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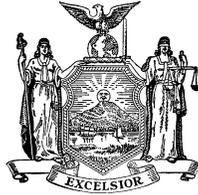
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June 25, 2003

To Active Parties in Case 03-E-0188:

This letter transmits to you my general summary of the products and discussions of the five Working Groups. This summary is intended to attempt to capture those parties' work and to assist parties in preparing their comments. It also addresses issues concerning ongoing Working Group projects.

At parties' requests, straw proposals and final reports of Working Groups will be posted on the proceeding web site. However, meeting minutes will not be posted, as some attribute positions and proposals to parties or otherwise concern the internal process of those collaborative efforts. All parties should have minutes available via the broadcast list. In addition, the attached summary captures some of those discussions, without attribution except where a party or group of parties formally submitted a proposal.

As to ongoing work efforts of the Working Groups, the Biomass Eligibility Subgroup of Working Group One proposes to report the results of its further collaboration "to the Commission". However, to ensure a complete record in this proceeding, this group should file with me and serve on active parties a report its progress, no later than August 26, 2003, the last comment filing of the parties. Where the group has agreed on standards or other outcomes, these should be reported; in addition, if the group seeks additional time to consider pre-implementation issues, it should so request at that time.

The Biomass Eligibility Subgroup also proposes a schedule to resolve animal manure, treated and processed biomass, emissions standards, and key sustainability issues by mid-July. In addition, these parties expect to resolve the remaining sustainability issues in the form of a model quality plan by mid-August. They should file these documents by August 15, 2003. This schedule will allow parties not participating in this subgroup to comment on its resolution of these issues in reply comments.

Again, all parties' serious attention to the issues involved has moved this process forward. I look forward to your ongoing participation.

ELEANOR STEIN

Administrative Law Judge

SUMMARY OF WORKING GROUP DISCUSSIONS

This high-level summary of the Working Group's conclusions and discussions is for parties' information, and to move the comment process forward based on the parties' collaborative effort. It tracks the comment outline circulated to parties on June 9, 2003; the numbered sections refer to that outline as closely as possible.

IV. Eligibility

A. The Baseline

On March 17, 2003, DPS Staff presented a working baseline estimate of what percentage of the electric energy purchased in New York derives from renewable resources, using the categories defined by the Environmental Disclosure program. On April 25, 2003 many parties filed comments on a DPS Staff compromise proposal to establish a baseline at 28,896,189 MWh.¹ Although there was no consensus on that proposal, it serves as a valuable reference for comments on the baseline. Parties that filed those comments need not reiterate them; they are already part of the record in this proceeding. Parties are invited, however, to file additional or new comments on the issue of the baseline, using the Staff compromise proposal as a starting point. Parties rejecting the Staff compromise proposal should proffer specific alternatives, if they have not already done so. In commenting on eligibility, parties not adopting the Staff

¹ Staff's proposed language is: "For the purposes of setting an incremental target to reach the 25% goal, it will be assumed that the incremental target is 25% of projected statewide electricity usage in New York State in 2013, minus a baseline of 28,896,189 MWh." This proposal assumes there will be no attribution as to "the specific sources that make up the baseline. Any future adjustments to targets will be made in the context of designated 'eligible' resources without attribution back to the effect, if any, on the makeup of the baseline."

compromise proposal should clarify whether they are addressing resource eligibility for baseline or target purposes, or both.

B. Target Levels

1. Forecast
2. Start date
3. Interim targets

Parties should comment on the target of 25% renewables retabled in New York State in 2013, in the context of the state's pattern of declining proportion of renewables to load. Points of reference include the Staff May 6, 2003 RPS Premium Input Table, other parties' proposals, and further target data that may be forthcoming in the cost and benefit studies. The Staff table is based upon State Energy Plan forecasts of overall load growth. In establishing annual ramp-up targets from the first target year to 2013, this table projects increases in renewables to reach 19% by 2004; 19.6% by 2005; 20.2% by 2006; 20.8% by 2007, 21.4% by 2008; 22% by 2009; 22.6% by 2010; 23.2% by 2011; 23.8% by 2012; 24.4% by 2013; and 25% by 2013.

Parties also discussed establishing a target level megawatt hour adjustment mechanism. Options identified include adjusting the target periodically to match actual load growth; when actual load growth deviates from the forecast by a predetermined significant amount; or for unforeseen implementation obstacles. Another option is to omit a target level adjustment mechanism.

Parties reached no conclusions as to target levels beyond 2013.

C. Target Resource Eligibility

Working Group One (Eligibility) established consensus that RPS targets should be measured as energy, rather than capacity; that eligible imports should be included in the RPS; and that the program's targets should be updated annually based on the system's actual load. While the group did not reach consensus on criteria, there are several proposals for criteria and for tiers. Parties distinguished various criteria on the

tier proposals; and on which resources (including both fuel source and generation process, where relevant) should be eligible.

