MULTIPLE INTERVENORS
REPRESENTING NEW YORK'S LARGE ENERGY CONSUMERS

February 28, 2022

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
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 Phillips:

Multiple Intervenors, an unincorporated association of over 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these comments in general support of the "2021 Divergence Test and Target Setting Filing" ("Filing") submitted jointly by New York State Department of Public Service Staff ("Staff") and the New York State Energy Research and Development Authority ("NYSERDA") on November 29, 2021, in the above-referenced proceeding. Comments on the Filing were solicited by the New York State Public Service Commission ("Commission") in the December 29, 2021, edition of the *New York State Register* (I.D. No. PSC-52-21-00007-P).

In the Filing, Staff and NYSERDA: (a) describe generally the Clean Energy Standard ("CES") Tier 1 divergence test and criteria (Filing at 1-2); (b) recount how the 2019 and 2020 divergence tests indicated that there was an undersupply of available Tier 1 Renewable Energy Credits ("RECs"), resulting in substantial reliance on Alternative Compliance Payments ("ACPs") by load-serving entities ("LSEs") (*id.* at 2-3); (c) reveal that the 2021 divergence test continued to indicate an undersupply of RECs, resulting in an over-dependence on ACPs (*id.* at 3-4); and (d) recommend a downward adjustment to the 2023 REC obligation imposed on LSEs and the setting of the 2024 obligation at a level below that in effect currently for 2023 (*id.* at 4-6).

For the reasons set forth herein, Multiple Intervenors urges the Commission to adopt, with caveats, the Staff/NYSERDA recommendations to reduce the existing 2023 REC obligation and constrain the 2024 REC obligation to a level only moderately higher than the reduced level recommended for 2023. Additionally, Multiple Intervenors urges the Commission to consider – and implement – additional measures that would have the effect of further reducing CES Tier 1 compliance costs (which ultimately are borne by electric customers).

A. Customers Have Been Paying Higher CES Tier 1 Compliance Costs Than Necessary

The Commission previously established annual CES Tier 1 requirements through 2023. Those requirements mandated that LSEs purchase a specified amount of RECs. To the extent RECs are not available in the market, LSEs are allowed to make ACPs, albeit at a targeted 10% price premium to REC costs. In all known instances, the costs of Tier 1 compliance by LSEs are passed-through to electric customers.

Due to a variety of factors, the development and the generation output of Tier 1 projects have lagged Commission expectations. In the 2019 divergence test, Staff and NYSERDA concluded that ACPs were used to satisfy: (a) 25% of Tier 1 obligations in 2017; and (b) 52% of Tier 1 obligations in 2018. (Filing at 2.) Given the price premium attached to ACPs, those results indicated a REC deficit and potential need for mitigation measures. Staff and NYSERDA, however, did not recommend that mitigation measures be implemented, believing at the time that the undersupply of RECs was temporary in nature. (*Id.* at 2-3.)

Similarly, in the 2020 divergence test, Staff and NYSERDA found that an undersupply of Tier 1 RECs was evident in 2019. (*Id.* at 3.) Based on this finding, Staff and NYSERDA recommended modifications to the then-existing REC obligations, which were adopted by the Commission. (*See id.*)

In the 2021 divergence test, Staff and NYSERDA found, yet again, that there was an undersupply of Tier 1 RECs, as evidenced by the fact that ACPs were used to satisfy: (a) 32% of Tier 1 obligations in 2019; and (b) a staggering 60% of Tier 1 obligations in 2020. (*Id.*)

Quite simply, there have not been nearly enough RECs available for LSEs to satisfy the annual Tier 1 obligations imposed by the Commission. In the Filing, Staff and NYSERDA conclude that this undersupply is "of sufficient concern to recommend mitigation measures." Multiple Intervenors concurs. For three consecutive years, the divergence test not only has indicated an overreliance on ACPs by LSEs to comply with Tier 1 requirements due to an inadequate number of RECs being available in the market, but that such persistent undersupply is quite material and apparently growing.

Tier 1 obligations that exceed the available supply of RECs have significant financial impacts on customers. Set forth below are the average Tier 1 REC prices for each recent year, along with the cost of ACPs:

Compliance Year	Tier 1 REC Price	Tier 1 ACP Price
2019[1]	$22.43	$24.67
2020[2]	$22.09	$24.30
2021[3]	$22.01 - $22.56	$23.79
2022[4]	To Be Determined	$35.00

Thus, with the apparent exception of 2022 (which, as discussed below, appears excessive and warrants scrutiny), there is an approximate 10% price premium associated with ACPs, above and beyond the material cost of the RECs. Significantly, however, the cost premium to customers when LSEs are obligated to make ACPs due to an undersupply of RECs is not 10% but, in reality, much larger. The reason is that due to the undersupply, customers essentially are being required to pay a premium price for RECs that do not even exist in the market.

For instance, assume that there are 1 million Tier 1 RECs available in the market at an average cost of $20.00. If the Commission caps LSE obligations at 1 million RECs, the ultimate cost to customers is $20 million (*i.e.*, 1 million x $20.00). If, however, LSE obligations are set at 1.25 million RECs (despite the existence of only 1 million RECs in the market), and ACPs are set at $22.00 (*i.e.*, a 10% premium to the hypothetical REC price), the ultimate cost to customers is $25.5 million (*i.e.*, [1 million x $20.00] + [0.25 million x $22.00]). Thus, setting REC obligations at a level in excess of available supply can increase the total cost to customers by substantially more than the 10% price premium applied typically to ACPs. This is precisely what happened in 2017, 2018, 2019, and 2020 (and, Multiple Intervenors suspects, 2021 and, absent Commission intervention, likely in 2022 as well).

