

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS ON BEHALF OF
CENTRAL HUDSON
GAS & ELECTRIC CORPORATION

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Preliminary Statement

These Comments are submitted on behalf of Central Hudson Gas & Electric Corporation ("Central Hudson"). Central Hudson has also joined in, and supports, the recommendations made in the following sections of the Joint Utility Comments: Section II, related to reliability being the paramount regulatory objective; Sections III.A. and B., related to the Central Procurement Model being the appropriate approach to implementing an RPS in New York; Section VI, insofar as related to discussing the cost studies by Staff and the Joint Utilities' Analysis; and Section VII.

Statement of the Case

The proceeding was established "to develop and implement a renewable portfolio standard for electric

energy retailed in New York State."¹ A "standard" of 25% of in-state electricity sales had, however, already been endorsed and adopted by the Commission² and the proceedings involved discussing alternative means of implementing that 25% standard.³

Pre-existing renewable sources of power within New York amount to about 18% of current (2002) sales in New York,

¹ See: Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard; Order Instituting Proceeding ("Instituting Order")(Issued and Effective February 19, 2003).

² This conclusion is demonstrated by the Instituting Order and Initial Comments filed by many governmental parties on March 28, 2003: 1) Staff at 1: "The purpose of this proceeding is to develop policies to achieve a goal that by the year 2013, at least 25% of the electricity . . . will come from renewable energy sources"; 2) Attorney General of the State of New York at 2: the Commission "announced that it was commencing this proceeding to develop and implement an RPS that will ensure . . . at least 25% of the electricity purchased in New York is generated from renewable resources."; 3) New York State Department of Environmental Conservation at 2: "[I]n order to achieve the increase to 25% of the electricity generated in New York State coming from renewable sources, . . . [certain sources] should not be considered."; 4) New York State Energy Research and Development Authority at 2: referring to "compliance with the 25% RPS goal."; 5) New York Power Authority at 2: referring to "meeting the 25% renewables goal."; 5) Long Island Power Authority at 2: referring to monitoring progress towards "meeting the 25% goal."

The similarity between the Governor's 2003 State of the State Address, and the Commission's Initiating Order lends support to that view. However, while it is clearly the Governor's prerogative, as the State's Executive Officer, to state his position and to propose policies for consideration by independent regulatory bodies like the Commission, it remains the Commission's duty to follow the applicable requirements of law to fully consider all reasonable alternatives as an integral part of analyses leading up to its decision. The necessary consideration of alternatives never took place because the Commission's Instituting Order treated the Governor's 25% target value as the pre-ordained conclusion.

³ Or, as the Commission said in its Instituting Order: "how best to achieve" the standard. The Commission's Instituting Order "found" that: "A return to the 25% figure would be in the public interest." No basis for that conclusion was presented. Although the 25% standard was referred to occasionally during the proceeding as a "target," it is clear, as described above, that the Commission and many parties consider 25% to be immutable. With that conclusion, Central Hudson respectfully disagrees.

leaving a gap of about 8% to be obtained from "new" renewables. At the rates of load growth estimated in the 2002 State Energy Plan ("SEP2002"), the 25% criterion is equivalent to an incremental growth in power from renewable sources of about 17 million MWh between 2006 and 2013.⁴

The proceeding has been directed towards considering differing methods for providing revenues to developers of new renewable sources of generation so that they construct new generating facilities and produce the desired 17 million MWh. These revenues, by definition, would be provided from sources other than the competitive electricity markets and would be supplemental to the competitive markets. In fact, the very purpose of the proposal is to provide these specific kinds of new generators with total revenues significantly greater⁵ than could be realized from the competitive markets.⁶

⁴ A period of time will be required to construct new renewable facilities in response to the proposal. Staff's assumption that the initial facilities would begin commercial operation in 2006 is not unreasonable.

⁵ See, Staff Response to Joint Utilities' Question 22 concerning Staff's Cost Study, which shows, under the assumptions of Staff's Cost Study, that almost every category of renewables "reached" in 2013 will receive a substantial portion of their revenues from the "RPS premium" as in relation to revenues received from the competitive markets.

⁶ Renewable sources of electric power generally have very low variable, or operating costs, but high capital or fixed costs. Many of the "renewable" technologies generally tend to produce power intermittently, when wind, sun or flowing water are available. They tend to have low "capacity factors," producing fewer kWhrs per kW of capability than many "conventional" types of generation. The relatively low output per unit of capability means that they cannot run sufficient hours during a year to produce revenues adequate at the prices prevalent in New York's energy markets to meet their relatively high capital costs and provide profits deemed reasonable by the developers of those facilities.

