), Multiple Intervenors is troubled by some of Staff's recommendations (addressed *infra*), and the general assumption that captive customers somehow have become the economic guarantors for renewable and nuclear generation facilities. Indeed, one of the primary, touted benefits associated with the divestiture of generation facilities by the State's utilities was that the risks of generation development and ownership would be shifted from utility customers to private developers. Clearly, that no longer is occurring. Instead, Staff is recommending that customers

³³ As noted earlier, recovering these subsidies on a volumetric basis unfairly and directly targets energy-intensive users, and that practice should change.

subsidize new and existing renewable generation facilities and selected existing nuclear generation facilities.

Even more troubling, this new paradigm of using customers as the economic backstop for troubled generation facilities has no upside for customers. For instance, some years ago, when gas prices were very high, and nuclear facilities were believed to be highly profitable, there was no sharing of the profits with customers, nor did the owners of such facilities offer to take anything less than the highest market-clearing price for their output. Thus, customers increasingly are being placed in a “heads-you-win, tails-I-lose” position. When wholesale electricity prices are high, generators are free to reap market-based profits and retain same for their shareholders with no relief offered to customers. Yet now, when wholesale electricity prices are low, customers are being forced – not asked – to subsidize economically-troubled nuclear generation facilities (and seemingly all renewable generation facilities). If this is how competition in going to be work prospectively, there appears to be little in it for customers.³⁴

2. Nuclear Tier

Staff proposes that “a Nuclear Tier be created to ensure that emission-free power from eligible operating nuclear generating plants is properly valued.” (WP at 30.) According to Staff: “The nuclear tier supports a smooth emission-free transition from nuclear to non-nuclear resources in the event that energy prices are not able to support the continued financial viability of the plants during their license lives.” (*Id.*) Subject to Multiple Intervenors’ general concerns regarding forcing already-overburdened customers to subsidize merchant-owned nuclear

³⁴ As the Commission is well aware, Multiple Intervenors has been a long-time advocate for, and supporter of, competitive electricity markets. Its current price-related concerns relate primarily to State and Commission policies that interfere with and/or jeopardize the benefits that customers receive from competitive markets.

generating facilities, the case for a separate nuclear tier as part of the CES is questionable. As detailed, *infra*, it is not clear that there is any benefit to creating ZECs, for which a competitive and/or liquid market is exceedingly unlikely to develop, and the focus instead should be on minimizing the economic costs to customers of yet another subsidy program.

3. Nuclear Zero Emission Credits (ZECs)

According to Staff, Tier 3 (*i.e.*, the nuclear tier) “is created to facilitate a market to recognize the value of fully licensed nuclear power plants that face financial difficulties” (*Id.*) There currently is no such market, nor has the case been made that New York needs to create such a market. For instance, there is customer demand for electricity – there is no customer demand for electricity generated by a merchant-owned nuclear facility that purportedly is under economic distress. Staff is proposing a subsidy program, pure and simple. Multiple Intervenors acknowledges that reasonable minds can differ as to whether it is in customers’ economic best interests to subsidize selected nuclear generating facilities for a limited period of time to ensure that they remain in operation. Indeed, under certain economic conditions – which may or may not exist here – Multiple Intervenors might agree that retaining selected nuclear generating facilities through temporary and limited subsidies is worthwhile. Significantly, however, there is no reason to create a complicated regulatory scheme to mandate the purchase of ZECs, and the economic case for a “nuclear bailout” has yet to be made fully.³⁵

³⁵ The State essentially is proposing to force today’s electric customers to subsidize merchant-owned nuclear generation facilities to aid in its efforts to meet certain self-imposed greenhouse gas emission reduction targets applicable to 2030. (There seemingly has been no consideration of the environmental impacts of nuclear generating facilities – either positive or negative – other than with respect to carbon.) Even if such targets were deemed beneficial (as opposed to arbitrary), under the Staff proposal the subject nuclear facilities could benefit from customer-funded subsidies for a number of years and then still decide to terminate operations sometime prior to 2030, thereby defeating the very objective of the subsidies.