Thus, it is critically important that REC obligations not be set at levels materially above the level of supply realistically likely to be available in the market. Doing so, combined with the material undersupply of RECs that has occurred every single year, has resulted in customers paying higher Tier 1 compliance costs than necessary. The Commission needs to address this problem; CES compliance is costly enough without being implemented in a manner that adds unnecessarily to customer burdens.

B. Staff and NYSERDA's Recommendations Regarding 2023 and 2024 REC Obligations Generally Should Be Adopted

As a result of the material, persistent undersupply of RECs, as highlighted by the most recent divergence test, Staff and NYSERDA recommend that: (a) the 2023 REC obligation be reduced from 8.20% to 6.16%; and (b) the 2024 REC obligation be set at 6.45%, reflecting only a modest increase from the reduced level recommended for 2023. Multiple Intervenors generally supports those recommendations, with caveats.

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[1] *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/LSE-Obligations/2019-Compliance-Year.
[2] *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/LSE-Obligations/2020-Compliance-Year.
[3] *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/LSE-Obligations/2021-Compliance-Year.
[4] *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/LSE-Obligations/2022-Compliance-Year. As detailed, *infra*, given ACP prices from 2019-2021 and the existing undersupply of RECs, the $35.00 price for ACPs in 2022 appears unjustifiably high and could result in substantial excess costs to customers.

Initially, Multiple Intervenors agrees with and supports the recommendation that the existing 2023 REC obligation of 8.20% be reduced materially. Given the magnitude of the shortage of RECs available in the market in recent years, a material downward adjustment to the existing obligation certainly appears warranted to protect customers from excessive compliance costs. Multiple Intervenors advances no opinion as to whether the recommended 6.16% obligation level constitutes an adequate reduction given realistic expectations of REC availability.

For similar reasons, Multiple Intervenors also agrees with and supports the recommendation that the 2024 REC obligation be set at a level only modestly higher than the 2023 level. Again, Multiple Intervenors advances no opinion as to whether the recommended 6.45% obligation constitutes a reasonable level given the recent, extreme undersupply of RECs available in the market and realistic expectations for REC availability in 2024.

C. The Commission Should Consider – and Implement – Additional Measures That Would Reduce Tier 1 Compliance Costs to Customers

Multiple Intervenors does not question here the intent of CES Tier 1, nor its role in helping the State to achieve a 70% renewable penetration level by 2030, as mandated by the Climate Leadership and Community Protection Act. That noted, the State – including the Commission – should be striving to achieve that objective as cost-effectively as possible, and at the least cost to customers. It generally makes sense to seek to gradually ratchet-up annual Tier 1 REC obligations; it does not make sense, however, to set those obligations at levels well in excess of available supply, which is what has been occurring (at material cost to customers). Accordingly, the Commission should consider – and implement – additional measures that would reduce Tier 1 compliance costs to customers.

For instance, it is not clear from the Filing why Staff and NYSERDA refrained from recommending any adjustment to the REC obligations in effect for 2022. The Filing indicates that the obligations in effect for 2021 and 2022 are 2.04% and 5.61%, respectively. (Filing at 5.) Inasmuch as prior divergence tests indicated an undersupply of RECs in 2017-2020 – and often a substantial undersupply – Multiple Intervenors is concerned (and, frankly, pessimistic) that adequate RECs will be available in 2022, especially considering that the existing requirement constitutes a very large increase over the 2021 requirement. Unless the Commission is convinced that there will be an adequate supply of RECs available in the market for LSEs to satisfy the 2022 requirement without material reliance on ACPs, it should reduce that requirement immediately. Forcing customers to bear the additional costs associated with substantial ACPs in 2022 would serve no productive purpose and simply add to customers' burdens unnecessarily (and during a time when wholesale energy prices are skyrocketing).

The Commission also should examine the ACP price for 2022. Traditionally, the ACP price has been set at a 10% premium to REC prices. According to NYSERDA's website, the ACP price was between $23.79 and $24.67 in 2019-2021, but, inexplicably, apparently was set at $35.00 for 2022. Unless there has been some massive, unreported increase in REC prices over the past year, the 2022 ACP price appears grossly excessive and could result in many millions of dollars in inflated – and unnecessary – costs to customers.[5]

Multiple Intervenors appreciates this opportunity to comment on the Filing, and urges the Commission to implement measures to reduce CES Tier 1 compliance costs to customers.

Respectfully submitted,

MULTIPLE INTERVENORS

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cc: Active Parties (via E-Mail)
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[5] Less than 18 months ago, the Commission rejected a NYSERDA proposal to increase the ACP price premium from 10% to 15%, concluding that it was "not the appropriate time" for such an increase, and that "NYSERDA does not expect much volatility in REC prices in the near term…." Case 15-E-0302, *supra*, Order Approving Phase 4 Implementation Plan (issued August 13, 2020) at 14. Given the Commission's directive that the ACP price premium remain at 10% (*see id*.), Multiple Intervenors does not understand why NYSERDA's website depicts a 2022 ACP price of $35.00, compared to a $23.79 price in 2021. *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/LSE-Obligations/2022-Compliance-Year.