Funding the addition of 17 Million MWh of generation from above-market, predominantly intermittent, renewable sources of generation by 2013 has a number of very significant implications for the people, businesses, and economy of New York State.

- Virtually all load growth until 2013 will be effectively assigned to the new renewable generators, having the consequences of erecting regulatory and economic barriers to "conventional" generators and returning to a "central planning" approach for generation differing significantly from the Commission's existing policies favoring addition of generating capacity by entrepreneurial developers shouldering the risks (and reaping the rewards) of the competitive generation markets.
- The proposed program will require the citizens and business in New York State to transfer significantly more than \$1 Billion (more likely, several \$Billion) in today's dollars,⁷ to the developers of the new renewable generators. Apart from the loss of in-state jobs implicit in the shut-down of existing in-state

⁷ This figure represents the direct RPS premium costs determined by Staff through 2013, and is understated because of the constraint on the time period considered in the Staff study and, as discussed subsequently, because it is based on optimistic and dubious assumptions.

generation shown or implied in the Staff Cost Study, the economic consequences of these extra-market revenues on the electricity markets operated by the NYISO are unknown and have not yet been considered.

- The electrical characteristics of the NY power system may be significantly affected by the addition of numerous intermittent sources of generation, large and small, with impacts on the reliability and costs of operating the grid that, as of the date hereof, are unknown.
- The displacement of "conventional" generation resources by the new renewable resources would produce only modest benefits in terms of reductions in wholesale power prices, emissions and natural gas consumption (and potential, albeit marginal, reductions in natural gas prices) in New York.

Central Hudson's Interests and Summary of Position

Central Hudson's March 28, 2003 Comments (at 8)⁸ stated that

The best method for commercializing new renewable sources of generation is through establishing a market for

⁸ Consistent with the ALJ's assurances that parties were not waiving their positions by participating in the proceedings, Central Hudson reserves its rights concerning the positions articulated in its March 28, 2003 Comments.

predetermined quantities of renewables at the ISO and including the above-market costs of the renewables purchased by the ISO as an "uplift" charge on ISO transmission (exclusive of wheel-throughs or wheel-outs).

This concept has come to be called the "Central Procurement Model" and variants of this approach have been developed (the ISO variant, essentially as outlined in Central Hudson's Comments, that treats all KWH transmitted for consumption within NYS as subject to the RPS and collects the required funding through an NYISO Rate Schedule 1 charge; and "State Agency" variants that presume only retail deliveries are subject to the RPS and collect the required funding through an "SBC-like" charge applied to retail delivery rates).

Consistent with its past support for maintaining workably competitive markets, Central Hudson does not oppose state-mandated economic assistance to renewable generators in principle, but it supports consideration of alternative approaches that will best serve the interests of the consumers and business of New York.⁹ There has been no

⁹ As stated in Central Hudson's March 28 Comments: "Central Hudson is not opposed in principle to any form of state assistance to renewable resources, but is concerned about the approaches that appear to have been contemplated thus far. Moreover, as discussed below, the policy debate should include the questions whether state assistance is appropriate, whether to impose a renewables portfolio standard, whether to impose some other means of attaining a 25% "penetration" of renewables, whether to select some other objective (e.g., a 20% or other renewables penetration level), and what mechanisms best implement the goals eventually selected."

meaningful consideration of alternatives to the 25% target in this proceeding and thus no showing that the 25% RPS proposal in this proceeding is the best means to commercialize increased production of power from renewables in New York.

Central Hudson supports economically efficient power markets and regulatory initiatives that reduce costs, encourage economic efficiency and best serve the long-term interests of the People of the State. The proposal has not been shown to satisfy those objectives.

