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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 - In the Matter of the Implementation of a Large- Scale Renewable Program.
CASE 14-M-0101 - Proceeding on Motion of the Commission in Regard to the Energy Vision.
CASE 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.**

Dear Secretary Burgess:

Enclosed please find the Comments of the Retail Energy Supply Association in this matter.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: Usher Fogel, Counsel
Usher Fogel, Counsel

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0302 - In the Matter of the Implementation of a Large- Scale Renewable Program.

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**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. PRELIMINARY STATEMENT

The Retail Energy Supply Association (RESA)¹ submits these comments in response to the *Notice Instituting Proceeding, Soliciting Comments and Providing for Technical Conference* issued in these proceedings on June 1, 2015,² in which the Commission issued and requested responses from interested parties on the paper prepared by

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, et. al., *Notice Instituting Proceeding, Soliciting Comments and Providing for Technical Conference* (issued June 1, 2015) (hereafter “Notice”).

NYSERDA entitled Large Scale Renewable Energy Development in New York: Options and Assessment.³

II. SUMMARY OF PRIMARY FINDINGS OF THE PAPER

At the outset of its evaluation and assessment of the basic approaches to further the development of Large Scale Renewable (“LSR”) projects, NYSERDA declares that the “State’s renewable energy policy is assumed to be carried out through solicitations and contracts with State entities, the utilities (EDCs), or both.”⁴ It is further assumed by NYSERDA that all ratepayers, including ESCO customers and voluntary renewable energy buyers, will continue to pay to support the LSR program.⁵

Following these constricted fundamental assumptions NYSERDA focused its analysis primarily upon those approaches that hearkened back to the generation model that was in vogue prior to the advent of the institution of deregulated wholesale and retail energy markets, in which the regulated utilities either through direct ownership or execution of a long-term Power Purchase Agreement (“PPA”) contracted to purchase the electricity generated by a facility and all costs related thereto were born by all of the utility ratepayers.⁶

³ NYSERDA, *Large Scale Renewable Energy Development in New York: Options and Assessment*, Report Number 15-12, June 2015 (hereafter “Paper”).

⁴ Paper, p. 128

⁵ Paper, p. 128, FN. 119

⁶ All of the “Options” considered in the Paper are similar variations on this basic theme with any differences relegated to which entity or body will conduct the solicitation and whether there should be an

It is therefore not surprising that NYSERDA concludes that the “preferred LSR support mechanism is the open-source solicitation using a State entity as soliciting entity and the EDCs as Bundled PPA buyer or project owner.”⁷ In other words, the LSR program would be limited to developers submitting bids through a State entity which would then pick and choose the winners, and subsequently the utility would either own the facility or enter into a PPA with the developer to purchase the output of the facility. The entire cost of either utility ownership or the PPA payments would be recovered from all distribution customers of the utility. Once chosen as the winner all financial and business risk of the project would transfer to and shouldered by utility ratepayers.

III. **THE RECOMMENDED APPROACH OF NYSERDA DOES NOT ADEQUATELY COMPORT WITH THE BASIC GOALS OF REV AND RELY UPON THE DEVELOPMENT OF WORKABLE COMPETITIVE ENERGY MARKETS**

The announced goals of REV as articulated by the Commission are to transform the regulation of electric distribution utilities by establishing and articulating “core policy outcomes intended to better align the role and operations of utilities to enable market and customer-driven change”, and to “give consumers greater freedom to manage their total energy bill”.⁸

open solicitation where the bid solicitation would be for both PPAs and the acquisition of renewable generating assets that would become UOGs. See, generally Paper, pp. 64-71 and 80.

⁷ Paper, p. 129.

⁸ See Case 07-M-0548, Press Release dated December 19, 2013 (“Press Release”)

Further, this policy is distinctly aimed at empowering the customer to have the tools and competitive options to make economically efficient energy choices. As the Commission underscored, a core policy would be:

Empowering Customers: A hallmark of an efficient consumer market is information and knowledge and ensuring the availability of tools to both procure supply and services that consumers' value. By focusing on consumer needs, the Commission can best determine if regulation and the markets are effective at delivering policy objectives.⁹

This emphasis on creating market driven solutions and competitive choice was further reinforced in the Commission's seminal REV Order.¹⁰ Therein the Commission noted that its "primary objective in this proceeding is to modify the regulatory model to support, rather than defend against, the numerous technological and market trends that promise consumer and environmental benefits."¹¹ It sought through REV to engender a "market transformation",¹² create a "level playing field" to promote fair competition¹³, and cited the important need to stimulate innovation and animate the market.¹⁴

The Commission has correctly recognized that achieving the goals presented in the REV proceeding requires departure from the traditional utility business approach and accepted ways of doing business. This involves movement away from a utility

⁹ Press Release, p. 1.

