MULTIPLE INTERVENORS

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July 24, 2017

VIA ELECTRONIC FILING

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

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

Dear Secretary Burgess:

Attached for filing in the above-referenced proceeding is the Comments of Multiple Intervenors on the Clean Energy Standard Phase 2 Implementation Plan Proposal. Copies of the attached Comments are being served herewith on the active parties to this proceeding.

Respectfully submitted,

MULTIPLE INTERVENORS

Justin J. Fung

Justin J. Fung, Esq.
Counsel to Multiple Intervenors

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

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF MULTIPLE INTERVENORS ON THE CLEAN ENERGY STANDARD PHASE 2 IMPLEMENTATION PLAN PROPOSAL

Dated: July 24, 2017

MULTIPLE INTERVENORS
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PRELIMINARY STATEMENT

In response to the Notice Soliciting Comments ("Notice") issued by the New York State Public Service Commission ("Commission") on June 7, 2017 in Case 15-E-0302, 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 these Comments on the *Clean Energy Standard Phase 2 Implementation Plan Proposal* (the "Plan"), issued jointly by the New York State Energy Research and Development Authority ("NYSERDA") and the New York State Department of Public Service Staff ("Staff") on May 12, 2017.[1]

In the Plan, NYSERDA and Staff detail, *inter alia*, (i) how NYSERDA would implement the Clean Energy Standard ("CES") for post-2017 CES compliance periods, and (ii) what refinements are needed to NYSERDA's program to procure Tier 1-eligible renewable energy credits ("RECs"). The Plan also details NYSERDA and Staff's proposal to utilize revenues from the Alternate Compliance Payments ("ACP") that load-serving entities ("LSEs") have the option of making as one means of fulfilling their REC-related obligations.

Multiple Intervenors has made clear throughout this proceeding that it is extremely concerned about the cost impacts of the CES, and has urged the Commission to take care that, in establishing policies and in furtherance of the State's clean energy goals, customers (and, in particular, price-sensitive, energy-intensive customers) are not burdened unduly with excessive and/or unnecessary costs. Based on its evaluation of the Plan, Multiple Intervenors has two

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

specific concerns: (1) the proposed disposition of collected ACP funds; and (2) the proposal to allow qualifying renewable generators to opt-out of their contractual obligation to deliver RECs to NYSERDA under certain circumstances. Multiple Intervenors' decision to limit the scope of its Comments to these two issues should not be construed as support for or agreement with any issues not addressed explicitly herein.[2]

ARGUMENT

POINT I

SECTION 4.1 - ACP REVENUES SHOULD BE RETURNED DIRECTLY AND ENTIRELY TO CUSTOMERS

In Section 4.1(b) of the Plan, NYSERDA and Staff propose that any collected ACP revenues be used to reduce or defer the need for NYSERDA to invoke the financial backstop mechanism detailed in the Commission's August 1, 2016 *Order Adopting a Clean Energy Standard*, whereby the State's electric distribution companies would cover any financial shortfalls needed to timely pay qualifying renewable generators for RECs and the costs of this financial backstop mechanism would be passed on to customers.[3] For the reasons set forth below, Multiple Intervenors opposes this proposal and, instead, advocates that ACP collections be returned to customers expeditiously to offset a portion of CES costs.

Multiple Intervenors acknowledges NYSERDA and Staff's concerns that invoking the financial backstop mechanism could impose additional financial burdens on customers (incremental to the already-substantial economic costs of the CES), and, to the extent that ACP

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2 Pursuant to the Notice, these Comments are organized based on the relevant headings in the Plan, and will reference the specific provisions of concern in the Plan.

