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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)<sup>1</sup> through its counsel submits these reply comments in response to the *Notice Of Comment Period For Staff White Paper And Cost Study issued April 8, 2016*,<sup>2</sup> in which the Commission invited comments on the *Staff White Paper On Clean Energy Standard* dated January 23, 2016.<sup>3</sup>

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<sup>1</sup>The 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](http://www.resausa.org).

<sup>2</sup> 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").

<sup>3</sup> Hereafter "WP".

A. THE WP PROCESS SHOULD ACCOMMODATE THE CHANGES ADOPTED IN THE RECENT RESET ORDER.

The contemplated WP timeline calls for implementation of the Clean Energy Standard (“CES”) by 2017<sup>4</sup>. However, during the same interval the Commission as part of the Reset Order<sup>5</sup> is examining requiring ESCOs to maintain and offer 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.

The proper accommodation necessitates at a minimum coordination between these interrelated proceedings to prevent conflicts as part of CES that would pose unreasonable burdens upon ESCOs attempting to comply with the standards adopted in the Reset Order.

The needed coordination and cooperation should also incorporate the following additional factors

- ESCOs have previously executed that predate 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. These types of arrangements should receive grandfather status.
- The Commission should 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, 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 compliance dated be moved to October 1 of each year to address the substantive timing concern.
- 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.<sup>6</sup> Thus, as ESCOs enter the

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<sup>4</sup> WP, p. 6.

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

<sup>6</sup> WP, p. 10

market to acquire the requisite supply they will be “competing” with many non-competitive entities. 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 and an even playing field is maintained. This would also include equitably allocating any “credit” for renewables that are developed by the utilities using NYSERDA funds or through REV demonstration projects.

- The Commission should clarify as soon as possible the system mix of available clean resources. 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 the CES requirements in their entirety, and requirement imposed for compliant green products under the Reset Order.

In the WP Staff recommends that 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.<sup>7</sup> 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

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<sup>7</sup> WP, 20.

