



**COMMENTS OF
THE ALLIANCE FOR CLEAN ENERGY NEW YORK
ON THE DRAFT STATE ENERGY PLAN**

I. INTRODUCTION

The Alliance for Clean Energy New York appreciates the opportunity to comment on the draft of the State Energy Plan. These comments expand upon our brief comments delivered at the public hearing held in Albany, NY on September 15, 2009.

The Alliance for Clean Energy New York (ACE NY) is a nonprofit organization whose mission is to promote the use of clean, renewable electricity technologies and energy efficiency in New York State in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Members of the Alliance for Clean Energy New York (ACE NY) include nonprofit environmental, public health and consumer advocacy organizations, educational institutions, and private companies that produce or sell renewable energy technologies or energy efficiency services in New York.

This draft State Energy Plan presents a comprehensive and much-needed review of state energy issues and includes a number of recommendations that we fully support. As a participant in the Governor's Renewable Energy Task Force, we are pleased to see that this Plan reiterates many of the recommendations in the Task Force's final report. However, we do believe that the draft Plan falls far short in the specifics of implementation. Detailed implementation steps are

needed to make this truly a “plan” rather than an inventory or summary of state energy concerns. Therefore, we offer the following constructive comments on how to improve the draft Plan.

II. THE ENERGY PLAN MUST INCLUDE IMPLEMENTATION DETAILS

ACE NY has an overarching concern that the Plan falls short on specifics for implementation of its key findings. The rhetoric must be accompanied by detailed action plans, milestones to measure achievement of goals, and suggestions on how to accelerate progress when interim goals are not being met. This is especially important given the number of entities – including state agencies and authorities – that must be involved in implementation of the recommendations.

New York has, in the past, received accolades for its innovative and effective energy efficiency and renewable energy programs, particularly those with funding mandated by the Public Service Commission (PSC) and administered by NYSERDA. Unfortunately, in recent years, effective legislative action on energy issues has been lacking, the pace of program development and authorization at state agencies – including the PSC in particular – has been slow, and the flow of funding to meet the state’s established goals has not been smooth or sufficient.

If New York is to create a “robust and innovative Clean Energy Economy” as stated in the Plan, it must prioritize clean energy options at all levels of government and follow through on commitments in a timelier manner. The final State Energy Plan should include:

- **Detailed action plans with interim milestones for each recommendation.**
- **Required reporting – at least annually – on progress by the appropriate implementing entities.**

- **Disclosure to the public in an accessible, web-based format of progress in meeting the goals.**

In the sections below, we provide some concrete suggestions for implementation by the Governor's Office, the NYS Legislature, and by various state agencies. It is vitally important that all of these entities work in concert to ensure that New York meets its responsibilities to its citizens – today and in future generations. Without a comprehensive effort to utilize New York's clean energy resources, we will see the clean energy industry invest elsewhere and leave the State and its citizens at a competitive disadvantage that will be impossible to recover from. The federal government is prioritizing clean energy investment more than ever before; now is the time for the State to take advantage of that focus and the accompanying federal resources to help grow our clean energy economy.

III. THE ENERGY PLAN SHOULD REQUIRE STATE LEADERSHIP

The State must match its rhetoric with actions. State government must lead by example through complete compliance with Executive Order 111, which lays out clean energy goals for state agencies. Furthermore, state government should show the way in complying with the recently issued Executive Order 24 for reducing carbon emissions significantly by 2050. Leading by example will help the State meet its clean energy goals and will help drive the market for clean energy goods and services. Therefore, the State should:

- **Implement aggressive energy efficiency and renewable energy measures to reduce the carbon footprint of its own operations.** The State must at least fulfill Executive Order 111; the State also should strengthen its commitment and go beyond existing EO 111 requirements to help meet EO 24 goals.

