

January 10, 2017

Dear Commissioners Zibelman, Acampora, Burman, and Sayre,

The Environmental Markets Association (EMA) commends Commissioners Zibelman, Acampora, Burman, and Sayre for issuing the Order Adopting the NY State Clean Energy Standard as a call to address the reduction of GHG emissions, and for NYSERDA to oversee the implementation of a program that will serve the interests of both the public and industry alike. EMA further applauds the efforts of all Staff and Stakeholders in creating a Clean Energy Standard which is clearly focused on the promotion of markets and cost-effectiveness in order to deliver investor certainty, ratepayer protection, and renewable energy uptake.

The EMA is a US-based trade association representing the interests of companies that are involved in the trading, legislation, and regulation of environmental markets. EMA was founded in 1997 as a 501(c)(6) not-for-profit organization. The members have decades of extensive, first-hand experience with market instruments related to Federal and regional cap-and-trade programs in SO<sub>2</sub>, NO<sub>x</sub>, and GHG emissions as well as state-driven RPS programs throughout the US. Our diverse member group represents a wide variety of participants in the clean energy markets, from utilities and load-serving entities to renewable project developers and investors. Our members have extensive operational experience with renewable portfolio standard (RPS) compliance, renewable energy credit (REC) trading, and renewable energy investment and, collectively, have made significant historical contributions to achieving State RPS Targets. The EMA has a vested interest in the continued success of market-based mechanisms and RPS programs throughout the U.S.

Through our collective experience in all of these markets, we believe that the EMA has established a set of Best Practice Principles for REC Markets which could be applied to construct a REC market with robustness, integrity, and, most importantly, achieves the policy objectives of the State of New York in a cost-effective manner. These Principles are as follows:

- 1) Tradable REC Markets.** Tradable RECs provide price transparency to market participants and regulators while providing real-time market signals to developers and investors. Tradable RECs allow for the most flexible compliance avenue to load-serving entities in fully restructured power markets and enable the efficient allocation of capital to renewable generators. Tradable REC markets provide a number of benefits which alternative policy mechanisms lack. These benefits include fair and open markets, cost-effectiveness, and a framework for financial innovation. Central procurement mechanisms that do not take advantage of the potential benefits from private investment and market participation should be avoided or minimized. Banking of RECs for compliance in future years is encouraged and can help facilitate a more efficient market.
- 2) Dispersed RPS Compliance Obligations.** RPS compliance obligations, fulfilled through the retirement of RECs, should be placed with load-serving entities and standard offer service providers in fully restructured power markets whenever possible. In addition, standards should be applied equally to municipals, cooperatives, and aggregators that reside outside of electric distribution company territories. As a general rule, the more compliance entities that exist in a market, the more effective the

market will be in facilitating price transparency, liquidity, and market efficiency. This supports competitive markets and provides more revenue options to renewable power generators. Centralized compliance obligations with a single entity or small group of entities should be avoided if possible.

- 3) **Fixed RPS Compliance Targets and Forward-Looking RPS Schedules.** First, RPS compliance schedules should be fixed at pre-set percentage levels of total retail sales in advance of compliance years. Percentage-based targets ensure that REC demand is responsive to load decline, which provides an additional cost-containment mechanism to ratepayers. Percentage-based targets also ensure that as a state's power market grows, so do the mix of renewable resources and associated clean energy benefits. Second, RPS compliance year schedules should have tenor and be as forward-looking as possible to support long-term market certainty. This creates transparency and is important to enabling investor confidence and a lower cost of capital and cost of compliance in achieving RPS objectives. If a combination of fixed targets and periodic reviews is used, it should be made explicit that no compliance year's requirement can be less than any previous compliance year's requirement.
- 4) **Fixed ACP Rates and Forward-Looking Alternative Compliance Payment (ACP) Schedules.** The ACP mechanism is a pre-requisite for REC market trading and timely RPS compliance. ACP rates should be fixed and set at sufficiently high enough levels that both encourage renewable energy investment and market tradability / liquidity. ACP rate schedules should also be forward-looking and align with the RPS compliance year schedules to support long-term market certainty. This creates transparency and is important to enabling investor confidence and a lower cost of capital and cost of compliance in achieving RPS objectives. Whenever possible, ACP rates should be set at levels which reflect regional circumstances to address REC shuffling and/or attrition between RPS jurisdictions. ACP payments should be required after each compliance year and payments should be required in a reasonable timeframe. Unknown ACP rates and opaque formulas pegged to complicated calculations or market prices create considerable market uncertainty and should be avoided.
- 5) **Comprehensive RPS Applicability.** The RPS targets should apply on a percentage basis to total retail sales, regardless of their end use and apply to the residential, commercial, and industrial market segments equally. Generally, electricity exemptions which reduce total applicable retail sales applied to the RPS requirements weaken demand for clean energy uptake, create market uncertainty, and mislead the public about the published RPS targets. The use of REC multipliers or "factors" for certain technologies can also have the effect of distorting the market and weakening overall RPS targets.
- 6) **Broad RPS Eligibility and Technology Tiers.** Generally, the RPS should be eligible to a diverse array of clean energy technologies to support competition, economic benefits and employment in multiple industries, and to promote fuel diversity and grid resiliency. If separate RPS tiers are created to support less commercialized technologies that may provide unique RPS benefits, these tiers should be additional to other technology tiers and use REC trading for tracking and compliance, if feasible.
- 7) **Private Investment.** Private investment in renewable generation by a diverse set of stakeholders should be fostered and renewable energy markets should be designed in a way that shifts risks from ratepayers

