



September 22, 2003

The Honorable Eleanor Stein
Administrative Law Judge
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12233-1350

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

Dear Judge Stein:

The Integrated Waste Services Association is pleased to submit these comments in the above mentioned proceeding. We have confined our comments to waste-to-energy's eligibility as a renewable source of power for New York state and factual reasons why the technology's inclusion in a RPS meets the Working Target and Objectives as outlined in the Ruling Establishing Comment Procedures issued June 19, 2003, as well as the RETEC analysis entitled "Reviewing Selected Potential Benefits of an RPS in New York State." We also provide comments relating to specific provisions and assumptions of the cost study prepared by the Public Service Commission (PSC).

The Working Target calls for the use of 25% renewable electricity by the year 2013 in New York. The Working Objectives of the RPS are: 1) improve New York's environment by reducing air pollution, including greenhouse gases and other adverse environmental impacts; 2) diversify New York's electricity generation mix and improve energy security and reliability; 3) economic development through the attraction of renewable energy generators, manufacturers and installers to the State; 4) develop a RPS that is economically efficient and equitable; 5) develop a competitively neutral RPS; and 6) establish a RPS that is administratively transparent, efficient and verifiable.

Waste-to-Energy's Contribution to Meeting the Target and Objective 2:
Meeting the 25% renewable electricity target by 2013;
Diversifying New York State's Electricity Generation Mix and
Improving Energy Security and Reliability

New York Governor George Pataki's stated goal of providing one-quarter of the Empire State's electricity from renewable energy is ambitious, but achievable if the renewable portfolio standard takes full advantage of existing renewable energy and includes diverse and economically competitive technologies capable of growth. Waste-to-energy currently provides about 300 megawatts of power generated by the State's ten waste-to-energy facilities, or enough power to meet the energy needs of 300,000 homes. It is reliable power. Unlike wind and solar sources that only provide intermittent power, waste-to-energy plants operate 365-days-a-year, 24-hours a day. Facilities average greater than 90% availability, that is, they operate more than 90% of the time and only shutdown for maintenance. When waste-to-energy plants are operating, they typically operate at full load. Equally important, waste-to-energy plants generally operate in or near an urban area, easing transmission to the customer. For example, 126 megawatts of waste-to-energy power is generated on Long Island, one area of the State with significant challenges in meeting capacity requirements. Long Island benefits from its waste-to-energy facilities that generate steady and reliable power from a constant source of municipal solid waste. The facilities not only contribute to the reliable base load capacity, they also diversify the supplier base in an area that is lacking in such diversity. Reliability and access to transmission in urban areas is a significant benefit made all the more important following this summer's blackout.

Waste-to-energy facilities compete favorably with other renewable energy. It is important to remember that waste-to-energy facilities provide a dual benefit by generating renewable energy and cleanly disposing of trash. Disposal fees can reduce the power price, allowing facilities to compete in the renewable marketplace. Facility revenues come from fees paid to dispose of the garbage and the price paid for electricity generated by waste-to-energy plants. The price paid for disposal of trash helps to offset the cost of electricity, making waste-to-energy power competitive on the open renewable market.

Critics of the technology claim that waste-to-energy power may "take away" a market share from wind, solar or other technologies. The criticism is a short-sighted and is, at its core, based on greed. Critics are correct that a lesser number of technologies allowed into an exclusive "renewables" group will increase the worth, and the price of those generators' electricity. Demand and the price paid for energy grows even greater for those fewer suppliers who enjoy charging higher and higher prices. It is industry's job to create better markets for their products, and excluding waste-to-energy from a renewable portfolio standard certainly would produce a more lucrative market for others. But exclusion would not benefit the consumer or public policy, particularly a public policy that includes the aggressive goal of generating one-quarter of its electricity from renewables while also increasing competition among electric suppliers, generally, and renewable energy suppliers in particular. Inclusion and diversity support consumer choice, lower prices, and the greater public good.

Waste-to-Energy's Contribution to Meeting Objection 1:
Improving New York's Environment

In New York, waste-to-energy's environmental benefits remain the most contentious issue that surrounds inclusion of waste-to-energy as a renewable resource. Emotional rhetoric abounds when opponents attack the "incinerators." The discussion quickly becomes polarized. The rhetoric of confrontation pits one side against the other, and does not allow for consideration or compromise.