- **Amend EO 111 to require that state government be carbon neutral within ten years.** In order to achieve this goal, agencies should be required to implement all cost-effective efficiency measures and then meet its remaining energy needs through the installation of on-site renewable energy or the purchase of renewable energy.
- **Ensure full transparency and accountability.** The State should use a transparent reporting process and government-wide energy management system to help ensure agency compliance. Each agency or department should report semi-annually on its compliance status, with the reporting made publicly available.
- **Create a visible presence in support of clean energy investment in New York.** The Governor and other state leaders should actively engage the clean energy business community in discussions on investing in New York. This would include speaking at conferences and other business gatherings, as well as visiting installations in New York and outside of New York to “market” the State and encourage investment in our in-state clean energy manufacturing and energy producing supply chains. “How-to” examples include New York’s efforts with Global Foundries and the Luther Forest Technology Campus, and the activities of other Governors in courting clean energy facilities (most recently, Governor Baldacci of Maine appeared at a wind energy conference in that state and toured wind energy facilities in Europe to promote investment opportunities in his state).
- **LIPA and NYPA should procure renewable resources.** Both LIPA and NYPA have indicated interest in procurement of renewable resources, with LIPA currently negotiating contracts awarded through its RFP for 50 MW of solar energy, and NYPA having issued RFEIs for solar and wind resources. These efforts should be encouraged and brought to fruition. In particular, LIPA should quickly execute contracts pursuant to its most recent 50

MW RFP round, and issue a separate RFP for another 50 MW for 2012-15 deployment, and NYPA should issue a 100 MW RFP for solar power for a 2010-2012 build-out. Both state power authorities should continue to pursue offshore wind development, and NYPA should explore an RFP for on-shore wind resources.

IV. THE PLAN SHOULD USE REALISTIC AND APPROPRIATE ASSUMPTIONS

- The modeling conducted for the Plan does not assume a federal program – and corresponding price – for carbon. Given the likelihood of a federal program, it makes no sense to use a reference case without one. Additional modeling that includes national carbon controls should be conducted prior to issuance of a final Plan.
- The reference cases assume a minimal achievement (27%) for the Energy Efficiency Portfolio Standard and a complete achievement of the overall goal (100%). ACE NY believes the State should aggressively pursue one hundred percent achievement of the efficiency goal, but realistically finds that this is highly unlikely given the pace of developments to date. However, a twenty-seven percent achievement must be considered a failure. A realistic scenario, in between a dismal record and an unattainable target, would be more useful and accurate for modeling purposes.

V. THE PLAN SHOULD MORE FORCEFULLY PRIORITIZE CLEAN ENERGY RESOURCES

The State's commitment to energy efficiency and renewable energy needs to be reiterated forcefully if we are to maintain our progress in attracting private investment that combats climate change, increases our energy security and reliability, and supports in-state economic development. There are a number of concrete steps that can be taken to further the State's clean energy goals, especially through strengthening the Renewable Portfolio Standard (RPS) and Energy Efficiency Portfolio Standard (EEPS) programs.

A. WHOLESALE MARKET RESOURCES (RPS “MAIN TIER” TECHNOLOGIES)

- **Provide immediate additional funding for the RPS program.** Progress in meeting New York’s clean energy goals has stalled because of a lack of funding for the RPS. New York needs to show that its stated commitment to the RPS program will be matched by sufficient funds to meet its goals. All parties to the proceeding establishing the RPS were well aware at its inception that additional funding would be necessary to fulfill commitments to 10-year contracts in order to meet the State’s renewable energy targets. The evidence collected to date for the RPS clearly illustrates that the program provides benefits that outweigh its costs (see the program evaluation reports prepared for NYSERDA). The economic benefits alone are substantial, including job creation, tax and land lease payments, and downward pressure on wholesale energy prices. In addition, there are environmental and public health benefits that are difficult to quantify. Given that climate change actions will become more and more necessary and power prices will continue to be volatile, it is imperative that the State act now to invest in price-stable clean energy for the future.
- **Set aggressive, binding goals and meet them.** The draft Energy Plan assumes that the Governor’s call for the RPS goal to be raised to 30% will be adopted by the PSC and also that the efficiency goal of 15% by 2015 will be realized. However, the PSC has not yet issued an order to change the RPS goal, nor has progress on either the RPS or the EEPS been as planned. Therefore, the PSC should raise the RPS target to 30% by 2015 and, more importantly, determine the megawatt hours (MWh) this represents, assuming a reasonable percentage of the State’s efficiency targets are met. The estimates certainly should not assume the EEPS will achieve 100 percent of its