Multiple Intervenors is very concerned about the potential costs of mandated, customer-funded subsidies to selected nuclear generating facilities. It is not clear how large those costs will be, or how long subsidies will be needed. Furthermore, if, *arguendo*, the implementation of Tier 3 leads to the extension of the NYISO's buyer-side mitigation measures and nuclear capacity is mitigated in the wholesale markets, the subsidies immediately should be terminated because the economic justification for them – if one even exists – will have been altered materially.³⁶

Next, Staff states that: “Similar to the Ginna RSSA, ZECs are an opportunity to provide qualifying nuclear plants with support payments, reflective of their going forward costs of operation, to ensure they continue to operate, to assist the State in maintaining low GHG emissions and to continue to provide fuel diversity and price stability.” (WP at 30-31.) Multiple Intervenors’ response to this statement is twofold. First, the proposed ZECs are not similar to the Reliability Support Services Agreement (“RSSA”) entered into with the owner of the R.E. Ginna nuclear generating facility. That RSSA was needed to maintain the near-term reliable operation of the electric grid. Absent the RSSA, there was a material risk of electric outages. Here, Tier 3 is being proposed not to resolve an imminent reliability need but, rather, to aid State efforts to achieve a self-imposed emissions objective for 2030. Second, Multiple Intervenors has little confidence that the Commission will be able to limit the subsidies paid to selected nuclear generating facilities via ZECs to those facilities’ “going forward costs of operation.” By publicly announcing a strong intention to retain certain merchant-owned nuclear generation facilities, seemingly irrespective of

³⁶ From the customer perspective, it is difficult to envision a more unfavorable outcome than being forced to subsidize certain generating facilities at the retail level, only to have those facilities then be mitigated at the wholesale level.

the cost to captive customers, the State has placed itself in a hostage position to the owners of those facilities and almost assuredly the costs of the subsidies will be greater than projected.³⁷

There may be one or two nuclear generating facilities that will be subsidized via ZECs at any one time. Staff envisions that: “LSEs could procure ZECs either through direct purchases from qualified resources, purchases through an established ZEC marketplace or direct arrangements with an entity that has surplus ZECs, or through innovative bilateral transactions such as bundled energy and ZEC arrangements.” (WP at 31.) Multiple Intervenors is skeptical that a liquid market for ZECs ever will be developed, especially if there only are one or two qualifying facilities being awarded ZECs (and dozens of LSEs that would be subject to the proposed requirements). While such a market may come to fruition with respect to RECs, the mechanisms proposed for ZECs appear unlikely to occur and unduly burdensome to implement.

4. Nuclear Eligibility

Staff proposes that in order to qualify for Tier 3, “nuclear facilities must have an in-service date of January 1, 2015 or earlier, be facing financial difficulty as determined by a Staff examination of the books and records of the facility, operating pursuant to a fully renewed license by the NRC until 2029 or beyond, and consistent with any other federal and state authorizations.” (WP 31-32; footnote omitted.) As detailed, *supra*, Multiple Intervenors has significant concerns regarding the need and appropriateness of proposed Tier 3. If, *arguendo*, the Commission is intent on forcing captive customers to subsidize selected, merchant-owned nuclear generating facilities

³⁷ The White Paper does not define “going forward costs of operation” and Multiple Intervenors is concerned that the interpretation of this “standard” will be stretched to appease the owners of those nuclear generating facilities deemed essential.

(on top of all of the other explicit and implicit subsidies being imposed and proposed at this time), then Multiple Intervenors urges that the eligibility criteria for Tier 3 be as narrow as possible.³⁸

5. Tier 3 ACP

Staff recommends that “in order to protect ratepayers from the exercise of market power, the maximum price that would be paid per ZEC should be administratively set by the Commission and should be updated every year based upon the difference between the anticipated operating costs of the units and forecasted wholesale prices.” (*Id.*) Although Multiple Intervenors questions the need for ZECs (and the underlying decision to subsidize merchant-owned nuclear generation facilities), it agrees that exercises of market power must be avoided, and that the amount of the subsidies extracted from captive customers should be subject to frequent review to ensure that they are no higher than absolutely necessary.

