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By Electronic Mail

Hon. Kathleen A. Burgess
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

**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:

The Retail Energy Supply Association (RESA)¹ through its counsel, submits these comments in response to the *Notice Of Comment Period For Staff White Paper And Cost Study* issued April 8, 2016,² in which the Commission invited responses *Staff White Paper On Clean Energy Standard* dated January 23, 2016.³

¹The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² Case 15-E-0302 - In the Matter of the Implementation of a Large- Scale Renewable Program and a Clean Energy Standard, Notice of Comment Period For Staff White Paper and Cost Study Notice Instituting Proceeding(issued April 8, 2016) (hereafter "Notice").

³ Hereafter "WP".

The WP proposes a timeline that would begin to see implementation of the Clean Energy Standard (“CES”) by 2017⁴, less than a year from now. However, it is important to recognize that the Commission as part of the Reset Order ⁵is currently examining the application to ESCOs of various green and renewable standard product requirements. This would also involve important elements of the CES, the Environmental Disclosure Label Program, and NYGATS particularly with regard to compliant renewable energy products. Further, how an ESCO would achieve compliance with the Reset Order will also be impacted by the CES. There is an obvious interconnection between CES and compliant renewable products under the Reset Order incumbent on ESCOs.

This direct and critical interrelationship requires at a minimum considerable coordination between both of these proceedings to ensure that conflicting practices, policies or principles are not developed as part of CES that may hinder or impose unacceptable burdens upon ESCOs attempting to comply with the standards adopted in the Reset Order.

The required coordination must also recognize that ESCOs have in previous months entered into various supply contracts which predate CES but go beyond the 2017 CES start date. Further ESCOs may have entered into fixed price contracts with customers which also bind the ESCO for a fixed term. Thus enabling a reasonable level of grandfathering for the previous activities is absolutely essential.

The CES will impose a new series of costs and requirements on ESCOs that were first created recently and were unforeseen when ESCOs first entered into various supply arrangements and their fixed price contracts with customers. In this context the Commission should consider allowing the new ESCO CES standards to be implemented on a forward basis (3 years in advance) to allow retail prices to account for the new costs. At a minimum, the CES should exempt existing contracts from the CES requirements so the new rules do not impact existing contracts

Due to the unique competitive position of ESCOs, important issues of timing need to be addressed. ESCOs will need an adequate grace period to procure the necessary renewable attributes under the CES. At the Session of April 19, 2016, the Commission noted that there would be a six month period after the calendar year to obtain the requisite clean, so compliance would be in June of each year. The NYISO resettlement window is 4 months so this leaves 2 months after an ESCO’s final load data is known for the ESCO to get achieve compliance. It is recommended that the

⁴ WP, p. 6.

⁵ Case 15-M-0127, et.al, Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016 (“Reset Order”).

compliance dated be moved to October 1 of each year to address the substantive timing concern.

Under CES all LSEs including ESCOs will be required to meet the new CES standard on an annual basis. This would involve the overall required level as well as each of the individual Tiers that will be applied to LSEs.⁶ Thus, as ESCOs enter the market to acquire the requisite supply they will be “competing” with many non-competitive entities including the utilities that due to their unique ratemaking recovery status are not subject to regular pricing and market constraints. This market structure can engender a lack of balance or disequilibrium that places ESCOs at a distinct competitive disadvantage. The Commission must take active measures to assure that this does not occur.

Further, utilities may currently receive “credit” for renewables that are developed by the utilities using NYSERDA funds or through REV demonstration projects. If any such renewable projects are ultimately funded using ratepayer dollars, then all LSEs should receive a proportional credit for the renewable attributes generated by these projects because the ESCO’s our customers are paying their share of these costs.

In view of the relatively early start date for CES, it is vitally important for the Commission to clarify the system mix of available clean resources. Staff has advised that there are about 26% of renewables in the NYISO system, but some of these attributes are already being claimed and retired for specific purposes. All LSEs would receive credit for the NYSERDA funded renewables that all customers pay for through SBC charges. However, the PSC and NYISO have to specify the “residual” attributes that all LSEs receive credit for. This reduces the 26% number down to ~16%.

However, currently, this number is only fully known for the 2013 year. On a forward basis, ESCOs will need to know this number quickly to plan for how much renewables they need to price into their contracts for meeting (1) the CES requirements in their entirety, and (2) the 30% requirement imposed for compliant green products under the Resetting Order. It would be useful to institute a formalized process where the Commission PSC calculates this residual mix number and communicates this to market participants. For example, the Commission should post the estimated value at the beginning of the compliance year (Jan. 1) and then update with the final, actual value shortly after the end of the compliance year.

⁶ WP, p. 10

In the WP Staff recommends that geographic eligibility and associated delivery requirements be instituted in a manner whereby renewable generation located in control areas adjacent to the NYISO control area will be eligible so long as the generation is accompanied with documentation of a contract path between the generator and the purchaser that, among other things, includes provision of transmission or transmission rights for delivering the generation via the NYISO and can supply a New York consumption point.⁷ This approach appears to be too restrictive. In an environment where the Commission is developing a large scale program whose contours, impacts and problems are yet to be fully known, the better approach is to allow for greater flexibility with respect to eligible RECs.

To this end, the Commission should allow for RECs to be retired in adjacent ISOs (PJM and New England) for voluntary retail green power products in NY without a requirement to deliver the power to NYISO. This would provide LSEs with a wider array of green products based in areas adjacent to the NYISO.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*

Usher Fogel, Counsel

⁷ WP, 20.