¹⁰ Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) (REV Order).

¹¹ REV Order, p. 48.

¹² REV Order, p. 77.

¹³ REV Order, p. 45.

¹⁴ REV Order, p. 95

centric model where the regulated monopoly, funded by utility ratepayers, essentially exerts all primary control and moving towards efforts and projects that in a fulsome manner incorporate competitive principles that supports the provision of energy products and services upon the bedrock of animated market forces and principles.

In sum, through REV the Commission seeks to develop a forward looking transformative regulatory model that departs from old practices and focuses on the forces of markets and competition.

A. **The Preferred LSR Option Does Not Further the Goals of REV**

The NYSERDA preferred solution for LSR far from being forward looking or transformative, is, with some negligible nips and tucks, a throwback to the period when all generation was effectively owned or purchased by utilities with the costs thereof in their entirety recovered from ratepayers. Rather than follow in any material way the policies applicable to existing generation sources that are of a merchant variety where the risks are the burden of the plant owners, and which were introduced as a critical element undergirding the deregulated wholesale and retail markets, NYSERDA has opted to once again embroil the utilities and their ratepayers in the process of owning or fully supporting generation. In essence they have gone “back into the future”, resurrecting an old model that had been placed aside, and which is at odds with meaningful competitive energy markets.

This is eerily reminiscent of the State's unfortunate prior experience with the passage and implementation of Public Service Law Section 66-c. In 1981, the legislature desirous of promoting the use alternate energy production facilities, co-generation facilities and small hydro facilities, directed utilities to enter into long term contracts to purchase electricity from such facilities at a minimum sales price of six cents per kWh.¹⁵ This policy turned out to be a boon for developers of such facilities as it essentially allowed for development of these facilities irrespective of actual avoided costs and market economics. Ratepayers however ended up being saddled with a huge bill associated with the utilities' obligation to purchase power from these facilities on a long term basis at a price that was significantly in excess of market costs. The escalating rate burden resulted in the Legislature repealing the six cent rule in 1992.¹⁶ Thus, to support what was deemed a worthy public policy goal of using alternative electric generating facilities, the Legislature compelled utilities and their ratepayers to acquire electricity from such sources on terms that were hugely advantageous as compared to other energy alternatives.

The NYSERDA preferred option is quite analogous. Once again to support the goal of the use of a preferred energy source (renewables), utilities and their ratepayers will be compelled to acquire electricity from such sources regardless of the comparative cost of alternative sources of generation and level by which such electricity is above

¹⁵ Public Service Law, Section 66-c(1) and (2).

¹⁶ See, Laws of 1992, c.519, Section 3.

market costs. These projects will thus, as was the case with the six cent law projects, be shielded from the shoals of competitive markets and pricing factors.

This approach is also at odds with the discussion of LSR in the REV Order. Therein, the Commission noted that “The Renewable Portfolio Standard [“RPS”] has increased renewable procurement, but far more investment is needed – investment beyond ratepayer contributions.”¹⁷ As emphasized by the Commission the incremental growth of LSR should not be founded upon “ratepayer contributions.” But it will be ratepayer contributions either in the form of paying for the LSR units or paying for the associated PPP that will fund the new LSR generating facilities. Further, the level of contribution from ratepayers will be significantly greater under the NYSERDA proposal for it will include fixed payments in addition to the REC payments made under RPS.¹⁸

B. The NYSERDA Proposal Will Negatively Impact Competitive Markets

The Paper asserts that the use of a utility sponsored PPA would have “no impact on competitive retail markets.”¹⁹ In support of this view, NYSERDA observes:

A key component of utility PPA procurements is the establishment of cost recovery mechanisms which would provide strong assurance to utilities that the net cost of the products (energy and RECs) purchased under a PPA are recovered from distribution customers. Because net costs would be recovered from (or net benefits would accrue to) distribution customers on an equal basis, there should be no impact on competitive retail markets.