An unemotional viewing of the data and facts attendant to waste-to-energy speaks for itself. IWSA has provided below a listing of facts and subsequent backup documents for consideration by Judge Stein of the technology's environmental benefits.

Waste-to-energy is unique among power production facilities in that it provides for municipal solid waste disposal in addition to power production. Trash is reduced in volume by about 90%, with a corresponding decrease in the amount of land needed for landfilling. This is an obvious environmental benefit that is often overlooked when analyzing the technology solely on its merits as a source of electricity. The elimination of land disposal of municipal solid waste eliminates the production of methane, a potent greenhouse gas, and eliminates the creation of leachate from land disposal. The significantly smaller ash landfills are simpler to operate and maintain.

In 2003, the U.S. Environmental Protection Agency completed a comprehensive review of compliance test reports for every waste-to-energy facility in the country and concluded that the facilities are a "clean, reliable, renewable source of energy" that "produce 2800 megawatts of electricity with less environmental impact than almost any other source of electricity." (USEPA letter from Assistant Administrators Marianne Horinko (currently U.S. EPA Administrator) and Jeffery Holmstead, Office of Air and Radiation, to Maria Zannes, 2/14/03, previously submitted.)

The country's waste-to-energy facilities exceed the requirements of Clean Air Act Section 129 standards that are based on the performance of the most advanced emissions control equipment commercially available including scrubbers to control acid gas, fabric filters to control particulate, selective non-catalytic reduction (SNCR) to control nitrogen oxides, and carbon injection to control mercury and organic emissions. (Horinko and Holmstead letter, Ibid; see also 40 CFR part 60, subpart Cb; 40 CFR part 60, subpart BBBB.)

Waste-to-energy technology nationwide reduces eleven million metric tons of carbon equivalents, or 33 million metric tons stated as CO₂, that otherwise would be released into the atmosphere on an annual basis. (The Impact of Municipal Solid Waste Management on Greenhouse Gas Emissions in the United States, K.A. Weitz, Research Triangle Park; S.T. Thorneloe, USEPA Air Pollution and Control Division; M. Zannes, IWSA, 2001, previously submitted; see also U.S. Department of Energy's Energy Information Agency Voluntary Reporting of Greenhouse Gases program, 2002, for CO₂ estimate, (Attachment 1)). In addition, the greenhouse gas benefits of waste-to-energy are acknowledged in the recent

study commissioned by NYSERDA entitled “Energy Efficiency and Renewable Energy Resource Development Potential in New York State”, published in August of 2003.

Waste-to-energy as an alternative to land disposal and power generation from coal prevents the release of nearly 24,000 tons of nitrogen oxides and 2.6 million tons of volatile organic compounds. (U.S. DOE Energy Information Agency, Voluntary Reporting of Greenhouse Gases report, 2002, Ibid.)

Waste-to-energy emissions of mercury now represent less than three percent of the national inventory of man-made mercury emissions. (Fact Sheet Final Air Regulation for Municipal Waste Combustors, U.S. Environmental Protection Agency, 10/31/95, (Attachment 2)).

Dioxin emissions from waste-to-energy facilities represent less than one percent of the nation’s inventory of dioxin sources. (Ibid.) Alternative waste management practices, such as backyard barrel burning of trash, result in orders of magnitude higher releases of dioxin. (Backyard Trash Burning: The Wrong Answer, 2002, (Attachment 3)).

Waste-to-energy emissions are lower than other accepted renewable sources in most cases when compared on the basis of megawatt-hour generated, particularly comparisons of volatile organic compounds such as benzene, toluene, and other hazardous air pollutants. Emissions of dioxin from landfill gas and wood waste biomass facilities, for example, are 1000 times higher than dioxin emissions from waste-to-energy. The comparison used U.S. EPA AP-42 estimates of average emissions for landfill gas and wood biomass plants and the September 2000 draft Dioxin Reassessment that contained data on dioxin emissions from generating energy from landfill gas. Waste-to-energy emissions estimates represent the average emissions as determined by the U.S. EPA upon consideration of actual compliance test data for all U.S. facilities. The comparative table is attached to this submission (Attachment 4).