1. Hydro

A Hydropower Subgroup convened to establish criteria for hydropower eligibility. No consensus was reached as to the appropriate criteria, although these were advanced: include all hydropower; include only low-impact, as defined by the Low Impact Hydro Institute; include only new or incremental hydro, or hydro licensed or relicensed after a certain date; include only hydro projects below a certain size or projects exempted from federal licensing requirements.

2. Solid Waste

A Waste-to-Energy Subgroup convened to explore and clarify parties' positions and the possibility of reaching consensus. Parties concluded consensus was not likely, and several parties have submitted their views on the legal status and environmental effects of various waste-to-energy technologies.

3. Biomass

The Biomass Eligibility Working Group reached general consensus as to some issues, identified areas of divergence, and proposes to continue its work effort to report specific recommendations. Generally, the group agreed that biomass resources could be eligible under proper conditions. Specifically, as to wood biomass resources, the group agreed sustainability standards, harvest oversight, and a verification regime were needed and could be designed to ensure wood resource sustainability. As to processed and treated biomass resources, the group agreed to define environmentally beneficial conditions under which certain categories of processed and treated biomass materials should be eligible. It agreed to review net air emissions of biomass facilities and recommend standards (as well as standards for landfill gas and cofiring facilities). The group also agreed to assess size and other standards for eligible livestock operations.

4. Customer-sited

Proposals included classifying as eligible customer-sited facilities only if interconnected to the grid; including all customer-sited facilities.

D. Tiers

No consensus was reached concerning tiers. However, several options offered were:

1. No tiers

Some parties preferred an RPS eligibility standard simply delineating eligible from ineligible resources, rather than using a tier structure to define levels of technologies' participation in or benefit from the RPS.

2. Emerging Technology Tier

Some parties propose additional premium or direct SBC incentives to stimulate developing technologies.

3. High Value Location Tier

Similarly, some parties suggest a location premium.

4. Resource Criteria Tier

On June 9, 2003, a Clean Technologies Coalition² circulated a formal version of a tier proposal offered during Working Group One meetings. The proposal, titled Technology Attributes Measurement, would be used to award credits based on how well any technology met RPS goals. No technology would be per se excluded; each technology would be assigned a score based upon a weighted set of RPS objectives. Technologies achieving some minimum score would be eligible to earn a premium.

Criteria offered include: greenhouse gas life cycle emission;

² Supporters include Brooklyn Union Gas Company d/b/a/ KeySpan Energy Delivery New York, City of Jamestown Board of Public Utilities, City of New York, Consumer Power Advocates, Coast Intelligen, Inc., The E Cubed Company, LLC, Hess Microgen, Invensys, KeySpan Business Solutions, LLC, KeySpan Gas East Corporation d/b/a/ KeySpan Energy Delivery Long Island, KeySpan Technologies, Inc., Niagara Mohawk Power Corporation, NiSource Inc., Nuvera Fuel Cells, RealEnergy, Turbosteam, Encorp, Gas Technology Institute, OfficePowerm and Enertec, LLC.

pollutant life cycle emissions, including waste recovery; fossil fuel reduction; increased generation diversity and improved energy security and reliability; economic activity; cost effectiveness; and efficient conversion of fuel to energy. Once quantifiable criteria are specifically defined, each technology is assigned a score.

5. Maintenance Tier

Several parties proposed some form of maintenance tier, to offer some level of premium to protect generators, such as some existing hydro or waste-to-energy, that have environmental benefits but could be at risk from contract expiration, league or regulatory changes, or market pressures.

6. Other

Other tier proposals included assigning a sliding scale to categories of resources based on their environmental attributes, attaching different alternative compliance prices to each category and requiring load serving entities to satisfy their RPS obligations from more than one category. Some proposed a two-tier approach with higher premiums for technologies requiring additional incentives.

V. Overall RPS Structure

A. Preferred Structure-Central or Individual Procurement

Working Groups Two and Three were charged with exploring, in detail, their respective structural models. A joint meeting of the two produced no strong preference. Parties should express such preferences here with their rationale.

B. Individual Compliance

Working Group Two listed certain consensus elements, and created a straw proposal detailing certain additional elements. Other options, not included by the group, are not summarized here. With respect to the conclusions and proposals of Working Groups Two and Three, each grappling with overall RPS structure, parties should comment on the groups' consensus and straw proposals, suggest alternatives, and indicate their

support for either individual compliance or central procurement, explaining the basis for that support.

1. Determination of Participating Entities

Working Group Two reached consensus that all load serving entities should be included, encompassing LIPA, NYPA, municipals, cooperatives, and delivery companies, subject to the right of NYPA and LIPA to elect not to take part. The group suggests, as a straw proposal, that all ESCOs should be included to ensure all customers contribute to achieving the targets. The straw proposal also provides that self-generation load should not be included, as it does not entail retail sales and the administrative burden could outweigh the benefits.