¹⁷ REV Order, p. 82.

¹⁸ Paper, p. 2, 53

¹⁹ Paper, p. 132.

This view is further underscored by the Paper's assessment that "...all ratepayers, including ESCO customers and voluntary renewable energy buyers, will continue to pay to support the LSR program."²⁰ The claim of competitive neutrality is simplistic and misleading.

The Commission has previously noted that unmodulated "utility participation in DER markets presents a risk of undermining markets more than a potential for accelerating market growth."²¹ Under the preferred alternative a State entity will consider the LSR proposals and then pick the winners. The winning projects will either be owned by the utility or the utility will enter into a PPA with the Developer to purchase the output and recover the costs from ratepayers. As acknowledged by NYSERDA, to the degree the PPA LSR net cost is above the relevant market cost, as proposed the net cost will be recovered from all socialized among all delivery ratepayers, even ESCO customers. Therefore, the winning project owner does not face any market sales or cost (and profit) recovery risk as ratepayers guarantee to make the project owner whole regardless of the market pricing risk associated with the facility in the actual competitive market.

As discussed in the Paper the ratepayer funding mechanism will include (i) a fixed price for bundled energy and REC supply; (ii) a varying , reconciliation mechanism due to fluctuating energy prices when energy is resold into the NYISO

²⁰ Paper, p. 128, FN. 119

²¹ *Id.*

markets; and (iii) a fixed premium supported by a predetermined and fixed collection rate from ratepayers.²² These components operating together ensure that the winning developer or owner is guaranteed full recovery of all costs and profit associated with the facility regardless of initial and on-going market risks and conditions, both of which will now be fully the responsibility of ratepayers.

In marked contrast, the owner of an LSR facility that is not anointed as a winner by the State entity will not have the benefit of a ratepayer backed PPA or any guaranteed cost recovery from utility ratepayers. Instead, the owner will have to face the normal competitive risks inherent in a competitive market both at the initial phase of the development and on an on-going basis in response to fluctuating market conditions in the energy market. This will clearly place such independent projects at a distinct competitive disadvantage.

Similarly, an ESCO or DER vendor that attempts to sell renewable products or offerings as part of its retail program will be forced to compete on an unequal footing with renewable products related to a facility that is undergirded by ratepayer guaranteed cost recovery.

The Commission has recognized the competitive risk associated with using ratepayer guarantees to pick winners and losers. The basic tenet underlying REV, as

²² Paper, p. 53, 60.

emphasized by the Commission is to use competitive markets and risk based capital as opposed to ratepayer funding as the source of asset development.”²³

Under REV the Commission seeks to design a market that is characterized by:

Fair and open competition – design “level playing field” incentives and access policies to promote fair and open competition.²⁴

Unfortunately, the preferred LSR option by institutionalizing ratepayer guaranteed recovery for certain facilities will create a highly distorted and un-level playing field and preclude “fair and open competition.”

The long term impact on the competitive market will also be exacerbated as under the preferred option the utilities will enter into PPAs with a lifespan of 20 years or more.²⁵ These PPAs will place the winning projects in a preferred economic position as compared to other LSR projects that will be competitively structured without the guaranty of ratepayer recovery and the subsidy built into this program. In other words the un-level playing field will not be a short term phenomena but will remain in place for decades.

C. **The NYSERDA Approach Will Hinder Consumers From Making Rational Economic Choices**

The purpose of REV is to transform the market in such a manner as to provide consumers with the ability to make more informed and accurate energy use and

²³ REV Order, p. 67.

²⁴ REV Order, p. 45.

²⁵ Paper, p. 53.

purchasing decisions. It is axiomatic that this transformation process is significantly dependent on consumers being presented with accurate cost and pricing signals associated with their various energy options. This is critical information which unless provided and made available on a consistent and comprehensive basis will prevent consumers from being able to make economically efficient choices and to rationally procure supply and services that are of real value to consumers. Masking real costs, and diffusing the near term impact cost impact of energy choices freely made are all actions that diffuse the presentation of clear pricing signals and confuses the consumer concerning the costs and benefits of available energy choices.