Importantly, Multiple Intervenors recommends that if, *arguendo*, more than one merchant-owned nuclear facility is subsidized at any time, the amounts of the subsidies should depend on the facility, thereby necessitating separate and distinct ZECs (if ZECs are employed for each facility). For instance, the White Paper speculates that the FitzPatrick and Ginna nuclear generating facilities would be eligible for Tier 3 subsidies. (*Id.*, n.32.) Significantly, however, even if that were the case, those facilities may require different levels of financial support “reflective of their going forward costs of operations.” (*See* WP at 30.) To the extent one nuclear facility requires less financial support than others, it would be inequitable and unduly harmful to customers to award two or more nuclear facilities with ZECs of equal value tied to the highest

³⁸ Staff notes that its proposed eligibility criteria “reflect the State’s interest in minimizing the level of customer support for ZECs to only those facilities that are currently experiencing, as well as forecasted to experience, financial difficulty.” (WP at 32.) As detailed, *supra*, the exact same approach should be adopted with respect to existing renewable generation facilities.

level of support needed by only one of the facilities. Accordingly, customer-funded subsidies to merchant-owned generation facilities should be calculated, if at all, on a case-by-case basis and be no higher than absolutely necessary.

C. The Role of Long-Term Contracting Mechanisms

1. The LSR Options Report

In this section of the White Paper, Staff summarizes multiple options for implementing the long-term, subsidized procurement of renewable energy, including the use of power purchase agreements (“PPAs”). (WP at 33-35.) Staff then identifies certain recommended options, such as: (a) mandating the use of PPAs; (b) using flexible procurements to promote competition; (c) “[c]entralized project solicitation/evaluation by a third party; (d) “procurements conducted for quantities to meet a planned budget, system needs, and other considerations”; (e) certain new (unidentified) mechanisms to facilitate voluntary market activity; (f) “[s]ecuritization to lower the cost of project debt”; and (g) long-term commitments to put LSR resources “on a path to grid-parity” (*i.e.*, something that has not come close to occurring after more than a decade of customer-funded subsidies under the RPS). (WP at 35.) Multiple Intervenors relies on its previously-filed comments regarding these so-called “recommended options,” many of which would be detrimental to customers and the State’s economy.³⁹

Stakeholder Feedback

Summarizing stakeholder feedback on the aforementioned recommended options, Staff states – without any citations or other support – that: “While no single program or method of procurement identified in the Options Report was overwhelmingly preferred by all stakeholders,

³⁹ See Case 15-E-0302, *In the Matter of the Implementation of a Large-Scale Renewable Program*, Initial Comments of Multiple Intervenors (dated August 12, 2015).

the large majority of comments supported all of the recommendations above.” (WP at 36.) Staff’s vague generalization – which ignores substantial opposition to many of its recommended options – is of little value here. Moreover, Multiple Intervenors notes that there was broad-based opposition to the proposed reliance on PPAs, which previously cost customers tens of billions of dollars in above-market costs the last time the State mandated their use in order to subsidize a preferred mode of electric generation (*i.e.*, subsidization of cogeneration under the “Six-Cent Law”).⁴⁰

2. Consideration of the LSR Options Report in the Context of a CES

Staff recommends that EDCs be required “to procure an appropriate percentage of the REC target through long-term contracts with renewable generators.” (WP at 36.) Multiple Intervenors vehemently disagrees with this recommendation. As noted earlier with respect to the Six-Cent Law, PPAs entered under similar circumstances already have cost customers tens of billions of dollars in the above-market costs, and have the effect of transferring market price risk from developers to captive customers.

Pursuant to the RPS, developers of renewable generation facility compete against each other for customer-funded contracts to provide attributes akin to RECs, which, when added to the market value for the energy and capacity produced, provide the total compensation realized by the developers. Importantly, however, PPAs, as recommended by Staff, would require EDCs

⁴⁰ See, *e.g.*, Case 15-E-0302, *supra*, Initial Comments, dated August 12, 2015, by, *inter alia*, the Joint Utilities (at 9-10), the Business Council of New York, Inc. (at 3-4), the Manufacturers Association of Central New York (at 4), Nucor Steel Auburn, Inc. (at 7-8), Sam’s East, Inc. and Wal-Mart Stores East, LP (at 7), Consumer Power Advocates (at 3), Retail Energy Supply Association (at 5-7), and Multiple Intervenors (at 9-12) (all opposing reliance on PPAs). Furthermore, Staff should hardly be surprised that the likely recipients and beneficiaries of PPAs all would support a mandate that PPAs be utilized.