Parties should comment on the effects, if any, of this requirement on energy services companies' ability to compete.

2. Adjustment of Target Levels

Parties agreed that if LIPA elects not to take part, its load should be removed from target calculations. The straw proposal suggests that if NYPA should elect not to take part, NYPA's full service load requirements should be removed from the calculations.

3. Determination of Individual Entity Target Levels

Working Group Two reached consensus that the targets should track actual loads by entity. It agreed that credit trading and credit banking were important components of individual compliance, and that a true-up period should be provided to match tradable credits with load. The consensus was that targets should be a fixed percentage applied to the actual load served, ramped up annually beginning in either 2005 or 2006. The straw proposal is that, to ensure all customers fairly contribute to achieving the target, there should be no adjustment for long-term power purchase agreements or full service requirement service from utilities. The straw proposal is that credit trading and an alternative compliance mechanism, rather than target adjustment, should be used to account for weather.

4. Alternative Compliance Mechanism

No consensus was reached on this issue. Working Group Two's straw proposal suggests an alternative compliance mechanism to ensure flexibility for participants while assuring program targets are met when sufficient renewable energy is unavailable. Participants could meet targets through bilateral contracts, trading RPS credits, or \$/MWh payments into an alternative compliance mechanism fund for future renewable energy projects or, if none can be identified, demand side management.³

5. Enforcement Mechanism

No consensus was reached on this issue. Working Group Two's straw proposal suggests that with an alternative compliance mechanism, no additional enforcement or penalty mechanism, beyond the provisions of the Public Service Law, is necessary.

6. Cost Recovery for Compliance by Delivery Utilities

Working Group Two reached consensus on the presumption that participants would weigh the economics of various qualifying options and choose the economically favorable option; and that utility cost recovery is presumed, subject to Public Service Commission prudence review.

C. Central Procurement

1. Preferred Central Procurement Entity, with rationale

Working Group Three created two central procurement models, detailed in its documentation: an ISO Procurement Model and a State Agency Procurement model.

2. The ISO Procurement Model

The ISO Procurement Model entails formation of a new group, a New York State Renewable Portfolio Board, to implement the RPS by forecasting incremental eligible production needed to meet RPS requirements, and facilitating a centralized Request-

³ The Working Group Two straw proposal suggests these payments would be the lesser of \$50/MWh or 150% of the market value of renewables.

for-Bid market process for renewable attributes associated with physical energy production.

Working Group Three identified the following as advantages of an ISO Procurement Model as (1) including all New York State load hence reducing the per-unit cost of an RPS; (2) payment and collection mechanisms already exist in the NYISO OATT for defined suppliers and transmission customers; (3) The NYISO already operates other markets such as energy, ICAP, ancillary services, and Transmission Congestion Rents; and (4) NYISO has a well-developed market monitoring unit.

It identified these as disadvantages of the ISO Procurement Model: (1) Some parties opposed using a NYISO R.S. 1 charge as the means for the collection of funds; (2) uncertainty of obtaining a favorable vote from the NYISO governance; (3) possible limitations on the ISO mandate; (4) possible disruptive effects on existing energy market marginal pricing and retail access.

3. The State Agency Procurement Model

This approach entails the state agency issuing a competitive solicitation for eligible renewable attributes and choosing the winners. This solicitation would resemble current SBC grants, awarded competitively and paid out over five years based upon kWh output. Implementation of this model needs to be compatible with conversion transaction, and the state agency would need to enter into longer-term contracts for at least a significant portion of the attributes.

VI. Credit Trading

A. Consensus Issues

The charge of Working Group Four was to devise a New York trading system to enable trading of renewable energy credits separately from energy contracts or transactions.

1. Establishment of New York-based Credit Trading System

A consensus was reached that there was no need to wait for the establishment of a regional system, to do this in New York; and that therefore New York should move ahead and design a New York trading system compatible with neighboring systems.

Near-consensus was also reached that Working Group Four's task should be spun off into a separate track to continue to design the details a New York trading system over the next months, without delaying the adoption of a general RPS policy favoring a trading system of some kind. Most, but not all, parties concluded that the creation of a New York trading system accommodating imports and exports was critical.

2. Establishment of An Implementation Track

Working Group Four concluded that implementation specifics will be dependent on policy choices as to eligibility made as a result of the Eligibility Working Group (One). Working Group Four is satisfied that as long as the RPS Policy Statement includes a commitment to creating some New York trading system, criteria for the creation of such a system, establishment of a process to finalize the New York trading system, and the continuation of conversion transactions for environmental disclosure, remaining implementation details could follow.