It is critical to underscore that those customers who receive accurate market price signals are in the best position to then determine the most appropriate market based response that properly serves that customer's best interest. Conversely where accurate market prices are shrouded or masked by extraneous elements, the customer cannot be expected to make the most rational economically based purchasing decision.

The emphasis upon the provision of accurate market based pricing in the utility commodity charge acts to *empower* the customer by providing needed market information so as to allow the customer to make a rational purchase choice concerning what types of commodity products best suit the needs of the customers.

However, as proposed by NYSERDA, ratepayers will not be presented with an accurate and clear portrayal of the costs associated with the chosen LSR projects.

Under the proposed revenue collection /rate design, the ratepayer funding mechanism will include (i) a fixed price for bundled energy and REC supply; (ii) a varying , reconciliation mechanism due to fluctuating energy prices when energy is resold into the NYISO markets; and (iii) a fixed premium supported by a predetermined and fixed collection rate from ratepayers.²⁶ It appears that these will be treated as a delivery rate component as they will be recovered from all delivery customers, like a non-bypassable wires charge. This will, of course, tend to diffuse the true cost of the LSR and mask what the real market costs are over the life of the project.

Further, as the net costs of each PPA would be recovered from all distribution customers on an equivalent basis, the real costs will not be clearly or accurately presented to the customer. For example, if the total cost is 20 cents per Kwh, but the net cost is 10 cents per Kwh. The 10 cents of net costs will be recovered from the distribution or a distribution like component, with only the remaining 10 cents flowed through the commodity portion of the rate. Ratepayers will not realize that the true cost of this LSR energy is 20 cents. This inaccurate information will, in turn, further hinder consumers from making rational energy use and purchasing decisions.

²⁶ Paper, p. 53, 60.

D. Rate Impact

A key feature of the NYSERDA approach is to provide greater certainty for developers by adopting a comprehensive rate recovery structured that will be paid by all delivery ratepayers of the utility. The potential rate impact of the proposed cost recovery mechanism is of considerable interest to ratepayers.

In this regard, the Paper develops cost of energy and revenue requirement models based upon various estimates and assumptions.²⁷ It would be prudent to take a skeptical view of such long term estimates of movement in energy markets. Historically, experts and consultants have not been able to predict with accuracy energy market developments over the long term and even for shorter periods. In connection with the six cent law for alternate energy production facilities, co-generation facilities and small hydro facilities, the experts originally thought this minimum price was reasonable and economic for ratepayers. Yet within a few years this estimate turned out to be out-of-the market and ratepayers were saddled with large rate costs due to these contracts. The changes in the market that can occur over time can be most significant especially as it relates to the economics of the PPP. The Renewable Portfolio Standard ("RPS") was first adopted in 2004.²⁸ At that time no one foresaw the rapid growth of fracking which has resulted in a dramatic and continuous decline in the price of natural gas as well as the significant decline in oil prices. Similarly, it is unlikely that NYSERDA will be able

²⁷ Paper, p. 96, Chapter 8.

²⁸ Paper, p. 2.

to accurately predict how energy markets will fare over the next two decades. In this context it is worthwhile to note that under RPS, renewable energy credit (REC) contracts with NYSERDA are the only source of revenue certainty for developers and financiers.²⁹ This has limited the financial exposure to ratepayers. Nevertheless, the continued erosion of natural gas costs has still driven up the RPS premium or the actual cost shifted to ratepayers through utility rates.³⁰

As noted above, the revenue burden under the proposed LSR option would be expanded to include a fixed price for bundled energy and REC supply, reconciliation mechanism due to fluctuating energy prices, and a fixed premium supported by a predetermined and fixed collection rate from ratepayers. Thus as compared to the RPS payment, the ratepayer cost under NYSERDA will be significantly larger. This will also greatly exacerbate the rate burden carried by ratepayers and lead to increases in utility rates, as has been the case with RPS and the six cent law.

Ironically, NYSERDA has underscored the fragility of its estimates as well as the potential burden ratepayers may be subjected to. In connection with its costing analysis, NYSERDA avers that deployment of LSR through a PPA or utility ownership can in the future provide savings to ratepayers only if “PPA prices drop below projected market

²⁹ Paper, p. 2.