– and their customers – to be contractually obligated, for 20-year periods, to purchase the electric output of renewable facilities, irrespective of whether such output even is needed. Thus, the effect of Staff’s recommendation, if adopted, would be to shift market price risk for the entirety of a project’s output from developers (where such risk belongs) to customers.⁴¹

To illustrate, under the RPS currently, a developer may determine that it requires \$80 per MWh to be economic and, based on projected energy prices of \$55 per MWh, that it should bid for a REC subsidy of at least \$25 per MWh. If energy prices turn out to be different from \$55 per MWh – which presumably reflects the developer’s best forecast – then the risk of market price variances (either up or down) appropriately is placed on the developer. If market prices exceed the developer’s projection, the developer will realize surplus revenues (compared to its initial expectation); conversely, if market prices fall short of the projection, it will realize a revenue shortfall (again, compared to its initial expectation). To the extent additional financial certainty is desired by the developer, it is free to enter into bilateral contracts and/or other financial hedges.

Significantly, however, a PPA shifts this market price risk from the developer to captive customers. Using the prior example, if an EDC enters into a PPA that guarantees the developer \$80 per MWh, but market prices decline from the \$55 per MWh projection to \$30 per MWh, the amount of the subsidy that the EDC’s customers would be required to fund would

⁴¹ Market price risk should remain with developers, and not be shifted to customers, for at least three reasons. First, developers voluntarily are choosing to own and develop renewable generation projects; it is more appropriate to place market price risk on them as compared to shifting such risk onto captive customers who are being forced to subsidize such projects. Second, developers are using their own market price forecasts to evaluate the economic viability of their proposed projects. Under such circumstances, it is appropriate to place the risk of market price variances from projections on the developers, as opposed to captive customers who are afforded no say whatsoever in terms of which projects their funds will be used to subsidize. Third, to the extent developers require or desire greater financial certainty, they are capable of entering into bilateral contracts or financial hedges for the output of their facilities. The proposed reliance on PPAs would depress the use of bilateral contracts.

increase from \$25 per MWh to \$50 per MWh. Inasmuch as it is extraordinarily difficult – if not impossible – to accurately forecast electricity prices one year in advance, let alone for a 20-year period, reliance on PPAs would increase tremendously the financial risks that would be shifted away from developers and imposed on customers.

Multiple Intervenors’ concerns in this regard are founded on experience from the State’s not-too-distant past. In the 1980’s, New York enacted a statute designed to offer an economic incentive to promote a certain type of environmentally-preferred generation facility, *i.e.*, qualifying cogeneration facilities (“QFs”). Although electric utilities already were obligated to purchase the output of QFs at their avoided cost under federal law, New York offered QF developers the greater of the utility’s avoided cost or six cents per kWh. In compliance with such legislation, many New York utilities then proceeded to enter into contracts that included six-cent per kWh floors, and much-higher prices based on long-run avoided cost (“LRAC”) estimates that sometimes were equal to or above 10-14 cents per kWh.⁴² By the time the Six-Cent Law – as the legislation infamously became known – was repealed, utilities and their customers were “on the hook” for tens of billions of dollars in above-market payments. In fact, the PPAs entered into at that time almost forced Niagara Mohawk Power Corporation into bankruptcy.

If, *arguendo*, the Commission adopts a CES in some form, the least it can do is refrain from repeating the mistakes of the past. Staff’s recommended reliance on PPAs would place inordinate market price risk on customers. Moreover, the magnitude of such risk would be

⁴² Anyone doubting that future electricity price projections developed today similarly could be inaccurate by several orders of magnitude did not participate in the LRAC proceedings of the early-1990s. In those proceedings, utilities and other interested parties calculated proposed LRACs based on sophisticated computer models and input from expert consultants. Relying on such inputs, the Commission approved the use of LRACs that, in hindsight, turned out to be extraordinarily inaccurate and overstated. Thus, notwithstanding best efforts and intentions by all concerned, PPAs can result in significantly-greater costs than may be anticipated.

enormous if 20-year contracts are utilized. For instance, the Cost Study apparently projects that the market price of electricity will increase over time, eventually surpassing the estimated cost of fixed-price PPAs. The same kind of market price assumptions led to the Six-Cent Law crisis, which New York electric customers cannot afford to repeat.

