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Gavin J. Donohue, *President &
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January 10, 2017

Honorable Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 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.

Comments on the Clean Energy Standard Proposed Phase 1 Implementation Plan

Dear Secretary Burgess:

The Independent Power Producers of New York, Inc. ("IPPNY") submits the following written comments in relation to the Clean Energy Standard ("CES") Phase 1 Implementation Plan Proposal¹ that was provided for public comment² with an extended³ comment due date. IPPNY's Members⁴ produce over 75 percent of New York's electricity using a wide variety of generating fuels and technologies including natural gas, cogeneration, nuclear, hydro, wind, landfill gas, fuel oil and coal.

1. Summary of Major Recommendations

IPPNY supports the goals of the CES; however, we have a number of priority issues within the draft Implementation Plan that should be clarified:

¹ Case 15-E-0302 - *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Clean Energy Standard Phase I Implementation Plan Proposal Submitted by Staff of the New York State Energy Research and Development Authority and Staff of the New York State Department of Public Service (October 31, 2016) ("draft Implementation Plan or draft plan")

² Case 15-E-0302, *supra*, Notice Soliciting Comments on Clean Energy Standard Phase 1 Implementation Plan (November 1, 2016)

³ Case 15-E-0302, *supra*, Notice Extending Comment Period (December 29, 2016)

⁴ All of the views expressed in IPPNY's comments do not necessarily represent the positions of each of our Members, since IPPNY represents a broad spectrum of companies.

- The New York State Energy Research and Development Authority (“NYSERDA”) should update the draft Implementation Plan to recommend changes to the Maintenance Tier to allow for broader eligibility of existing renewables;
- NYSERDA should confirm the 2018 price for Renewable Energy Credits (“RECs”) will be determined based upon the outcome of NYSERDA’s Request for Proposals (“RFP”) to purchase RECs from winning generator bidders;
- NYSERDA should make awards under the May 2016 11th solicitation⁵ under the Main Tier of the Renewable Portfolio Standard (“RPS”) and describe further how RECs associated with the winning projects would be used to meet the CES target;
- Projects under the Renewable Energy Standard (“RES”) should have an additional 24 months to reach the Commercial Operation Milestone Date (“COMD”) as provided for similar projects under the May 2016 RPS Main Tier solicitation; and
- The inclusion of additional components in the bid evaluation process other than price is subjective; instead, the process should focus on objective price-based components to have a more market-based approach; additionally, the existing consideration of economic benefits to New York State should not be de-emphasized, and the evaluation process should not favor some technologies or fuels over others.

2. Highlights of Additional Issues

IPPNY also urges that the draft Implementation Plan provide additional information to:

- describe further how the CES target will be met by large-scale renewables (“LSR”) through the April 2017 REC auction and the potential one in October of 2017;
- reconcile the 2017 compliance target for load serving entities (“LSEs”), as estimated by NYSERDA, with the total statewide REC procurement goal that was provided by the August 2016 CES Order;⁶
- specify the extent to which the CES goal would be met by voluntary market activity and not just through the compliance targets;
- explain how NY-Sun and other Customer-Sited Tier projects will be counted towards the overall CES goal;
- specify that the contract term for all resources is 20 years;
- state that bid deposits would be returned to unsuccessful bidders and to developers that ultimately are unable to bring their projects to commercial operation; and

⁵ New York State Energy Research and the Development Authority, Renewable Portfolio Standard Main Tier, Eleventh Main Tier Solicitation (Issued in May 2016), with information available at: <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Portfolio-Standard/Past-Main-Tier-Solicitations>

⁶ Case 15-E-0302, *supra*, Order Adopting A Clean Energy Standard (August 1, 2016), (“August 2016 CES Order”)

- delineate the uses for the collected Alternative Compliance Payments (“ACP”) funds.

3. Additional Discussion of Points

IPPNY provides the additional discussion below to elucidate further some of our recommendations and issues summarized above upon which the draft Implementation Plan should expound.

A. Existing Renewables

The August 2016 CES Order specifies that: “Staff is directed to develop and recommend for Commission consideration as part of an implementation plan whether there should be changes to the maintenance program to align support with zero-emissions facilities.”⁷ NYSERDA should update the draft Implementation Plan to recommend changes to allow for broader eligibility of existing renewables.

More specifically, IPPNY urges NYSERDA to include a provision in the draft plan for renewable facilities, which came into commercial operation before January 1, 2015 and which qualify as eligible technologies under Appendix A⁸ of the August 2016 CES Order, to be eligible to sell RECs to LSEs for compliance with the CES procurement obligation. These existing facilities should be compensated fairly for the value of their renewable attributes so that these resources are retained in New York’s baseline to meet the CES goal. The draft plan also should include additional information for how NYSERDA and the Staff of the New York State Department of Public Service (“DPS”) will be able to efficiently monitor whether such existing facilities in New York are selling their attributes out-of-State and, if so, at what price.

