STATE OF NEW YORK PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to	**)**	
Implement a Large-Scale Renewable Program	**)**	**Case 15-E-0302**
And a Clean Energy Standard	**)**	

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits comments on the Staff White Paper on Clean Energy Standard [hereinafter "CES White Paper"], dated January 25, 2016, pursuant to the Order Expanding Scope of Proceeding and Seeking Comments issued on January 21, 2016, and subsequent Notices establishing and extending the filing dates for comments, in the above-referenced proceeding. NEM submits these comments to recommend that: 1) if the approach of the CES White Paper is adopted, the Commission should look to the Massachusetts approach to Renewable Portfolio Standard (RPS) compliance and reporting as a model that has supported clear, cost-effective compliance by competitive suppliers; 2) if the approach of the CES White Paper is adopted, RECs from neighboring regions should be permitted to satisfy compliance obligations; and 3) the nuclear generation facilities and Zero Emissions Credit proposal is outside of the scope of this renewable energy proceeding, and the issue should appropriately be dealt with at the wholesale level.

[1] National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

I. Summary of CES White Paper Proposal

On December 2, 2015, Governor Cuomo directed the Department of Public Service, to develop a Clean Energy Standard (CES) incorporating the "50X30" goal - 50% of all electricity generated in New York State should be from renewable resources by 2030 - as enunciated in the State Energy Plan.[2] In response, the Commission expanded the scope of this existing Large Scale Renewable Proceeding to include the Clean Energy Standard. Staff subsequently developed a CES White Paper, proposing how to achieve the 50X30 goal, which was issued for comment on January 25, 2016.

Staff's CES White Paper proposes that all Load Serving Entities (LSEs) serving retail load, including ESCOs, be responsible for compliance. For each CES tier, each LSE would be responsible for supplying a defined percentage of retail load with supply derived from eligible resources during each calendar year, with progressively increasing annual statewide targets. Tier 1 resources would include all new incremental renewable generation. Tier 2 resources would include existing renewable generation, divided into sub-tiers, and Tier 3 resources will include existing eligible nuclear facilities.

Compliance with renewable energy purchase requirements could be achieved through the purchase of tradable renewable energy credits (RECs), self-supply or alternative compliance payments (ACPs). The CES White Paper proposes that ACPs be established by the Commission based on forecasted REC prices, system needs, and other factors. The CES White Paper suggests that entities be provided flexibility in compliance through, at a minimum, banking of RECs from one

[2] December 2, 2015 Letter of Governor Andrew Cuomo to Audrey Zibelman, CEO, New York State Department of Public Service, available at: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable_Energy_Letter.pdf

year to be used in a subsequent year, and possibly, REC borrowing which would allow the LSE to postpone a REC shortfall to the following compliance year. Each LSE would make an annual compliance filing to demonstrate compliance with the requirement.

The CES White Paper proposes that all LSEs would also be required to procure Zero Emissions Credits (ZECs) from qualifying nuclear facilities. ZECs would be "support payments" for qualifying nuclear facilities. It is proposed that an administratively-established, maximum ZEC price would be set by the Commission.

II. If the CES White Paper Proposal is Adopted, Clear Tools for Compliance and Reporting Should Be Established

If this CES proposal is adopted, it would represent a significant change in New York regulatory policy, market participant compliance obligations, energy resource mix, and corresponding tracking processes. The current model, adopted by the Commission over a decade ago in 2004, established NYSERDA responsibility for administering the RPS program and entering into contracts for Large Scale Renewables. Replacing the NYSERDA program, and in the manner proposed, would entail a major overhaul and transformation in the way that New York achieves its renewable energy goals. Accordingly, it requires thoughtful, deliberate and thorough consideration so that all of the implementation details can be identified and addressed. This will avoid the need for major after-the-fact changes and the imposition of significant regulatory uncertainty and risk for stakeholders. The CES White Paper is primarily focused on high level constructs. The manner in which each element will actually be implemented by the Commission is unclear but is, of course, incredibly important to the program's likelihood of success. As Staff develops further details on implementation, additional opportunities for comment and stakeholder engagement should be provided.