3 Case 15-E-0302, <u>supra</u>, Order Adopting a Clean Energy Standard (issued August 1, 2016) ("CES Order").

revenues can be used to mitigate the impact to customers of funding the financial backstop mechanism if invoked, the Plan arguably adheres to the Commission's ruling in the CES Order that disposition of the ACP revenues should benefit customers. Significantly, however, Multiple Intervenors is very concerned that the Plan does not provide details on the disposition of ACP revenues in situations when there is no need to reduce or defer the invocation of the financial backstop mechanism. That is, if and when the financial backstop is not invoked, under the Plan NYSERDA presumably would retain ACP revenues indefinitely until if and when a financial backstop is needed, if ever. In Multiple Intervenors' opinion, this is not an acceptable outcome and would do very little to reduce the costs of the CES ultimately being borne by customers.

In a November 17, 2016 Order establishing principles to guide the financial backstop mechanism, the Commission explained that NYSERDA could use its existing Clean Energy Fund ("CEF") cash balances to meet any cash shortages associated with the CES, and that the financial backstop mechanism would not be invoked unless aggregate shortfalls exceeded the amounts that could be covered short-term by CEF cash balances and ACP revenues.[4] In the CES Order, the Commission expressly required that "disposition of ACP payments must always be applied to the benefit of consumers by reducing the cost of the [Renewable Energy Standard] program."[5]

The proposal for NYSERDA to retain the ACP funds "just in case" the financial backstop mechanism has to be invoked does not comport with either the Backstop Order or the CES Order. As explained above, the Backstop Order allows NYSERDA to use existing CEF cash balances as necessary to make timely payments to the generators. According to NYSERDA's

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4 Case 15-E-0302, <u>supra</u>, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016) ("Backstop Order"), at 20.

5 CES Order at 110.

latest quarterly report on the CEF, as of December 31, 2016, over $999.9 million has been approved for spending in the CEF Market Development and Innovation & Research Portfolios, of which only $183 million (or 18%) either has been spent or committed.[6] In other words, NYSERDA appears to have roughly $816 million in approved but unspent CEF funds that could be used to partially solve any potential CES cash shortfalls before incremental collections are imposed on customers. The approved CEF budgets also are collected from customers and, to the extent that NYSERDA has such money available, those funds should be utilized first before customers are subject to further incremental collections.

Moreover, according to its Fiscal Year 2017-18 Budget and Financial Plan (encompassing the fiscal year ending March 31, 2018), NYSERDA will have a cash balance of approximately $466 million after accounting for revenues and expenses through the end of the fiscal year.[7] This substantial positive cash balance further places into question whether NYSERDA needs additional reserve funds (in the form of retained ACP revenues) to mitigate the unlikely potential invocation of the financial backstop mechanism. The Backstop Order already provides that CEF cash balances and ACP revenues can be used to make timely payments to generators if there is a lag between those payments becoming due and CES funds being collected from customers. To the extent that there are any ACP revenues left over, there does not appear to be any need – let alone a pressing need – to place them indefinitely into a reserve fund "just in case." Multiple Intervenors notes that, in the Backstop Order, the Commission opined that "the

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6 See Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Clean Energy Fund Quarterly Performance Report Through March 31, 2017 (issued May 2017), Table 3.

7 NYSERDA's Fiscal Year 2017-18 Budget and Financial Plan is *available at* https://www.nyserda.ny.gov/About/Publications/NYSERDA-Annual-Reports-and-Financial-Statements.aspx.

financial risk to NYSERDA will be relatively small," despite the fact that a customer-funded backstop would be a useful safety net.[8] That is, while total procurement expenditures may differ from amounts collected through CES charges and there is a remote possibility that a financial backstop mechanism may need to be invoked, retaining the ACP funds indefinitely "just in case" arguably would be an inefficient use of the monies, particularly when NYSERDA already has significant resources available to it to mitigate or delay the need for the financial backstop mechanism. Instead, ACP revenues could – and should – be used to offset some of the already-substantial CES costs to customers (including, but not necessarily limited to price-sensitive, energy-intensive customers for which the cost of electricity often is a material factor in decisions as to where to site production, make capital investments and employment levels at various facilities within and outside of New York).[9]

Accordingly, the Commission should rule that NYSERDA be required to return unused ACP revenues directly and entirely to customers.[10] Such an approach ensures that the ACP revenues actually reduce the costs to customers of the CES, as mandated in the CES Order, instead of being retained by NYSERDA indefinitely in response to the remote possibility that NYSERDA will not be able to timely pay generators from its already-substantial resources, and that a financial backstop mechanism will have to be invoked. If the Commission rejects this recommendation,

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8 Backstop Order at 20.

