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Hon, Jaclyn A. Brillling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, N. Y. 12223-1350

**Re: Case 11-E-0176 – In the Matter of the Commission’s Implementation
Of Certain Provisions of the Recharge New York Power
Program Act**

Dear Secretary Brillling:

In accordance with the rules and regulations of the Commission, the Retail Energy Supply Association ("RESA")¹ hereby appears as an active party in this proceeding addressing the implementation of certain provisions of the Recharge New York Power Program Act ("RNY").

Further, in accordance with the Commission’s Notice of Proposed Rulemaking published in the July 13, 2011 edition of the New York State Register (ID# PSC-28-11-00006-P), RESA submits these comments in response to the June 27, 2011 “Petition Concerning Delivery Service Rates, Terms and Conditions for the Recharge New York Power Program” (“Petition”) filed with the Commission by the New York Power Authority (“NYPA”) in this proceeding.

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA

Under the new legislation, RNY power will be sold by NYPA and delivered by various electric utilities. The purpose of the RNY program is to achieve significant economic development benefits for New York businesses.² As outlined in the legislation and Petition, 910 MW of electricity will be made available to New York businesses and not-for-profit entities. This power allocation will consist of 455 MW of NYPA hydroelectricity and 455 MW of market electricity purchased from NYPA or ESCOs by RNY recipients.

RESA supports the effort to enhance the economic welfare of the business community and the State. It is imperative, however, that the manner by which RNY is implemented by NYPA including the accompanying rate structure applied by the utilities, is accomplished in neutral and unbiased manner that does not, in any way, discriminate against retail customers who purchase market commodity supply from an ESCO.

The Commission has “long supported the development of viable and sustainable competitive markets, which promote economic efficiency and thereby yield consumer benefits.”³ This was also emphasized by the Commission in the “Statement of Policy on Further Steps Toward Competition in Retail Electric Markets”, wherein the Commission underscored that the “provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal” and that competitive markets “are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit of greater choice, value and innovation.”⁴

An important rate feature of the RNY program presented in the Petition involves the application of delivery service discounts for RNY Power allocations that exclude the System Benefits Charge (“SBC”), the Renewable Energy Portfolio Standards (“RPS”) surcharge and the Energy Efficiency Portfolio Standards (“EEPS”) surcharge from the standard delivery service charges normally assessed by each utility to establish the discounted service rate.⁵ In describing how the discount are to be applied, NYPA proposes that such discounts “would be applied, of course, to the entirety of the RNY Power sold by NYPA to Program participants, *i.e.* the power derived from both NYPA hydroelectric resources and market purchases.”⁶

This vague language would apparently apply the exemption from SBC, RPS and EEPS surcharges to the hydropower and market power components purchased from NYPA, but could be interpreted not to apply the exemption on the market power component where the customer voluntarily chooses to purchase the market power from an ESCO as fully authorized by the legislation. Thus, the market power purchased from an ESCO under this interpretation might not be eligible for the exemption. This discriminatory treatment would actively discourage RNY customers from purchasing the market power component from an ESCO and tilt the market in favor of purchasing the competitive component from NYPA.

² <http://www.governor.ny/press/04142011rechargenewyork>.

³ Case 07-M-0458, Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets, *Order on Review of Retail Access Practices*, p. 4

⁴ Case 00-M-0504, Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets and Fostering Development of Retail Competitive Opportunities, *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets* (issued August 25, 2004) at p. 18.

⁵ Petition, p.5.

⁶ *Id.*

RESA takes issue with and objects to this approach. In accordance with established Commission policy, a level-playing field for purchases of the market power commodity needs to be maintained and no distinct competitive benefit should be afforded to NYPA. The importance of maintaining a level playing field is also incorporated in the RNY legislation as RNY participants have the right to purchase one-half of their RNY allocation from market sources such as an ESCO.⁷ Obviously, the right to purchase from an entity other than NYPA will be severely undermined with the loss of the material delivery rate discounts.

To maintain a level competitive playing field, RESA therefore requests that the entire 910 MW of RNY power allocations be exempt from the surcharges, and eligible for any actual delivery rate discounts regardless of whether NYPA or an ESCO supplies the non-hydropower component. This approach is consistent with established Commission policy as market purchases from an ESCO will stand on an equal footing with market purchases from NYPA, and is consistent with the RNA legislation which authorized purchases from an ESCO.

RESA thanks the commission for the opportunity to submit these comments.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

⁷ Public Authorities Law § 1005[13-a][c].