Staff asserts that “a bundled long-term power purchase agreement between a developer and a credit-worthy counter party is the least expensive way to develop new renewable resources in the near-term.” (WP at 36.) As detailed, *supra*, PPAs turned out to be a prohibitively-expensive way to subsidize cogeneration facilities when a similar approach to the one recommended here was implemented pursuant to the Six-Cent Law. Staff’s assertion is based on the belief that by forcing customers to bear the market price risk borne typically by developers, financing costs will be less. (See WP at 36-37.) Significantly, however, the assertion assumes, *inter alia*, that (i) reduced financing costs somehow will be passed-on to customers instead of being retained by developers, and (ii) the customers’ share of such reduced financing costs (if any) will more than offset the market price risks being imposed on them instead of developers. Given the volatility of wholesale electricity prices, such assumptions are questionable. Moreover, the potential magnitude of market price risk that could be shifted onto customers through the recommended use of PPAs far exceeds any reasonable estimate of the customers’ share of reduced financing costs.

Staff states, incredibly, that “New York has first-hand experience with the benefits of long-term contracting as a mechanism to enable the development of renewable energy.” (WP at 38.) As detailed, *supra*, New York’s experience with PPAs is a sad tale of misguided, costly market interventions by the State that cost customers tens of billions of dollars. The fact that some solar developers are relying on PPAs with customers – as cited by Staff – is different in several

respects. First, New York's solar subsidies (which are in addition for federal subsidies) – paid for by customers and taxpayers – are enormous and so to claim success casually ignores any analysis as to whether such subsidies are excessive and resulting in more costs than benefits.⁴³ Second, to the extent individual customers choose to enter into a PPA with a solar developer, that decision is a reflection of the customer's choice (*i.e.*, to install solar at its home or business, to enter into a PPA as opposed to a different commercial transaction). Here, Staff is proposing that EDCs be mandated to enter into PPAs, with customers being accorded no choice but to absorb such cost.

Staff then states that: "The most common form of procurement of large-scale renewable resources in the restructured Northeastern United States is for utility contracting of energy RECs (and sometimes capacity) under 15 to 20-year PPAs for at least a portion of a State mandate." (WP at 38; footnote omitted.) Such statement, however, is far from a ringing endorsement of Staff's proposals. With very limited exceptions, the Northeastern States generally have the highest cost of electricity in the United States and pay far more for RECs than in other regions. Multiple Intervenors sees no reason why New York should join this race to the top.

To make matters, Staff then recommends that utilities be accorded an opportunity to earn financial incentives by reselling RECs acquired through PPAs at a higher cost. (WP at 39.) Thus, not only would customers subsidize heavily the development of renewable resources and be forced to bear many of the risks borne typically by developers, they essentially would be called upon to fund financial incentives for utilities for performing a risk-free function. As proposed, utilities would be allowed to recoup from customers 100% of the costs of RECs acquired under the CES. Consequently, no utility ever would resell RECs for less than their acquisition price. To

⁴³ Countries such as Spain and Germany touted success in increasing reliance on renewable up until the time when the economic consequences of their actions became clear.

the extent opportunities exist for utilities to resell RECs for more than their acquisition price, they should do so willingly to reduce costs to their customers. There is no justification for forcing customers to financially incentivize utilities for entering into risk-free transactions to moderate REC costs.

Finally, “Staff seeks comments on the percentage of the REC obligation that should be purchased via utility PPAs” (WP at 40.) For the reasons set forth above, Multiple Intervenors recommends that such percentage be set no higher than zero.

3. Use of Central Procurement

In this section of the White Paper, Staff concludes that central procurement by NYSERDA under the RPS has reduced costs and, therefore, the State’s utilities should be required to rely on NYSERDA to conduct central procurements for utility PPAs. (WP at 40-41.) Multiple Intervenors disagrees. First, there is no evidence that NYSERDA’s implementation of the RPS to date has resulted in the least cost to customers.⁴⁴ Second, if, *arguendo*, the State EDCs are to be forced to enter into long-term PPAs with renewable developers over Multiple Intervenors’ strong opposition, then they should be responsible for conducting their own procurements, albeit preferably on a centralized basis. If EDCs are to be counterparties or financial guarantors to PPAs, they should be responsible for procuring and negotiating those PPAs. After all, to the extent any EDC is found to have acted imprudently with respect to committing its customers to one or more specific PPAs, it will be shareholders at risk for the consequences of an EDC’s decisions.