In general, we recommend that the renewable energy compliance process be set up in a manner that provides ESCOs with clear tools for compliance and reporting, that are as user-friendly as possible, in order to minimize regulatory risk. In this regard, and in order to assist the Commission in meeting its expedited time goals, we recommend that the RPS compliance and reporting approach utilized in Massachusetts be consulted as a framework for use in New York. In order to demonstrate compliance with Massachusetts renewable portfolio standard requirements, each retail electricity supplier is required to submit an Annual Compliance Filing to the Massachusetts Department of Energy Resources no later than July 1 of the subsequent compliance year. Massachusetts provides suppliers with a RPS Compliance Workbook, webinar and workbook links in furtherance of this obligation. NEM members report that Massachusetts RPS compliance and reporting tools have been valuable resources to facilitate timely and clear compliance.[3]

III. If the CES White Paper Proposal is Adopted, RECs from Neighboring Regions Should Be Permitted to Satisfy Compliance Obligations

The CES White Paper recommends that out-of-state renewable generation be allowed as eligible resources, consistent with New York's prior approach to geographic eligibility for its RPS, when the resource is located in a NYISO-adjacent control area, with a documented contract path, and that such resource be able to actually physically supply into New York. (CES White Paper at 20). If the approach of the CES White Paper Proposal is adopted, NEM recommends that out-of-state renewable generation resources be included for eligibility in the program. NEM urges, however, that greater flexibility in the deliverability requirement be granted than was proposed in order to encourage a greater array of renewable offerings. This will better ensure an adequate supply of

[3] These materials are available on the Massachusetts Department of Energy Resources website at: http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/retail-electric-supplier-compliance/annual-compliance-filing-forms-and-guidelines.html

RECs for LSEs to meet their compliance obligation, particularly as these requirements increase over time. It will also improve liquidity in the REC market, and by increasing the supply of RECs, better allow ESCOs to manage their costs.

IV. The CES White Paper Proposal on Nuclear Generation Facilities and Zero Emissions Credits is Outside of the Scope of the Proceeding

The CES White Paper includes a first-of-its-kind proposal to establish a Nuclear Tier and associated obligation for all LSEs to purchase nuclear Zero Emissions Credits from qualifying resources. The rationale offered in the CES White Paper for this proposal is the need to, "facilitate a market to recognize the value of fully licensed nuclear power plants that face financial difficulties, as a resource of zero-emission electric generation, something which is not adequately captured in the energy market today." (CES White Paper at 30). The White Paper describes Zero Emissions Credits as, "an opportunity to provide qualifying nuclear plants with support payments, reflective of their going forward costs of operation, to ensure they continue to operate, to assist the State in maintaining low GHG emissions and to continue to provide fuel diversity and price stability." (CES White Paper at 30-31).

The nuclear generation and ZEC proposal would be a significant policy change, affecting both wholesale and retail markets, and is outside of the scope of this renewable energy proceeding. The Commission's concerns about the on-going operation of existing New York nuclear generation facilities and the sufficiency of energy prices, "to support the continued financial viability of the plants" is at its heart a wholesale market issue. The ZECs are tantamount to a nuclear subsidy, described in the White Paper as "support payments." The support payments would be made outside of the least cost dispatch model utilized by NYISO to establish prices for these resources. Such a payment scheme will have extremely disruptive impacts on the market. Moreover, the ZEC proposal and nuclear support payments appear to implicate exactly the type of state regulatory intervention in wholesale markets that the U.S. Supreme Court just invalidated in Hughes v. Talen Energy Marketing, LLC.[4] For these reasons, the nuclear generation and ZEC proposal should not appropriately be considered within the scope of the instant renewable energy proceeding.

Conclusion

NEM respectfully submits these comments on the Staff CES White Paper and urges the Commission to adopt the recommendations set forth herein.

Sincerely,

Craig G. Goodman, Esq.
President
Stacey L. Rantala
Director, Regulatory Services
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
Tel: (202) 333-3288
Email: cgoodman@energymarketers.com;
srantala@energymarketers.com
Website-www.energymarketers.com

Dated: April 22, 2016.

[4] In Hughes v. Talen Energy Marketing, LLC, No. 14-614 (April 19, 2016), the U.S. Supreme Court reviewed and invalidated a Maryland Public Service Commission program. Under the program a generator was selected to build a new power plant and LSEs were required to enter into a twenty-year contract for differences with the generator. Under the contract, the generator sells its capacity to PJM through its auction, but receives the contract price, by virtue of payments from or to the LSEs, rather than the clearing price established by PJM. The U.S. Supreme Court rejected Maryland's program, "because it disregards an interstate wholesale rate required by FERC." The Court reasoned that,

> "Maryland's program sets an interstate wholesale rate, contravening the FPA's division of authority between state and federal regulators. As earlier recounted, see *supra*, at 2, the FPA allocates to FERC exclusive jurisdiction over "rates and charges . . . received . . . for or in connection with" interstate wholesale sales. §824d(a). Exercising this authority, FERC has approved the PJM capacity auction as the sole ratesetting mechanism for sales of capacity to PJM, and has deemed the clearing price *per se* just and reasonable. Doubting FERC's judgment, Maryland—through the contract for differences—requires CPV to participate in the PJM capacity auction, but guarantees CPV a rate distinct from the clearing price for its interstate sales of capacity to PJM. By adjusting an interstate wholesale rate, Maryland's program invades FERC's regulatory turf. (slip op. at 12).