9 In resolving ACP and other, related issues, the Commission should strive to minimize the cost of the CES on customers. Allowing NYSERDA to retain ACP revenues indefinitely – without any defined plan for returning such funds to the customers paying for the CES – is contrary to the public interest.

10 Multiple Intervenors has long argued that CES costs should not be allocated to or recovered from customers on a purely volumetric (*i.e.*, per kWh) basis. However, leaving aside the disproportionate impact of this methodology, equity dictates that inasmuch as CES costs currently are being imposed on customers volumetrically, ACP revenues should be returned to customers as an offset to CES costs in the exact same manner.

Multiple Intervenors recommends in the alternative that NYSERDA should be required to first demonstrate a financial or other need before it is allowed to retain the ACP funds. Currently, no such need exists.

For the foregoing reasons, the Commission should act expeditiously to reduce the already-substantial cost of the CES to customers by returning ACP revenues, expeditiously and equitably, to customers.

POINT II

SECTION 5.1(d) – THE COMMISSION SHOULD ENSURE THAT ANY CONTRACTUAL OPT-OUT PROVISION DOES NOT INCREASE COSTS FOR RATEPAYERS

In Section 5.1(d) of the Plan, NYSERDA states that it may consider, starting with the 2018 REC solicitations, allowing a generator the limited right of suspending performance with respect to its contractual obligations to deliver RECs to NYSERDA, and instead sell those RECs into the voluntary market, subject to: (1) a minimum duration to ensure that generators are not arbitraging the NYSERDA contract while increasing overall customer costs; and (2) NYSERDA consent which would only be granted only if the generator can demonstrate, through proper documentation of an alternative transaction, that such a suspension is in the public interest. Multiple Intervenors is concerned that this proposal may result in an overall increase in REC prices, which ultimately are borne by the customers of the LSEs responsible for obtaining RECs to comply with the CES.

As NYSERDA already acknowledges in the Plan, allowing an unlimited suspension would be adverse to customers because such suspension likely would occur during market shortages, thus exposing customers to higher REC prices and, potentially, the ACP. Customers already are burdened with substantial costs associated with complying with the CES, particularly high-load-factor customers who bear a significant and (disproportionate) share of CES costs due to the manner in which such costs are being allocated and recovered. It is paramount that the Commission does not take any action that would result in such customers being forced to pay even higher prices than necessary.

Moreover, it is not clear to Multiple Intervenors why qualified renewable generators should be accorded the unilateral ability to opt-out of their contractual obligation, even if NYSERDA consent ultimately would be required. For instance, if the price of RECs declines, NYSERDA does not possess a similar right to opt-out of making contractual payments to generators. Moreover, such generators are choosing, willingly, to enter into customer-subsidized contracts. Inasmuch as customers (via LSEs) are being forced to enter into and fund such contracts, it seems inequitable to provide any type of opt-out election to generators in this circumstance. If an opt-out is to be permitted at all, it should be premised solely on tangible cost savings to customers.

For the foregoing reasons, Multiple Intervenors opposes the opt-out provisions as proposed. If, *arguendo*, such provisions are adopted in some form, the Commission should ensure that: (a) sufficient safeguards are in place to protect customers from contract arbitrage; and (b) the opt-out results in tangible cost savings to customers and reduces the overall cost of the CES. The Commission should reject any proposed opt-out provision framework that would result in higher REC prices and/or economic harm to customers.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to: (1) modify the Plan and direct that, absent a demonstrable need to invoke the financial backstop mechanism, ACP revenues should be returned directly and entirely to customers on a volumetric basis; and (2) reject any NYSERDA contract opt-out provision that would result in higher REC prices and/or economic harm customers.

Dated: July 24, 2017
Albany, New York

Respectfully submitted,

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