goal given the pace of the proceeding to date and certainly should assume achievement of no more than 50%. While we hope for and support fulfillment of the EEPS goals, the State must be prepared to supply power to meet demand and should do so with clean energy resources. We note that the NYISO has assumed a much smaller percentage achievement for EEPS (27%) in its planning to ensure reliability of the grid. The MWh target for the RPS Main Tier should be used as the minimum level for funding and procurement purposes to provide clear signals to the marketplace. In addition, the RPS should have regularly scheduled procurements that contract for the full amount required in order to meet the goal. ACE NY firmly believes that the PSC has the ability to fully implement the RPS as described above under current proceeding orders and urges that the Commission do so as soon as possible.

- **Authorize Power Purchase Agreements (PPA) with clean energy resources.** While ACE NY supports the competitive wholesale power market administered by the NYISO, we also believe it is appropriate for the PSC to approve PPAs between clean energy generators and load-serving entities to ensure reliability, adequate capacity, and least-cost development of clean energy resources.
- **Explore shifting RPS procurement responsibility to load-serving entities.** The PSC should explore shifting the current central procurement model for the RPS to one where the purchasing responsibility is placed on load-serving entities, as is the case in most other states. This could alleviate the problem of insufficient funding and delays in procurement, open up the market to new investors, and enhance market liquidity.

The program should continue as outlined in the two bullets above until such a change is ready for implementation.

- **Immediately establish a Renewable Energy Credit (REC) tracking system.**

Establishment of a Renewable Energy Credit (REC) tracking system was endorsed by all RPS stakeholders in 2003 and yet has remained inexplicably – and inexcusably – stalled by the PSC. The State should immediately implement a REC tracking system, preferably administered by the NYISO. This is especially important given the failure of the State’s current system for “tracking” green power and preventing double counting of RECs to keep pace with the data submitted.

B. ON-SITE RESOURCES (RPS “CUSTOMER SITED TECHNOLOGIES”)

- **Provide sufficient RPS funding and set aggressive RPS goals for the Customer-Sited technologies.** As stated in the relevant paragraphs above, the PSC must ensure adequate funding for fulfillment of the RPS goal, which should be increased. The Customer-Sited Tier funding for solar energy systems has undergone boom and bust cycles, which makes planning and job creation difficult. There should be a smooth and continuous source of rebate money available and rebates levels should be adjusted to meet changing market conditions within time frames that allow installers to adjust. Program flexibility is especially important for the Customer-Sited Tier given there will be changes in the types of systems customers will want to install once effective net metering is implemented. Demand for these systems also can change more rapidly than in the Main Tier depending on power prices, new home construction rates, etc. While both the solar and digester programs have experienced

high demand, we believe the wind and fuel cell programs will see increased interest in the next few years and should continue to have adequate funding available.

- **Support and advocate for legislation to ensure commercial class customers can net meter on-site renewable energy systems sized to meet their annual average energy use up to 2 MW.** As the Draft State Energy Plan accurately points out, the revisions to net metering law passed in 2008, which expanded net metering to commercial class customers, is not able to function as intended and a legislative “fix” is necessary. The Executive Branch and the Energy Planning Board’s continued support for this endeavor is extremely important, as is the support of the PSC in decision-making on cases applicable to clean, distributed generation.
- **Revise the solar rebate program to include larger systems.** It is crucial that incentives be available across the full spectrum of customer classes and system sizes. Unfortunately, due to funding constraints, solar PV incentives have historically been limited to systems under 80kw. The lack of rebates coupled with a restrictive net metering policy has constrained solar energy as an economically viable option for New York’s large commercial, industrial, and governmental customers. Both the net metering constraint and the rebate constraint must be removed to allow this important renewable energy technology to thrive.
- **Revise the fuel cell net metering law to allow fuel cell installations to net meter on par with solar and wind installations.** In particular, the recently passed rules for net metering of fuel cells provide only for monthly credits rather than an annual “true up” as is the case for other renewable energy technologies. This puts installations in

New York at a disadvantage to those in neighboring states and creates a disadvantage for this important technology.

