NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 03-E-0188 – Proceeding on Motion of the
Commission Regarding a Retail
Renewable Portfolio Standard

COMMENTS OF AIRTRICITY, INC.

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On September 24, 2004, the Public Service Commission ("Commission") issued in Case 03-E-0188 an Order Regarding a Retail Renewable Standard (RPS) ("Order") in which the Commission established an overall policy goal of increasing the amount of renewable resources use to provide electric energy to New York consumers to a level of at least 25 percent of total retail sales. In furtherance of that goal, the Commission's Order adopted a Renewable Portfolio Standard.

The Order, inter alia, established a surcharge to fund above-market costs of renewable resources under the RPS program. The Order also designated the New York State Energy Research and Development Authority (NYSERDA) as the administrator of the central procurement component of the RPS program and all associated funds.

On March 30, 2005, the New York State Legislature passed a budget amendment (Senate 3669; Assembly 6843) that states:

> 2. Commencing with the 2006-2007 state fiscal year, and each fiscal year thereafter, the governor shall, in his or her executive budget, as submitted pursuant to article VII of the state constitution, provide appropriations for currently non-appropriated monies received by the New York state energy research and development authority, under the direct oversight of the department of public service, related to assessments, collected for the purpose of public policy energy programs.

On April 1,2005, the Commission issued a Notice Seeking Additional Comments ("Notice") in Case 03-E-0188, a Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard RPS). Specifically, the Commission requested interested parties to comment on the potential impact of the proposed budget amendment language on the implementation and administration of the RPS program as set forth in the Commission Orders of September 24,2004 and December 16,2004.

Budget Amendment Will Discourage Investment in Wind Projects in New York

Airtricity, Inc. ("Airtricity") is actively pursuing the development of several wind energy projects in New York. We are deeply concerned about the potential impact of the proposed budget language on our ability to continue to develop and finance these and other wind projects New York State.

Governor George Pataki has articulated a vision that New York State be the national leader in the development of renewable energy resources. Historically, the New York State Legislature has been very supportive of efforts to promote the development of renewable energy resources in New York. This collective bi-partisan support for renewable energy has contributed to the creation of a highly favorable policy and regulatory climate for the investment in new renewable energy in New York.

In no small measure, a major factor in attracting Airtricity and other wind developers to New York has been the Commission's establishment of an aggressive, indeed visionary, renewable portfolio standard (RPS) program. Unfortunately, intentionally or unintentionally, the effect of the proposed budget amendment will be to seriously undermine the usefulness of the Commission's RPS program as a tool for attracting new renewable investment in New York State.

Beginning with the state 2006-2007 fiscal year, the proposed budget amendment mandates that the Governor include in his/her Executive Budget appropriations for the RPS program. The clear intent of this amendment is to subject RPS funding to the annual legislative appropriations.

Based upon our considerable experience and knowledge in the development and financing of wind projects, Airtricity is deeply concerned that the RPS program will be seriously undermined if its funding becomes dependent upon annual legislative appropriations.

While developers and investors can manage risk, both developers and investors hate uncertainty, especially financial uncertainty. If the level of uncertainty is too high, investors will forego a particular technology, company or even geographic region and invest take their monies elsewhere. With respect to renewable energy projects generally and wind projects specifically, this is a highly likely scenario if RPS funding is subject to annual legislative appropriation in New York.

Assuming the proposed budget amendment becomes law, there are a plethora of unanswered questions, all of which contribute to a climate of investment uncertainty. How will funds be appropriated? To whom will the RPS funds be appropriated? Will the State Legislature appropriate a lump sum for the RPS program or will funds be appropriated on a project-by-project basis? Can funding be provided on a multi-year basis or does the legislative appropriation process by its nature limit RPS funding to an annual basis? To whom would the funds be appropriated --- the Commission, the New

York State Energy Research and Development Authority (NYSERDA) or some other state entity to fund RPS projects? Who will select the projects that will receive RPS funding? Will projects go through an independent, competitive review process administered by a state agency, such as NYSERDA, or will specific projects be selected for funding through the legislative appropriation process?

The prospect of the legislature picking RPS "winners" and "losers" is particularly troublesome. What is to prevent the legislature from withdrawing RPS funds from a previously appropriated approved RPS project if that project should subsequently become politically controversial? What type of multi-year funding guarantee, if any, can the legislature provide investors in a renewable energy project whose RPS funding depends on the annual legislative appropriation process?

Even if answers to these questions could be provided within a reasonable time frame, it is highly unlikely that an investor will invest substantial new funds in renewable energy projects in New York at least until there has been several years of experience with an RPS process that relies entirely on annual legislative appropriations. If this is the case, then the annual RPS targets outlined in the Commission's September 24, 2005 Order will not be attained.

In summary, in the face of such uncertainty, a developer or an investor cannot realistically be expected to rely upon RPS funding to support a wind project if such funding is subject to annual legislative appropriations.

Commission Should Reconsider Centralized Procurement Mechanism

Airtricity respectively suggests that this may be an appropriate time for the Commission to reconsider its adoption of the centralized procurement model for implementation of its RPS Order. Airtricity recommends that the Commission reevaluate the potential benefits of an individual RPS procurement process that would place the burden directly up load serving entities (LSEs) to procure sufficient energy from renewable energy resources to achieve the RPS targets established by the Commission.

Airtricity continues to believe that the individual RPS procurement model is the most competitive, cost-efficient means to develop new renewable capacity. Based on the track record of other states, individual procurement is a proven market mechanism that maximizes flexibility and promotes competition.

Commission adoption of the individual RPS procurement model would eliminate the need under the Commission's current centralized RPS procurement model to impose a surcharge to fund above-market costs of renewable resources. In turn, the elimination of this surcharge would mean that the Commission's RPS program would not be covered by the proposed budgetary amendment.

Airtricity believes that there is ample evidence in the record for Case 03-E-0188 to support a Commission decision to amend the RPS procurement process to base future procurements on an individual procurement process. Airtricity recognizes that while such a programmatic change might delay the next round of awards under the RPS program, such a short-term delay might be preferable to the more fundamental long-term uncertainties that would accompany legislative appropriation of RPS funds.

Respectfully Submitted,

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