⁴⁴ If NYSERDA’s procurement of renewable attributes under the RPS is viewed so favorably, then the current model of procuring LSR resources should be retained, without resort to tradeable RECs and long-term PPAs.

4. Utility Ownership and Self-Initiated Market Development

In this section of the White Paper, Staff recommends that: (a) “it is not necessary or advantageous for utilities to participate in mandated PPA solicitations under the utility ownership model”; (b) participation in those solicitations “should be reserved to third parties with the regulated utilities as counterparties”; (c) “an absolute prohibition of utility participation in the ownership structure may not be in the interests of consumers”; and (d) utility ownership of generation only be “permitted in exceptional circumstances where there are demonstrable consumer benefits that could not otherwise be achieved.” (WP at 43-44.) Putting aside for a moment Multiple Intervenors’ overarching opposition to much of the Staff White Paper, it generally agrees with Staff on the issue of utility ownership of generation.

Following the Statewide divestiture of utility-owned generation facilities, Multiple Intervenors has opposed utility proposals to reenter the generation business due to competitive concerns. The State’s utilities possess no unique expertise with respect to electric generation, and in addition to competitive concerns, Multiple Intervenors has supported third-party ownership of generation because it places development and market price risk onto developers instead of utilities and their customers.

Significantly, however, if, *arguendo*, those risks are to be imposed on customers by the Commission via exorbitant financial subsidies and mandated PPAs, then at that point there can be little additional risk to customers to according utilities an opportunity to reduce CES costs. Thus, if a utility can demonstrate that it can satisfy a portion of any applicable CES requirements at a lower economic cost to customers, it should be allowed to do so (provided an appropriate degree of risk is retained by the utility and its shareholders to ensure that the promised economic savings to customers are in fact realized). Although Multiple Intervenors is not a proponent of

allowing utilities back into the generation business, utility ownership of renewable generation facilities subject to cost-of-service ratemaking would be preferable to utilities entering into long-term, subsidized PPAs with renewable developers at customers' expense.

D. Targets for Each Tier Through 2020

In this section of the White Paper, Staff advances its proposed targets for each tier through 2020. (WP at 44-45.) For the reasons detailed, *supra*, Multiple Intervenors recommends that CES obligations become effective, if at all, in 2018, not 2017 (with three-year examinations occurring in 2021, 2024 and 2027). If, *arguendo*, a CES is made effective in 2017, Multiple Intervenors recommends that the proposed targets be reduced in the near-term.

Multiple Intervenors is concerned that the near-term targets are much too ambitious, especially given the work involved and issues remaining to be resolved in this proceeding. If the CES becomes effective prematurely, before all issues are resolved and the appropriate "infrastructure" is established, it will lead to increased implementation costs to customers. Accordingly, given the tremendous uncertainty that exists currently, and the enormous amount of work required before mandatory obligations can or should be imposed on LSEs and their customers, the Commission should reduce the near-term goals and institute a more gradual path toward the State's objectives. The merit of this approach also is bolstered by the very-low wholesale electricity prices that exist today. Because wholesale electricity prices are at or near historic lows, the magnitude of the subsidies required for uneconomic renewable generation would be very high. If, as Staff forecasts, wholesale electricity prices rise in the future, procuring more renewable generation at a later date would reduce the overall cost of the CES to customers.

E. Implementation Plan

Staff recommends that “within 30 days after issuance of the Commission’s initial CES order, that it provide, in consultation with NYSERDA, an Implementation Plan for review and comment.” (WP at 46.) Multiple Intervenors concurs.

There are an extraordinary number of issues that need to be resolved before a CES is implemented. A failure to resolve those issues in advance of, or too soon prior to, the effective date likely would lead to increased uncertainty and costs to customers. Accordingly, following issuance of the Commission’s order in this proceeding, an Implementation Plan should be developed and, even more importantly, issued for public comment. The Commission should not place customers at even greater risk by rushing to implement a CES before critical issues are examined, subject to public comment, and then resolved using reasoned decision-making. In this instance, expediency for its own sake would constitute a grave disservice to customers.

CONCLUSION

For all the foregoing reasons, if, *arguendo*, the Commission adopts a CES in some form and requires captive customers to subsidize new and existing renewable generating facilities and/or existing nuclear generating facilities, it should modify the CES proposed in the Staff White Paper in accordance with Multiple Intervenors' positions herein.

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Respectfully submitted,

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