Central Hudson recognizes that, in theory, renewable sources of generation may offer advantages in terms of reducing reliance on (mostly imported) fossil fuels, reducing emissions and potentially creating jobs.¹⁰ However, the studies that have been filed in the proceeding do not show that there will be significant reduction in use of those fuels or in emissions, and the reductions in wholesale prices estimated by Staff are overstated. The potential price reductions have not been shown to be

¹⁰ In theory, construction of new facilities should tend to create jobs. The jobs will be created predominantly where the facilities are built. Under the RPS specifications of the Staff Cost Study, nearly half of the job-creating benefits would be exported to nearby states and Canada, but all of the costs of the RPS premiums would be borne by New Yorkers, and the displacement of generation from in-state sources is forecast in Staff's Cost Study to lead to shut downs of existing, in-state facilities (and, presumably, attendant in-state job losses).

sufficient to justify the payments that the proposal would require New York consumers to transfer to developers, or the unknown reliability and market impacts that increased intermittent resources may impose on New York consumers and businesses.

Working Objectives

The ALJ provided the parties with a proposed list of "Working Objectives," sought comment from the parties and included a revised list in the matters set down for comment at this time.

The Working Objectives should be revised to establish reliability as the paramount objective. Operation of new sources of renewable generation in New York will increase the amount of intermittent generation relative to "conventional" generation on the New York bulk power system and thereby potentially affect grid reliability. Grid reliability must continue to be the paramount regulatory policy objective.¹¹ No initiative should be implemented

¹¹ As articulated in Opinion No. 96-12, the Commission's policy is: "The importance of a reliable bulk power electric system cannot be over-emphasized. Consumers now rely on very high service quality, and their well-being, and the state's economic growth, require that it be maintained. No changes in the future regulatory regime should be allowed to compromise reliability, even if the intention is to lower consumer prices."

unless, after thorough investigation, it is determined that grid reliability will not be adversely affected.¹²

The Working Objectives include appropriate considerations ("values") to guide development of policies that will serve the interests of the consumers and businesses in the State and further the commercialization of additional sources of renewable generation. After reliability, as discussed above, the most important values to guide both the way in which a program can best be implemented and the specific objectives of the program are: job creation and other benefits within New York, maximization of compatibility with the competitive markets, and minimization of costs.

Working Target

In addition to the Working Objectives, the ALJ also provided the parties with a "Working Target."¹³ The ALJ's June 25, 2003 "Summary of Working Group Discussions" ("June 25 Summary")(at 2) advises parties to "...comment on the target of 25% renewables retailed in New York State in 2013...."

¹² The August 14, 2003 blackout has starkly confronted all of us with the paramount importance of reliability. We can no longer consider an RPS without collectively being fully informed about the potential operational and reliability interactions of an RPS with the electrical system. This reality requires that we reconsider the future path of this proceeding and refocus it.

¹³ See, n.2, supra, and associated text.

The Commission had articulated a 25% overall target objective prior to the development of the cost studies that were presented in late July 2003. Information presented in those studies warrants revision of the 25% target.

The Staff Cost Study, which essentially seeks to illustrate the minimum potential level of costs, shows that attaining a 25% target requires reliance on imports from new, out-of-state generators for 44% of the incremental power needs by 2013 and the consequent export of about 44% of the direct RPS premiums and the associated jobs out of New York. Additionally, the displacement of in-state generation by out-of-state generation shown in the Staff Cost Study produces the consequential shut down of Mid-Hudson, upstate, and perhaps other generating plants, and presumed in-state job losses. Moreover, the Staff Responses to Joint utility Question 20 states that Staff's supply curve is broad and flat, so that exclusion of imports will not significantly increase the costs of the direct RPS premiums shown in Staff's Cost Study.

Rather than export RPS premium payments and jobs from New York consumers and business to out-of-state generators, Central Hudson supports evaluation of an alternative that would limit eligibility to in-state resources and commensurately reduce the incremental annual targets by 44%.

That alternative could be implemented together with a credit trading system designed, among other objectives, to be compatible with broad-scale regional trading. These elements work together to link the payments made by New York's consumers and businesses directly with the jobs that may be produced and, at the same time, they minimize costs and provide a constructive platform to assist in facilitating development of out-of-state renewables in a way that does not needlessly burden New York.¹⁴

Overall RPS Structure

With respect to the "Overall RPS Structure," the ALJ's June 25 Summary (at 5) advised the parties to "express [their] preferences...with their rationale." Assuming an RPS-like approach for purposes of this discussion, Central Hudson believes that the "Central Procurement" model outlined at 7-8 of the ALJ's June 25 Summary is the only suitable approach.¹⁵ The Central Procurement Model would establish market and regulatory structures that treat new renewables similarly to other generators, yet facilitate financing by eligible new renewables through providing revenue

¹⁴ A regional trading system could serve a number of interests, including allowing consumers desiring to purchase "Green Power" to have expanded options and perhaps lower costs. The system should be designed to permit a seamless integration of "Conversion Transactions," until such time as development of regional markets supersedes a need to maintain a New York-specific conversion transaction mechanism.