Parties reached consensus on certain important issues. First, they agreed that a single regional trading system is not necessary and that New York should move ahead and design a New York trading system so long as it is compatible with neighboring systems.

Second, they agreed that imports into New York should be allowed to be traded. As New York appears likely to be a net importer of renewables, there was consensus that eligible imports should be allowed to be traded here. The definition of "region" was left open, with the understanding that a deliverability requirement, if adopted, would impose its own ineluctable geographical limitations.

Third, parties reached consensus in seeking a separate procedural track for Working Group Four to complete its tasks. As requested by Working Group Four, it should regroup and propose to me by September 5, 2003, a workplan and schedule, including status reports, for completion of design specifics in time for final Commission action should the Commission decide to implement a New York trading system simultaneous with the RPS.

B. The Deliverability Requirement

A critical issue that was not agreed upon concerns deliverability—the requirement that the actual energy itself be delivered into the New York electric grid for the attributes associated with that energy to be traded in the New York Trading System. Parties agreed deliverability is a key criterion to be decided by the Commission in its policy statement. Parties discussed the likelihood that issues of reciprocity, environmental benefit, economic benefit, and trade restrictions would be resolved by the imposition of an energy deliverability requirement. Parties opposing deliverability asserted the value of eliminating barriers to attribute trading.

C. Other Open Issues

Parties agreed upon certain criteria for a New York trading system; others remain open.

1. Accounting Issues

- a. Selection of accounting period should be shortest needed to allow credits to be used in multiple jurisdictions;
- b. Quantity of generation used as the basis of tradable credits should be verified by a third party;
- c. A reconciliation mechanism is necessary to prevent double-counting;
- d. The source of credits should be refined to individual units to allow for different fuels and generation types at the same station, if practicable;
- e. All generation sources in the market should be included;
- f. Market transparency and explicit practices, as in New England, are necessary for consumer trust;
- g. An inclusive list of attributes tracked is preferable to an exclusive list;
- h. Attention to design details (for example, defining credit units in MWh; or time frames in months) will facilitate compatibility and coordination with neighboring systems;

- i. Mechanisms to transfer title should be clear;
- j. Initial certificate title assignment for existing units should be identified; and
- k. True-up periods for generators and load-serving entities are necessary.

2. Administrative Issues

- a. The administration of the trading system should be administratively and economically efficient;
- b. A clear-cut process for dispute resolution is necessary;
- c. The needs of LSEs to reconcile portfolios and meet targets must be accommodated;
- d. The needs of very small ESCOs to participate must be accommodated.
- e. The New York trading system should minimize regional market seams.

3. Financial Issues

- a. Price signals should be provided sufficient to satisfy the project lending community;
- b. The system should minimize the likelihood that credit prices will be influenced by market power;
- c. The most liquid market possible should be achieved.

4. Credibility Issues

- a. The New York trading system should be consistent with or work in the framework of the RPS, the environmental disclosure program, retail access, and competitive wholesale markets.
- b. As allowed, banking and borrowing should be available for generators and load-serving entities (there should be no banking and borrowing in the accounting system);
- c. The New York trading system should be credible to consumers, the general public and regulators of consumer transactions.

VII. Contracting Standards

This Working Group did not reach consensus as to whether or not contracting standards were necessary, but debated whether the PSC should establish a uniform contract or establish parameters. Discussion included the possibility of subdividing a project's revenue streams from bilateral energy transactions, bilateral ICAP contracts, bilateral attributes contracts, and ancillary services transactions with the ISO.

A. The Role of Long-Term Contracts

Parties agreed this was the central issue, although no consensus was reached.

1. Necessary Duration for Developers

Some, although not all, developer parties, particularly wind developers, asserted the necessity of long-term contracts to obtain financing; discussion of NYSERDA contracts referenced four- to five- year terms.

2. Financial Risk Management for Load Serving Entities

Parties discussed covenants protecting delivery of generation, including a pre-construction bond, to be refunded upon completion of construction milestones; escrow accounts; reconsideration of credit policies.

3. Proposal for Pilot or Interim Requirement for Early Long-term contracts

Parties discussed but did not agree to proposals for pilots or interim templates for contracts to ensure early renewable development.

B. Establishment of Contracts

1. Model/Template Contracts or Individual Negotiations

There was no consensus as to the wisdom of developing standard contract templates. Disputes were unresolved as to the appropriate length of contracts and whether contracts should be for both attributes and energy, or attributes-only. However,

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parties identified essential terms for power purchase agreements as applicable for use for the purchase of energy and attributes. These terms included: the EEI Master Power Purchase and Sales Agreement (with Collateral Annex); definition of transactions and confirmation process; performance obligations and assurances; force majeure; product description; credit protection mechanisms; remedies for failure to deliver; termination and early termination; payment terms.