- **Reenact tax credits for clean energy resources.** A New York State tax credit for fuel cells has expired and should be reinstated to help drive demand for these clean energy resources. ACE NY acknowledges that current fiscal realities make large and widespread tax credits for a broad array of technologies infeasible. However, the tax credit for fuel cells was withdrawn due to insufficient demand and would involve a minimal expense to the State, while supporting private investment and driving demand in a vital piece of our emerging clean energy economy.

C. ENERGY EFFICIENCY AND DEMAND RESPONSE

- **Adopt a policy of acquiring all cost-effective energy efficiency.** Given the multiple and significant benefits of energy efficiency and the critical role it must play in the fight to address climate change, the State should institute a policy to acquire all cost-effective energy efficiency as its first clean energy priority.
- **Move expeditiously towards achieving the State’s Energy Efficiency Portfolio Standard (EEPS) to reduce electricity consumption 15% below forecasted levels by 2015 and provide full funding for the EEPS.** Achievement of the “15 by ‘15” goal will produce innumerable benefits for the State. However, as in the case of the RPS, the slow pace of progress on program development and authorization is hampering achievement of the State’s goals. Though over two years have passed since the goal was announced, progress on approving and funding programs has been slow – too slow for the State to meet the original goals of the program. The State’s slow progress on this issue also is reflected in the New York Independent System

Operator's 2009 Reliability Needs Assessment, referred to in the draft Plan, which assumes only 27% achievement of the efficiency goal. The State needs to fully fund the EEPS to send a clear signal to the marketplace regarding its commitment to greatly scale up energy efficiency. The exact level of funding will depend on how aggressive New York is with respect to adopting more stringent codes and standards and on successful utilization of innovative energy efficiency financing mechanisms.

- **Ensure that demand response is pursued aggressively through smart grid development, public policy and market initiatives.** Similar to efficiency efforts, demand response programs are a highly effective means of mitigating price and pollution impacts of energy use at times of peak demand. Demand response should be explicitly discussed and supported where appropriate in implementation of the Plan.

D. NATURAL GAS SHOULD NOT BE LISTED AS A RENEWABLE OR SUSTAINABLE FUEL

- The State Energy Plan should not include natural gas per se in lists of sustainable resources such as wind and solar energy. Natural gas is not a “clean” fuel when compared with renewable energy sources, although some technologies that use natural gas, such as fuel cells, are correctly placed on par with renewables in the State's RPS program. The draft Plan includes natural gas in lists of clean energy resources (e.g., Section 1.2 on page 6), which we believe is misleading and inappropriate. While natural gas is the environmentally preferred fossil fuel, it should not be the State's preferred fuel, nor should it be listed alongside sustainable resources. Sustainable biomass, as defined in the State's RPS eligibility rules, should be carbon neutral and could be appropriately classified alongside other renewable resources.

VI. THE ENERGY PLAN SHOULD FACILITATE SITING OF CLEAN ENERGY RESOURCES

- **Provide for consistent and supportive decision making in permitting of clean energy projects.** In the absence of legislation establishing a state siting board, state agencies need to rise to the challenge of providing private investors an environment where their proposals can be considered and evaluated fairly and in a timely manner. Ever-changing permitting requirements at state and local levels and the lack of a “one-stop shop” for timely decision making have severely hampered project development. Therefore, the Plan should require each state agency involved in review and approvals for clean energy projects to acknowledge the State’s clean energy goals and prioritize approval of such projects to help the State meet its goals. It is a red flag for private investors when a state declares its support for clean energy and provides support to specific projects, only to find them blocked by the actions of a state agency.
- **Advocate for creation of a “one-stop shop” for permitting of new generation.** The draft Plan calls for reinstatement of a siting board but provides no plan for implementation. While the legislation supporting a siting board has lapsed, ACE NY suggests the draft Plan should, at the very least, lay out a guide for opening a dialogue on this issue. Also, in the absence of a statute creating a siting board, the agencies that had a role on the previous siting board, which are part of this State Energy Plan process, should outline how they can coordinate their permitting roles and agree to a time table for decisions on permits for new, clean energy generation.
- **Ensure that guidelines for siting of clean energy resources include real stakeholder input, are not overly burdensome, and are consistent.** Guidelines developed to ensure clean energy projects meet established requirements for protection of environmental and

