MULTIPLE INTERVENORS
REPRESENTING NEW YORK'S LARGE ENERGY CONSUMERS

February 6, 2023

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

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

Dear Secretary Phillips:

Pursuant to the Notice published in the December 7, 2022, edition of the *New York State Register* (I.D. No. PSC-49-22-00021-P), Multiple Intervenors, an unincorporated association of more than 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments to the New York State Public Service Commission ("Commission") concerning the petition filed by the New York State Energy Research and Development Authority ("NYSERDA") to modify the design of Tier 1 of the Clean Energy Standard ("CES") (hereinafter, the "Petition"). As detailed herein, Multiple Intervenors generally is supportive of the relief sought in the Petition, but advances a few potential concerns regarding implementation.

Multiple Intervenors hereby advances two points for the Commission's consideration. First, and primarily, Multiple Intervenors agrees with NYSERDA that transitioning to a load share obligation approach should reduce CES compliance costs to customers and is in the public interest. Second, selling Tier 1 Renewable Energy Credits ("RECs") into the voluntary market, as proposed by NYSERDA, also should lower customer costs, but needs to be implemented in a manner that avoids or minimizes unintended consequences. Multiple Intervenors generally supports both of NYSERDA's proposals, which are addressed more fully below.

A. A Load Share Obligation Approach Should Be More Cost-Effective Than the Current Approach

Tier 1 of the CES is focused on incentivizing, at customer expense, the development of new, large-scale renewable generation facilities. Pursuant to Tier 1, all load-serving entities ("LSEs") currently are required to purchase a proportional share of the Tier 1 RECs targeted by the Commission for a given year. LSEs pass the cost of these mandatory purchases onto customers via higher supply costs. If LSEs fail to purchase sufficient RECs – for instance, if the supply of available RECs is less than the demand for them – LSEs may make Alternative Compliance Payments ("ACPs") to comply with the CES. ACPs historically have been priced at a 10% premium to RECs, although the transition to indexed as opposed to fixed REC contracts has led to an estimated price premium for ACPs starting in 2022 that appears greater than 10%.

Every year, NYSERDA, in conjunction with New York State Department of Public Service Staff ("Staff"), conducts a "Divergence Test," which is intended to safeguard against a persistent oversupply or undersupply of RECs. Historically, NYSERDA and Staff have found that an undersupply of RECs has existed, resulting in LSEs being forced to rely on higher-priced ACPs to a greater extent than desirable, resulting in additional costs to customers.

In its petition, NYSERDA proposes to redesign how Tier 1 is implemented by transitioning the LSE mandatory purchase obligation away from a percentage framework and toward a load share framework. (Petition at 7-8.) In other words, LSEs would be required to purchase a proportionate share of the RECs that actually are available, as opposed to a proportionate share of a pre-determined targeted level of RECs that may not reflect market availability. This approach is described as a "pay-as-you-go" model, meaning LSEs would pay a per MWh charge monthly based on their actual, proportionate load to satisfy their Tier 1 obligations. (*Id*. at 7.) Importantly, this approach would eliminate any need for LSEs to make ACPs. (*Id*. at 8.)

Multiple Intervenors is supportive of the proposed load share obligation approach, which should reduce costs to customers because LSEs no longer would be required to make ACPs in an effort to comply with a REC-purchasing requirement that repeatedly has been well in excess of available supply. Currently, ACPs serve no real purpose other than to drive up Tier 1 compliance costs on LSEs and, ultimately, customers. This is evident by the Divergence Test conducted in 2021, which revealed that several years of very high ACPs reflected a persistent undersupply of available RECs.

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 ("CLCPA"). 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. Therefore, Multiple Intervenors recommends the Commission approve NYSERDA's proposed modification of Tier 1, which should limit costs to customers to those associated with the mandated purchase of RECs by LSEs, without the unnecessary, and expensive, additional burden of ACPs.

B. If NYSERDA is Authorized to Sell RECs Into the Voluntary Market, Additional Information is Needed as to How This Would Be Implemented

NYSERDA proposes in the Petition to implement voluntary sales, wherein it would sell Tier 1 RECs to willing purchasers as a way to limit the cost of the program to customers. (Petition at 11.) This new approach would include, *inter alia*, long-term contracts with voluntary purchasers, an annual REC presale for the upcoming compliance year, and an annual REC resale at the end of each compliance year. (*Id*. at 12.) Each of these approaches is intended to capitalize on growing market interest in purchasing RECs, while also reducing customer costs. (*Id*. at 11.) For instance, to the extent Tier 1 RECs are purchased in a voluntary market, the mandatory purchase obligation imposed on LSEs would be reduced by a corresponding amount, thereby moderating the cost of the program to the customers. (*Id*. at 12.) Cost reduction measures, such as NYSERDA's proposal, are critically important given the potential magnitude of CLCPA-related costs, as well as the rapidly-increasing amount of the Tier 1 RECs that NYSERDA is expected to purchase in the coming years. The Commission generally should view favorably proposals to shift costs into a voluntary market and away from already-overburdened captive customers.

Notwithstanding Multiple Intervenors' general support for NYSERDA's proposal, additional information is needed as to how it would be implemented. For instance, Multiple Intervenors assumes that other parties similarly would be allowed to make voluntary REC sales, and that NYSERDA's proposal would add to – as opposed to reduce – liquidity in the voluntary REC market in New York. Multiple Intervenors generally supports the voluntary sale of RECs in an effort to reduce Tier 1 compliance costs, but recommends increased transparency as to how it would be implemented, including how the sales prices would be set. Additionally, if a large customer (or another type of entity) purchases certain Tier 1 RECs, and subsequently determines that not all of those RECs are needed, it should be allowed to resell the RECs that it no longer requires. This is consistent with the Commission's long-standing commitment to competition. Therefore, while the Commission should approve NYSERDA's proposal to implement voluntary sales of RECs, care should be exercised to eliminate or minimize any unintended consequences of such efforts on the REC market generally and on customers (who are funding the CES, among other initiatives) in particular.

Multiple Intervenors appreciates this opportunity comment on the Petition, and respectfully urges the Commission to adopt the recommendations and positions set forth in these Comments.

Respectfully submitted,

MULTIPLE INTERVENORS

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cc: Active Parties (via E-Mail)
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