¹⁵ As noted previously, Central Hudson supports Sections III.A and III.B of the Joint Utilities' Comments on this point.

streams at least as secure as those available to "conventional" generators.

The "ISO Procurement" variant is the best option within the general Central Procurement Model because it spreads the costs over the broadest base, and offers other advantages as identified by the ALJ, but the "State Agency Procurement" variant would produce many of the same advantages. While preferring the former, Central Hudson can also support the latter.

A necessary element of Central Hudson's support for any RPS-like program is that it contain the requirement that any new renewable facility not receive an RPS premium unless it has been determined that the specific facility is part of an "optimum expansion plan" for the New York electric system. This is a necessary condition, in Central Hudson's view, because the RPS concept is not consistent with the existing competitive market policies of the Commission that are based on the premise that the markets would "incentivize" the investment of capital in new generation and lead to economic entry decisions by developers. Since the RPS concept involves extra-market payments to certain generators, it is therefore necessary that only those generators who are deemed part of an optimum expansion of the grid be funded.

The "optimum expansion plan" concept requires specification of the types of resources that would be eligible, the amount of power and in-service date for the increment of power sought and a decision on the specific facilities that best meet the specifications. The specifications could be established by the Commission, by another existing State entity, or by a board.¹⁶ The determination of the facilities that best meet the specifications could be accomplished either through an auction process or through a competitive solicitation.

The method of developing an expansion plan that is most consistent with existing State Policies favoring competitive electricity markets is through use of periodic auctions. In those auctions, selection would be made on strict economic criteria of minimizing the present value of the RPS premiums, leading to an "economic" expansion plan that would be deemed "optimum" because it was the lowest cost. Auctions of that type could be conducted by the ISO, or by another "independent" body.

If it is determined that criteria other than economics should be incorporated into the selection process, the body making the selections must then be some type of State entity,

¹⁶ If the use of a board is approved, Central Hudson recommends that a Representative Stakeholder Group (exclusive of generator interests) be established.

so that appropriate non-economic criteria are incorporated in the expansion plan and valued consistently with the objectives of State Policy at the time of the decisions.¹⁷ Since the stated objectives of State policy conflict,¹⁸ decisions of that type necessarily can be made only by a State entity, not by private parties.

These requirements are necessary so that the actual award of RPS premiums reflect the "economic expansion" logic contained (with more or less rigor) in both the Utility and Staff Cost Studies.¹⁹

In addition, Central Hudson is concerned about the entitlement nature of the RPS proposal, in light of 1) the significance of the RPS revenues to economic viability of subsidized generators in the post-2013 time frame under the assumptions of Staff's cost study,²⁰ and 2) the potential for loss of existing federal tax credits and development grants, which, under the model advanced in Staff's Cost Study, would lead to automatic increases in the level of the RPS premiums,

¹⁷ Central Hudson recommends that the decision-making body be a board with representatives of relevant interests (to avoid conflicts of interest, generators would not be represented), and mandates to establish the specific "targets" and approve the specific facilities that will receive an RPS premium in fashions that minimize costs.

¹⁸ See, discussion under the heading "Balancing of the Proposal With Existing Commission and State Policy," infra.

¹⁹ Unless the ability of new renewable facilities to receive an RPS premium is constrained to an "optimum expansion plan" to reflect the economic optimization logic of the "supply curves" (implicit or explicit in the two differing analyses), the actual costs of addition of new facilities will be greater than those calculated. This is necessarily the case because the studies seek to calculate an economic minimum level of costs.

²⁰ See, Staff response to Utility Question 26.

to compensate the developers of new renewable generators on a pre-tax equivalent basis.²¹

Costs and Benefits

Operation of a renewable source of generation in place of a fossil-fired source of generation should reduce emissions. Under the existing competitive markets in New York, a renewable source of generation can assure that it is selected for dispatch in the ISO's markets through "price taker" bidding strategies that are permitted under the ISO's rules. As noted above, current and reasonably forecast market prices are insufficient to provide most types of renewable generation with sufficient market revenues to meet their financial "needs."²² Therefore, it is proposed that consumers and business in New York pay the above-market costs necessary for the renewable sources of generation to meet their financial "needs" on the premise that reductions in emissions, reductions in the wholesale price of power and other benefits sufficient to justify the costs will be produced.