B. Determining the 2018 REC Price

The August 2016 CES Order states: “The Commission directs Staff, as part of the implementation plan to i) review and either confirm or propose modifications to the targets adopted here for 2018-2021 after taking into consideration current market conditions including the result of the 2016 NYSERDA LSR solicitation and ii) develop a potential acquisition curve for the years 2022-2030. The curve will serve simply as a base case calculation that will be adjusted as necessary based upon actual market dynamics.”⁹ Furthermore, the November 2016 CES clarification order states: “It should also be noted that the CES Order at pages 91-92, with more clarity, directs Staff as part of the implementation process to review, confirm or propose modifications to the 2018-2022 targets. As part of that process, Staff should similarly parse out the difference in those targets between resources that contribute towards the overall Statewide goal without further action by the LSEs and the resources that are intended to be acquired as a new mandatory obligation.”¹⁰

The draft Implementation Plan does not address these directives by the New York State Public Service Commission (“PSC”), resulting in great uncertainty as to the annual goals for subsequent years. The PSC and NYSERDA have not explained how the compliance target will be set for

⁷ August 2016 CES Order at page 17

⁸ Appendices to Order Adopting A Clean Energy Standard (August 1, 2016), Appendix A: Eligibility of Resources

⁹ August 2016 CES Order at page 91

¹⁰ Case 15-E-0302, *supra*, Order Providing Clarification (November 17, 2016) (“November 2016 Order”), at page 7

subsequent years. Will the 2018 compliance target similarly be based on the amount of RECs NYSERDA can promise will be produced in 2018, or will it be based on the percentage specified in the CES order? How will the ACP be set for 2018?

C. Consistency in “Expected Commercial Operation Date”

The draft Implementation Plan states: “In order to increase the likelihood of generation facilities with REC contract awards successfully coming to fruition, NYSERDA and Staff propose to modestly extend the maximum elapsed duration from bid acceptance to the last potential date of commercial operation before triggering contract termination. In the 11th RPS Main Tier solicitation, the period from issuance of the RFP until the initial COMD ... was approximately 2 years, with an additional five calendar quarter’s extension possible for the final COMD. For the RES solicitations, NYSERDA and Staff propose to extend the maximum elapsed duration until the initial COMD to equal 2 years from the expected award notification date until the initial COMD, and in addition, to modify the ability to extend the COMD to allow for up to four 6 month extensions, each secured through posting of additional contract security...or entering into an interconnection agreement.”¹¹ The draft Plan goes on to rationalize the change as providing “a more flexible approach allowing viable generation facilities a more realistic timeframe to achieve commercial operation (in the face of the many development challenges it must face), while creating additional milestones for termination of contracts with generation facilities failing to make sufficient forward progress...”¹²

IPPNY agrees with the assessment by the Staffs of NYSERDA and the DPS. Given the various development challenges faced by even the most experienced developers, providing additional flexibility to bring viable projects on-line, coupled with more stringent deposit or interconnection agreement requirements, makes considerable sense, particularly given the Administration’s more aggressive CES / RES targets. However, there is a disconnect between the flexibility provided under the RES and the timelines provided to similar projects under the May 2016 11th RPS Main Tier solicitation, particularly given the fact that projects under this solicitation have yet to be formally awarded. Under this May 2016 solicitation, projects have up to an additional 15 months to reach COMD; under the draft Implementation Plan projects have up to an additional 24 months. For a project developer, the additional nine months can be a very material difference. IPPNY strongly encourages NYSERDA and DPS Staffs to adopt and apply the more flexible approach under the draft Implementation Plan to those projects under the 11th RPS Main Tier for purposes of both consistency and for compliance in meeting the overall RES targets.

D. 2017 Compliance Target

On November 1, 2016, NYSERDA stated it will be selling¹³ 56,142 megawatt-hours (“MWh”) of RECs, and, on November 17, 2016, the PSC ordered¹⁴ that this amount of RECs is the 2017 compliance target for LSEs that are under the PSC’s jurisdiction. However, NYSERDA’s issued draft Implementation Plan is dated October 31, 2016.

¹¹ Case 15-E-0302, *supra*, draft Implementation Plan, at pages 13 - 14

¹² *Ibid.*

¹³ Case 15-E-0302, *supra*, Filing Regarding Renewable Energy Standard 2017 Compliance Period (November 1, 2016)

¹⁴ November 2016 Order

The draft Implementation Plan should clarify how the balance of the statewide total goal of 917,858 MWh of RECs will be met in 2017 and whether the statewide goals in subsequent years will be modified. It is important that the annual REC goals are established well in advance of NYSDA's REC procurements to provide certainty to prospective developers that there will be a robust market for their RECs.

Furthermore, in its November 2016 Order clarifying the CES, the PSC states that the new renewable resources from NY-Sun and other Customer-Sited Tier projects are to be counted towards the overall goal; however, these resources are not intended to be included in the amount of renewable energy the LSEs are mandated to procure in 2017. The PSC noted that 953,000 MWh of new renewable resources were estimated to be available from these projects. The draft Implementation Plan should clarify the role that these projects have in relation to the statewide total of 974,000 MWhs of RECs.

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

Sincerely,

/s/ Gavin J. Donohue

Gavin J. Donohue
President & CEO