historic resources should include meaningful (i.e. input not simply brushed aside, but actually used) stakeholder and expert input, should not be overly and unnecessarily burdensome, and should be applied consistently across the State. For example, the DEC guidelines for bird and bat studies at wind energy projects were supposed to be developed as part of the NYSERDA Wind Energy Dialogue. However, expert advice from that dialogue is not reflected in the guidelines and the guidelines were not reviewed by the dialogue group, or its steering committee, prior to issuance. As a result, we believe the guidelines continue to include unnecessary and burdensome requirements that do not provide useful data on impacts. Finally, as long as there are statewide guidelines, we believe these should apply across the state and individual DEC Regions should not have their own regional guidelines.

VII. THE PLAN SHOULD ENCOURAGE ENVIRONMENTAL STEWARDSHIP BY THE NYISO

- In several places, our comments address the need for a firm commitment to clean energy resources from all state agencies and coordination among them to enable such resources to be implemented in a timely manner. While the NYISO is an independent nonprofit organization, it too should be part of the commitment to the increased reliance on clean energy resources, and the State should use its influence to effect such a commitment. The NYISO is a nonprofit organization acting in the public interest. We firmly believe it can meet its mandate to effectively and efficiently manage the competitive markets while ensuring that New York's power supply is increasingly environmentally responsible.
- The NYISO originally had a member of the Board with strong "environmentalist" credentials. However, despite initial statements that the Board wished to continue to have an environmentalist in their midst, no one with such a background was chosen for open board seats and we have not seen evidence that the Board considers responsiveness to

environmental concerns a priority, as we believe it should be. We strongly suggest that the Board rectify this situation and be more responsive to environmental concerns, as this is consistent with ensuring a safe and adequate electric supply and acting in the public interest. Furthermore, while we have seen and are appreciative of the responsiveness to the need for clean energy by senior staff at the NYISO, we urge continued vigilance to clean energy issues by all staff given the inability of environmental interests (because of the governance structure) to play as active a role in governance as fossil and nuclear fuel representatives and transmission owners.

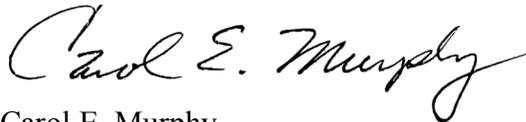
VIII. THE ENERGY PLAN SHOULD ADDRESS TRANSMISSION NEEDS

- **Encourage investment in transmission infrastructure to ensure use of clean energy resources.** The Plan should support increased investment in transmission supporting full development of the State's domestic renewable infrastructure, with costs shared among beneficiaries and utility investment recoverable through the rate base. The transmission upgrades should include both high voltage lines for generation in the wholesale market and distribution line upgrades to accommodate distributed and on-site generation.
- **Support Federal and NYISO efforts on transmission upgrades.** Several efforts are underway to explore how to upgrade the transmission system regionally and nationally in order to use more of our country's renewable resources. While it is vitally important for New York to develop its in-state clean energy industry, it also is important to have secure, reliable and modern transmission connections to our neighbors. New York should support larger efforts to upgrade transmission, but should do so where such upgrades are designed to support clean energy development.

IX. CONCLUSION

In summary, ACE NY is appreciative of the work of the Energy Planning Board and believes this draft report shows a great deal of work was done in a relatively short period of time. The predominant concern we have is that the Plan's recommendations and analysis must be accompanied by concrete implementation plans if the State is truly going to meet its goals and create the clean energy economy New Yorkers deserve.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Carol E. Murphy". The signature is written in black ink and is positioned to the right of the typed name.

Carol E. Murphy
Executive Director

October 19, 2009
Albany, NY