²¹ See, Staff response to Utility Question 23. Entitlement programs to commercialize new generation in New York, such as the 6 cent law, have historically proven to over-stimulate developments that never became economically viable absent continued subsidization.

²² Central Hudson believes that the Commission cannot approve any rate-funded payments to developers until the Commission has found that the profits those developers would make are just and reasonable and not excessive. That analysis would include revenues received by renewables from all sources, as well as tax and any other economic benefits. There has been no discussion in the proceeding of the just and reasonable financial "needs" of new renewable generators.

However, the studies filed in the proceeding demonstrate that the costs exceed the benefits. The direct, out-of-pocket costs through 2020 of implementing a 25% RPS on New York's consumers and businesses will be about \$1.5 Billion in today's dollars, under the approach of Staff's Cost Study.²³ Both the Staff Cost Study and the Initial Cost Analysis developed by Central Hudson and other utilities²⁴ show that a 25% RPS will cost New Yorkers significantly more than it will save them.²⁵ Central Hudson does not agree with the view espoused by RETEC that no

²³ The lowest estimate of the direct costs of the RPS premiums, just over \$1 Billion in 2003\$, was contained in the Staff Cost Study. This amount sums direct RPS premium costs from 2006 through 2013 (Staff Analysis at page 12, Section V-C). The \$1.5 Billion figure was developed by the Utilities and extends the time period from 2013 (as used by Staff) to 2020.

²⁴ The utilities sponsoring this study are Central Hudson Gas & Electric Corporation, New York State Gas & Electric Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation. The Joint Utilities' submission consists of a transmittal letter, a 63 page series of PowerPoint Slides entitled "Report of Initial Analysis of proposed New York RPS" (including Appendices), and five pages of spreadsheet summaries of certain model results. The study was called an initial analysis because there has been no consensus developed as to the design elements of a program (e.g., level of "targets," kinds or extent of "tiers," restriction, or absence thereof, for geographical location, level of profit to be allowed to developers, etc.).

²⁵ The Utility Analysis found that the direct, out-of-pocket, costs to consumers and businesses in New York of the "RPS premiums" required to "incentivize" the production of 17 million KWH by 2013 from new renewable generation, and continue at 25% of in-state sales thereafter, could exceed \$6 Billion in today's dollars. If the more optimistic assumptions of Scenario 2 prevail, the direct RPS premium costs would be reduced to about \$2 Billion, again in today's dollars. In the second cost metric used by the Joint Utilities, the costs were expressed as "total in-state production costs." This metric again includes the direct RPS premium costs, offsetting effect of savings in wholesale power prices and the revenues lost or gained by other generators operating within New York State. Using this metric, the net present value of Scenario 1 was reduced to about \$5 Billion, but that of Scenario 2 increased to over \$2 Billion; in both cases as a result of the changes in revenues received by other in-state generators.

quantification, or realization, of benefits adequate to at least offset the costs, is required in this proceeding because a 25% RPS standard was endorsed by Governor Pataki in his January 2003 State of the State address.²⁶

A. Costs

The Staff Cost Study sought to estimate the "net" New York electric ratepayer costs through 2013 (but not beyond) of the RPS program assumed in Staff's Study. Staff's calculations found that the total direct RPS premium costs through 2013 would be \$772 Million (2003 \$), offset partially by wholesale market price reductions of \$450 Million (2003\$), leaving a net cost to electric consumers of \$322 Million (2003\$).

However, Staff's Study understated the likely costs of the RPS program, overstated the potential benefits and thereby significantly understated the "net" costs. The understatement of the costs results from: 1) Staff's method of "levelizing" costs, and the lack of computation of the post-2013 costs

²⁶ The RETEC Study (Clean Air, Fuel Diversity and High-Quality Jobs, Synapse Energy Economics, Inc., July 28, 2003) states at page 1 that the decision to implement an RPS has already been made by Governor Pataki, such that the usual SEQRA requirements do not apply: "We have not quantified these benefits here for three reasons: first because the DPS modeling analysis has not yet been finalized; second, because we have not had time or sufficient resources to quantify these benefits accurately; and third, because their exact quantification is not necessary for the RPS implementation process currently under way in New York. This point is critical. In making his decision to implement an RPS in New York, Governor Pataki clearly made a determination that the RPS policy would benefit New York...."

resulting from that levelization method; 2) Staff's eligibility criteria, specifically the inclusion of out of state wind and hydro resources; and 3) Staff's GE MAPS modeling and "spreadsheet supply curve" assumptions. Staff overstated the benefits (reductions in wholesale prices and emissions) through its GE MAPS modeling.