The comparison may be particularly pertinent to the RETEC document submitted on July 28, 2003, entitled “Reviewing Selected Potential Benefits of an RPS in New York State.” The RETEC analysis appears to assume that renewable technologies that would be eligible for the RPS would have no emissions of particulate, NOx, SOx, greenhouse gases or air toxics, or that the technologies would emit these pollutants in substantially lower levels than the fossil fuel plants that would be replaced by the renewable sources. Such an assumption would more quickly exclude biomass and landfill gas generators that do emit such pollutants at levels higher than that emitted by waste-to-energy on a KWh basis.

Waste-to-energy emissions have dramatically decreased since 1990. The attached memorandum from U.S. EPA entitled “Emissions from Large MWC Units at MACT Compliance” graphically shows the emissions reductions. (See Memorandum from W. Stevenson, EPA Combustion Group, 6/20/02, (Attachment 5))

Communities with waste-to-energy facilities have a recycling rate of 33% as compared with the national average of 28%. In New York, communities with waste-to-energy plants recycle at a rate of 38%. Onondaga County hosts a waste-to-energy facility and holds the highest recycling rate in New York with more than 65% of the waste stream being recycled. (A letter is attached to this submission in support of waste-to-energy as a renewable from Onondaga County Resource Recovery Executive Director A.T. Rhoads.) Nationwide, waste-to-energy facilities annually remove for recycling more than 1,600,000 tons of material, including nearly 800,000 tons of ferrous metals. Further information about waste-to-energy's compatibility with recycling is attached with a copy of "Recycling and Waste-to-Energy: The Ongoing Compatibility Success Story" by Jonathan V.L. Kiser, MSW Management Magazine, May/June, 2003 (Attachment 6).

Waste-to-Energy's Contribution to Meeting Objection 3:
Economic Development

Waste-to-energy provides several economic development benefits for the citizens of New York. Waste-to-energy contributes a number of the economic benefits described in the report prepared for this proceeding for RETEC entitled "Cleaner Air, Fuel Diversity and High-Quality Jobs", dated July 28, 2003. For example, waste-to-energy contributes to fuel diversity and the resulting decrease in natural gas prices, as well as significant employment benefits. Waste-to-energy provides more reliable, base load power than other renewable sources, and its inclusion in the RPS will result in mitigating price volatility and the risk of higher natural gas prices in a market with fewer energy sources. As previously explained, waste-to-energy power competes favorably with other renewable sources in the marketplace.

Waste-to-energy has a substantial positive impact on the creation of long-term, high-quality local jobs. The attached letter from the New York State AFL-CIO, dated May 21, 2003, indicates that local labor leaders recognize the benefits of waste-to-energy on New York employment. The State's ten plants provide about 400 full-time jobs and contribute about \$100 million to the State's economy. The RETEC benefits analysis, on page 26, estimates that a 50-MW wind power project would employ about 20 full-time operational employees. A waste-to-energy facility of similar electrical output employs 50 to 75 workers full-time. In addition, these facilities rely heavily upon local contractors for maintenance and repair services.

Waste-to-Energy's Contribution to Meeting Objectives 4,5, and 6:
Developing a RPS that is efficient, equitable, competitive,
Administratively transparent, and viable.

The environmental benefits of waste-to-energy plainly speak to its inclusion in the RPS. Economic consideration equally supports the technology's inclusion. New York will benefit from a diverse energy portfolio that takes full advantage of independent power producers. The greater number of players within the marketplace, the greater chances for

success for a robust, cost-competitive and thriving marketplace. Competition is enlivened by more competitors who push each other to supply increasingly better products at lower prices.

Equality is key. Waste-to-energy has earned its renewable status over the past twenty years. The U.S. Department of Energy recognizes waste-to-energy as a renewable energy source and includes it in their tracking of progress towards achieving the Federal Government's renewable energy goal, established by Executive Order 13123. The Federal Power Act Amendments of 1978 defines waste-to-energy as renewable; the Public Utility Regulatory Policy Act further includes waste and biomass as a renewable resource; Federal Energy Regulatory Commission Regulations define biomass as energy source which is 50 percent or more biomass; and the Biomass Research and Development Act of 2000 defines municipal wastes as biomass and therefore renewable. An IWSA fact sheet listing these sources is attached to this submission. (Attachment 7) The stellar accomplishments in meeting New Clean Air Act standards provides even greater reason to keep the technology within New York's RPS. New York Public Service Law Section 66-c declares that it is the State's policy to encourage the development of alternative energy production facilities. Public Service Law section 2 (2-b) defines alternative energy production facilities to include "waste management resource recovery," another name for waste-to-energy. There is no reason to reverse existing federal and state law.