³⁰ As the Commission has noted: “Various factors have influenced the RPS premium (REC) required to support wholesale grid connected renewable energy project development in the State. Continued low natural gas prices result in reduced wholesale revenues for projects, exacerbating financing and hedging difficulties, and ultimately drive up ratepayer premiums to develop renewable energy.” Case 14-M-0101 - Proceeding On Motion Of The Commission In Regard To Reforming The Energy Vision, Developing The Rev Market In New York: DPS Staff Straw Proposal On Track One Issues (issued August 22, 2014).

prices.”³¹ In other words, the Commission must pin its policy on the hope that over a 20 year period the PPA contract price will “eventually” be lower than market prices, an outcome that has never transpired with any previous Commission efforts to spur renewable development, and is unlikely to occur for the foreseeable future.³²

Finally, the proposed rate design for cost recovery can lead to volatility and a destabilization of delivery utility rates. In addition to the fixed rate component, it is proposed that customers also be subjected to a reconciliation mechanism to reflect fluctuating energy prices. If the gap between the cost of the LSR energy and market prices widens, a condition that has occurred in the past, the size, scope and impact of this reconciliation mechanism can appreciably impact the level of utility rates. This would force ratepayers to be subjected to automatic rate increases even in a period when market costs are declining, and lead to volatile and unstable rates.

IV. THE PAPER FAILS TO SHOW A COMPELLING NEED FOR THE PROPOSED LSR DEVELOPMENT

A review of the Paper fails to reveal a persuasive or compelling case to support the LSR program presented by NYSERDA.

³¹ Paper, p. 112.

³² Based on most recent data, electricity generated from new wind farms is between two and four times more expensive than electricity from natural gas and nuclear plants. With respect to solar, data from the U.S. Energy Information Administration shows that it will be significantly more expensive than competitors for at least the rest of this decade and likely far beyond. *The Wall Street Journal*, July 11-12, 2015, p. A9.

To support LSR resources, New York State initiated the RPS in 2004, which involved providing developers with a fixed REC payment.³³ Under the RPS program developers built approximately 1,900 MW of LSR generation capacity a truly significant amount. The NYISO reports that in 2014,“ 35,756 gigawatt-hours of New York’s electricity was produced by renewable resources representing approximately 25 percent of New York’s electric generation.”³⁴ The NYISO provides the following additional useful information:

Wholesale electricity market initiatives have contributed to the growth of New York’s renewable resources. The generating capacity of wind-powered projects in New York grew from 48 megawatts in 2005 to 1,746 megawatts in 2014. Electricity generated by wind power increased from 112 gigawatt-hours in 2004 to 3,986 gigawatt-hours in 2014. Wind power output in New York marked a new record of 1,524 megawatts on March 2, 2015. At the time of record production, wind power provided 7 percent of New York’s 20,894 megawatts of total system demand. Projects capable of supplying another 2,300 megawatts of wind power currently are proposed for future interconnection with the New York bulk electricity grid.³⁵

Based upon this data it appears that the existing RPS program and related initiatives have been quite successful in spurring the development of LSR. What then is the compelling basis for introducing the new NYSEDA proposed LSR program that will significantly increase the rate burden of all utility ratepayers?

³³ Paper, p. 2.

³⁴ NYISO, Power Trends 2015, Rightsizing the Grid, p. 44.

³⁵ *Id.*, p. 46

According to NYSERDA it is primarily necessary to expand LSR activity by way of its proposal in order to enhance the certainty of financial recovery for developers and financiers of LSR projects.³⁶ This is a slim reed to buttress the NYSERDA proposal. It is correct that developers will obtain greater financial certainty and security under the NYSERDA proposed rate design, but that will occur at the cost of significantly increasing the cost burden of ratepayers and shifting basically all of the risk upon captive utility ratepayers. This trade off does not appear to be prudent or in the best interests of ratepayers.

III. CONCLUSION

RESA appreciates the opportunity to comment on the Paper and aid the Commission in its effort to move forward with the REV Vision.

Respectfully submitted,

Retail Energy Supply Association

By: Usher Fogel, Counsel
Usher Fogel, Counsel

Dated: August 12, 2015
Cedarhurst, N. Y.

³⁶ Paper, p. 2.