As the Staff Response to Joint Utilities' Question 26 shows, the RPS premiums are a very significant source of revenue. In the 2013 "increment" of new renewables, virtually all of the facilities will be economically dependent upon the RPS premiums.²⁷ About half will receive almost equivalent revenues from the RPS premium and from the markets! Although Staff's summation of RPS costs avoided the post-2013 period, the significance of the 2013 RPS revenues to developers shows that these costs cannot be ignored.

²⁷ Actually, the dependence of the facilities on non-market sources of funds is greater, because Staff's percentages "...do not include other revenue sources such as tax incentives or development grants."

In addition, elements of Staff's expansion plan are questionable and apparently non-economic. For example, Staff assumed that Roseton (two, 600MW units with gas and oil-firing capability located near NYC on the preferred side of the Total East-Central East constraint) would add expensive environmental control equipment in 2005-06, but then retire by the end of 2007, implicitly assuming the recovery of hundreds of millions of dollars in compliance investment over a two to three year period.

The results of the Staff Analysis depend greatly on Staff's "supply curve." As stated by Staff in its response to Joint Utilities Question 22a):

"The available amounts of each resource were phased in on an annual basis to represent a combination of factors such as evolving market barriers, delivery and manufacturing infrastructure limitations, development lead time, permitting constraints, market acceptance and technology availability."

Staff's description points out the subjective nature of the three explicit supply curves developed by Staff. Each of the curves is controlled by the non-transparent "phasing in" of many subjective features. An illustration of the concern over the assumptions in the Staff supply curves arises out of Staff criticism of the Utilities' treatment of biomass

co-firing, in which Staff essentially contended that the Utilities artificially limited the potential for coal/biomass co-firing.²⁸ Staff's biomass parameters included a biomass "fuel" cost of \$0.50/MM BTU for all biomass fuels.²⁹ In contrast, the analysis done for the Massachusetts RPS in December 2002 utilized a base case cost for biomass fuel of \$2/MM BTU and a sensitivity range between \$1.50 and \$3/MM BTU.³⁰ The under-pricing of the operating costs of coal/biomass co-firing in the present Staff Analysis supply curve creates the appearance of availability of a significant quantity of low cost resources that the Massachusetts Study indicates will actually cost significantly more to operate; in turn affecting the supply curve itself and the costs calculated in Staff's Analysis.³¹

²⁸ This criticism was first advanced at the August 13, 2003 meeting and it is repeated in Appendix A to Staff's August 28, 2003 letter to the Joint Utilities: "Biomass co-firing represents a significant source of low-cost incremental renewable energy supply in the DPS study. While the Joint Utilities Study treats it as eligible, the quantity is artificially limited to a negligible total by assuming that only 5% of New York's plants could co-fire, and limits the co-firing percentage to only 5% of fuel input...."

²⁹ Staff Analysis, Appendix A, at 26.

³⁰ Massachusetts RPS: 2002 Cost Analysis Update-Sensitivity Analysis, December 16, 2002 at 7, 18; available at <http://www.state.ma.us/doer/programs/renew/rps-docs/CAU-SAP.pdf>.

³¹ An understatement of the costs in the three Staff supply curves will produce an understatement of the costs of an RPS to New Yorkers. A small inconsistency concerning out of state resources exists concerning the treatment of New York wind between the Massachusetts Cost Study and the present Staff Study. The Massachusetts Study claimed the benefit of 432 GWH of low cost NY wind in 2012. In the present study, Staff does not remove the same resources from the more than 5000GWH of NY wind in 2013, but a cross section of all resources, thereby creating a double counting of low cost New York wind resources between NY and Massachusetts.