and taxpayers to private investors. This helps to ensure an efficient and cost-effective market while providing economic and employment opportunities to all stakeholders. RPS programs that rely on state budget appropriations are less reliable due to greater business and political cycle susceptibility and should be avoided.

- 8) Market Integrity.** Rules and systems should be in place that maintain the integrity of the market. Any issues with ownership of title, claims of benefits, or means of tracking the RECs must be clarified before the start of the program. Failure to do so can greatly undermine the confidence in the market, stifle liquidity, and hold back its full potential of benefits. Double counting of attributes within a state’s RPS, or within a neighboring RPS, must be avoided. Furthermore, regulatory policy changes that are applied retroactively to a market can have material impacts on private investments and existing contractual agreements and can have extremely damaging consequences to a markets integrity or investor confidence. For example, downward revisions in ACP rates after they are established can invalidate commercial agreements to the detriment of developers, traders, and investors. Maintaining market integrity is the responsibility of both regulators and market participants.

Specifically related to Case Number 15-E-0302, “Proceeding on Motion of the Commission to Implement a Large-scale Program and a Clean Energy Standard”, the EMA has the following list of program recommendations and asks the Commission and Staff to take these into consideration when issuing future implementation orders and final regulations:

**Recommendation #1: Appropriately Set ACP Rates and Schedules.**

- *Page 110: “By December 1, 2016 for the Year 2017 compliance period, NYSERDA shall publish on its website a per MWh ACP price for the 2017 compliance period. The ACP price will equal an amount calculated as the published REC price plus 10%. Staff will propose a methodology for establishing the ACP for the Commission’s consideration for subsequent years as part of the implementation phase.”*
- Set fixed ACP rates according to a forward-looking ACP schedule that provides market participants with long-term certainty. ACP levels should be set at a sufficiently high enough level for all Tiers to encourage investment, facilitate REC trading, and to meet the RPS objectives. ACP rates should be in line with other ACP rates in adjacent regions to address REC attrition or promote cross-border trading of RECs similar to cross-border RGGI trading. Properly designed ACP rates and schedules create liquidity and enable forward sale REC contracts between participants which are then used to secure revenue and project financing. Refer to EMA Principle #4.

**Recommendation #2: Create or Disclose Tier II Baseline Renewable Resource Adjustment Mechanism.**

- *Page 85, Footnote 64: “If any of the renewable resources currently counted in the baseline sell RECs into other markets at some point in the future, the Commission may adjust the baseline in the future accordingly.*
- The Existing Tier II standard baseline adjustment for REC attrition should be transparent to market participants and have a pre-set formula that adjusts in a timely manner so that the overall RPS compliance

requirements of the Clean Energy Standard (Tier I and Tier II) are clear to participants. In regards to REC attrition, ensure that RECs generated under the Tier II standard are not double counted if they are used for compliance / retired in other RPS markets. Refer to EMA Principles #3 and #5.

**Recommendation #3: Maintain the Integrity of the Annual Targets.**

- *Page 90: "The Commission also recognizes that even while it is optimistic for success, the development of new renewable resources or any new resource can take more time than anticipated. The concern here is that if supply is not able to meet the jurisdictional level of demand, the prices may increase higher than is reasonable for consumers. In this circumstance, the Commission may decide to adjust near-term targets downward, increase obligations in later years, or focus on actions that can facilitate development."*
- Creating and maintaining stable, transparent RPS targets will promote investor certainty. High prices are a signal to developers and investors that more renewable generation is needed. High prices also enable financial innovation through the facilitation of long-term forward sale REC arrangements that can then be financed against and used for project finance. Temporary high pricing cycles are a natural condition of REC markets. Long-term high pricing fears can be a self-fulfilling prophecy if developers and investors believe their investments will be at risk because of retroactive policy change (such as reducing standards because of high prices). Obviously, there is a disconnect between investor confidence and the any negative reviews of standards that trigger a reduction in targets due to high prices. This provision may discourage investment and the benefits that an efficient market provides. Refer to EMA Principles #3 and #8.

EMA's recommendations and clarifications above are in line with our Best Practice Principles for REC Market design and if implemented in the following manner will help encourage private market investment, market efficiency, and overall cost-effectiveness of the program. Thank you for your consideration of our comments. We stand ready to offer any additional assistance as needed in helping the Commission and Staff move NY's Clean Energy Standard forward.

Respectfully,



Laura Dwulet  
Executive Director, Environmental Markets Association