Earlier in the proceeding, some speakers alleged that the direct costs of an RPS could be offset to some large degree by drops in the unit prices of natural gas driven by demand elasticity. Those assertions have not been corroborated in the cost studies, or any other way. There has been no study of demand elasticity to provide a basis for concluding that the decremental changes in gas usage shown by the cost studies are sufficient to produce any measurable elastic response. The Utility Analysis found reductions of 4 to 5% in the use of natural gas for power production purposes, as new renewable projects displaced conventional generation, but reductions of this magnitude are insufficient to produce a significant price elasticity response.³²

B. Benefits

The displacement of fossil-fired electric generation by renewables can produce two different kinds of benefits: reductions in energy costs,³³ because the facility receives a significant portion of its required revenues from an

³² The Joint Utilities concluded that reductions of this magnitude in NY gas consumption would not cause price-elastic reductions in the price of natural gas consumed by electric generation in New York State.

³³ The reductions in energy costs may result from 1) direct reductions in spot wholesale power prices on the NYISO grid as a result of increased "bidding at zero" by the renewable facilities that receive the state-sponsored subsidies, and 2) reductions in the price of natural gas in NYS, as the new renewables displace gas-fired generation. These have been discussed in preceding parts of these Comments.

extra-market source,³⁴ and reductions in emissions, because operation of the subsidized renewable displaces consumption of fossil fuels by "conventional" generation. A third kind of benefit, creation of jobs, may also occur as a result of the construction and operation of electric generating facilities.

1. Estimated Emissions Reductions

The reductions in emissions were also forecast as modest by the Utility Cost Analysis and greater in the Staff Study. The relatively minor changes in emission rates shown at 31 and accompanying "Emissions" spreadsheet of the Joint utility Analysis, on a total NY basis, were corroborated by the Response to Staff Question 11 (on a broader, NY, PJM, NPCC and Ontario regional basis).

2. Job Creation

There have been no quantitative estimates of the number of jobs that the proposal might create.³⁵ While Central Hudson concurs with the theory that construction of new renewable generating facilities should lead to job creation, under the Staff Study's assumptions, almost half of any jobs would be created outside of New York under the

³⁴ Although energy costs may decrease, overall costs are expected to increase.

³⁵ The RETEC Paper (at 1) acknowledges that it lacks quantitative estimates.

RPS design employed by Staff, while all of the costs would be borne in New York.

Balancing of the Proposal With Existing
Commission and State Policy

According to the SEP2002 (at 1-33), "all energy-related actions and decisions by State agencies, Boards, Commissions, and Authorities are required by statute to be reasonably consistent with the forecasts, policies, and long-range planning objectives and strategies contained in the Energy Plan."³⁶ The Energy Planning Board recognized that "some of the recommendations conflict with one another. In these cases, a balance needs to be established that moves toward the broad policy objectives over time without significantly impeding progress toward the collective objectives."

A similar requirement for balancing among conflicting objectives is applicable to the Commission's deliberations in this proceeding. In addition, the Commission's decision must satisfy the substantive balancing required by SEQRA. By limiting the scope of consideration to various means of how to implement the 25% target, the proceeding has precluded recognition of the competing objectives, or any

³⁶ The SEP2002 (see 1-34) "adopts a renewable energy goal of increasing the share of renewable energy use by 50%, by 2020, as a percentage of total primary energy use. This would increase renewable energy as a percentage of primary energy use from 10% currently, to 15% by 2020."

systematic consideration of alternatives, and made it unlikely that the Commission will have adequate, reliable information to inform an appropriate balance among the competing policy objectives.

The existing policy of the State is that generation should be provided through the operation of the competitive energy markets. As stated in the SEP2002 (at 2-1):

The pursuit of effective competition, wherever practicable, in the provision of natural gas and electric services is the policy of the State of New York. Such competition has the potential to reduce energy costs over the long term, increase customer choice and satisfaction, provide economic development advantages, enhance system reliability, promote technological changes and improvements, and improve environmental quality.

The record does not contain any showing that the proposal to require consumers to fund the development of significant amounts of above-market resources to achieve a 25% standard has been subjected to the required balancing with existing policy objectives of job growth, development and enhancement of the competitive markets and minimization of costs to consumers.

SEQRA

By limiting the proceeding essentially to assessing how to implement a 25% renewables portfolio standard, the

Commission has undertaken additional action in furtherance of the 25% renewable standard to which it had already committed. The adoption of the 25% standard was accompanied by the declaration that the standard was in the public interest; a decision that was an "action" under SEQRA³⁷ that the Commission took without first complying with SEQRA's procedural and substantive requirements.³⁸ Subsequently, the Commission acknowledged the significance of a 25% renewables standard implicitly by determining that the corollary action³⁹ of implementing that standard may have a significant effect on the environment.⁴⁰

The Commission did not perform a SEQRA review of its plan prior to endorsing the 25% renewables portfolio standard. Agency action that is part of an integrated

³⁷ "Actions" include agency policy making [ECL § 8-105. 4.(ii)] including "agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions [6 NYCRR 617.2 § (b)(2)].

³⁸ Central Hudson raised concerns about SEQRA in its March, 2003 Comments. ECL 8-109. 2.; 6 NYCRR § 617.1 (c). To the extent the Commission adopted the goal of attaining a 25% renewables portfolio standard in response to a directive by the Governor, that impetus would not waive compliance with SEQRA by the Commission. By announcing its goal of attaining a 25% renewable standard, achieving that goal became an action by the Commission and the Commission must fully comply with SEQRA. While actions by the Governor are not subject to SEQRA review [6 NYCRR § 617.5 (c)(37)], those of the Commission, even when executing an act of the Governor, are. See, West Village Committee, Inc. v. Zagata, 242 A.D.2d (3rd Dep't 1998)(Noting that virtually any conceivable act by the Governor would have to be executed by a State agency and thus fall within SEQRA).

³⁹ See, Kirk-Astor Drive Neighborhood Assoc. v. Pittsford, 106 A.D.2d 868, 869 (4th Dep't 1984).

⁴⁰ Case 03-E-0188, Notice of Determination of Significance (issued March 18, 2003).

plan, and the plan itself, are "null and void"⁴¹ unless the entire plan is accorded proper SEQRA review from the outset. After-the-fact compliance with SEQRA is an "empty exercise."⁴² Reaching a conclusion as to the outcome of a proceeding at the outset without analysis and, in this case, without an EIS, violates both the "hard look" and the "reasoned elaboration" rubrics applicable to the Commission's decision-making.

SEQRA places substantive (as well as procedural) obligations on agencies, including the obligation to "...choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects."⁴³

The "proposed action" in the Commission's Notice of Determination of Significance (how to achieve a 25% renewables portfolio standard) necessarily excludes from consideration whether to impose a renewables portfolio standard, whether to impose some other means of attaining a 25% "penetration" of renewables, and whether to select some other renewables penetration level. As a result of the Commission having constrained this proceeding to ways of

⁴¹ Tri-County Taxpayers Assoc. v. Queensbury, 55 N.Y.2d 41, 43 (1982); Scenic Hudson v. Fishkill, 258 A.D.2d 654, 657-58 (2nd Dep't 1999).

⁴² Vitiello v. Yonkers, 255 A.D.2d 506, 507 (2nd Dep't 1998).

⁴³ ECL § 8-0109. 1.

implementing the 25% renewables portfolio standard, the studies of the effects of establishing a renewables portfolio standard that have been prepared to guide the Commission target only that result.⁴⁴

SEQRA's requirement that an EIS discuss "alternatives to the proposed action"⁴⁵ is within the "hard look" standard applied by the courts. A draft EIS and the final EIS must contain "a description and evaluation of reasonable alternatives to the action."⁴⁶ As the Court of Appeals has explained:

The purpose of requiring inclusion of reasonable alternatives to a proposed project is to aid the public and governmental bodies in assessing the relative costs and benefits of the proposal. To be meaningful, such an assessment must be based on an awareness of all reasonable options other than the proposed action.

Webster Assoc. v. Town of Webster, 59 N.Y.2d 220, 228 (1983).

Conclusion

The proceeding has been conducted thus far on the premise that the 25% renewables target is a paramount objective of State Policy that will not be balanced against

⁴⁴ Two such studies were filed July 28, 2003; one prepared by Staff and certain other parties and one prepared by ICF Consulting on behalf of certain utilities.

⁴⁵ ECL § 8-109. 2.(d).

⁴⁶ 6 NYCRR § 617.9 (b)(5)(v).

competing objectives. The Commission, however, has the obligation to adopt its RPS policy after full consideration of all relevant alternatives (including the "no action" alternative) and after balancing any RPS objective with the competing objectives of reliability, workably competitive electricity markets, low costs to energy consumers and the enhanced economic development opportunities that competitive electricity markets were established to produce.

State-sponsored financial support to private developers may be justifiable if the benefits to the public outweigh the costs to the public. Based on the proceedings thus far, the costs significantly exceed the benefits and the 25% standard has not been justified on the record of this proceeding as being in the best long-term interests of the State's consumers and businesses.

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