Comments on the PSC Document "New York Renewable Portfolio Standard Cost Study Report," dated July 28, 2003

The PSC staff prepared a cost study for a RPS that assumed that the incremental target of 25% of projected statewide renewable electricity usage in 2013 would be set by first subtracting an existing baseline of nearly 29 million MWh of renewable power now operating in New York. The PSC cost study assumes that there would be no attribution to the specific sources that make up the baseline, and that future adjustments to targets would be made by adding new eligible resources only, without an impact to the baseline. PSC staff has made the fundamental assumption that any final RPS will only include new facilities, unless individual existing facilities somehow demonstrated a "need" to be included through an as-yet-undefined process. IWSA objects to this assumption. It is based on the concept of an unchanging baseline, and it ignores those very renewable technologies that the State has relied upon for years to be a leader in renewable energy generation.

The proposal of a fixed, unchanging baseline is flawed. The Commerce Clause of the Constitution allows generators to sell their power nationwide, and if existing renewables are not provided benefits under the RPS in New York, the power will likely be sold outside New York where benefits do exist. If existing renewables are ignored in this fashion, the baseline will be eroded and the State's renewable goal will be out of reach. Existing renewables such as waste-to-energy should be encouraged to continue generating reliable power for New York.

By ignoring existing facilities, the PSC's approach jeopardizes the cost balance of facilities such as waste-to-energy. As discussed above, facility revenues come from fees paid to dispose of the garbage and the price paid for electricity generated by waste-to-energy

plants. The price paid for disposal of trash helps to offset the cost of electricity, making waste-to-energy power competitive on the open renewable market. A reduction in power revenues that is likely to be experienced by waste-to-energy plants as existing PURPA contracts expire would result in increase solid waste tip fees, which may jeopardize the economic viability of some facilities. At a minimum, such a situation would “punish” regions of the state that have chosen to commit to the superior environmental benefits of waste-to-energy.

Overall, IWSA believes that the PSC’s basic assumption that existing renewable energy facilities are not eligible for participation in a RPS is unfair and inconsistent with the ultimate goal. These facilities have contributed to the State’s achievement of about 18% renewable generation in the State for years. It is vital to maintain this base in order to achieve the ultimate goal of 25%.

In addition to the PSC’s apparent decision to exclude existing renewable generators, the cost study appears to betray a bias against making any waste-to-energy, new or existing, eligible for the RPS. IWSA believes that this bias is incorrect. Specifically, the basic cost analysis conducted in the report excludes waste-to-energy, and then discusses the technology in a separate sensitivity analysis that uses a set of assumptions that essentially renders such facilities irrelevant for purposes of their analysis. The PSC cost study’s sensitivity analysis assumes that new waste-to-energy would require a price of six cents per kWh total for its power, which makes the technology the highest-priced renewable generation in the analysis. The effect would be to essentially price waste-to-energy out of the market and according to the PSC, there would be no effect on overall cost. IWSA believes that this assumption is not correct, and that it overestimates the cost of the waste-to-energy. Even if one were to assume that waste-to-energy might be higher priced than other renewables, it is unreasonable to exclude waste-to-energy, or any other technology, from the RPS on this basis. If the power were priced to high for the marketplace, it simply would not be purchased.

A more telling example of the inherent bias against including waste-to-energy is Appendix A of the report, on page 8, where the cost study describes how eligibility technologies were selected for the study. The appendix references a new study commissioned by NYSERDA that became publicly available in September of 2003 entitled “Energy Efficiency and Renewable Energy Resource Development Potential in New York State” (the NYSERDA study). The NYSERDA study analyzed several renewable technologies in terms of their ability to cost-effectively meet the greenhouse gas and energy production goals of New York for the next 20 years. Notably, the NYSERDA study prominently includes waste-to-energy as renewable technology, and it also identifies waste-to-energy as one part of an overall low-cost solution. However, the PSC cost study notes that for the purposes of its study the PSC “...chose to ignore some of these technologies as either not RPS-eligible (for example, storage hydro or new hydro greater than 30 MW and municipal solid waste)...”. Regardless of the inclusion of a sensitivity analysis in the cost study, the wording used by the PSC in its description of how eligible technologies were chosen seems to demonstrate that a decision has already been made without explanation.

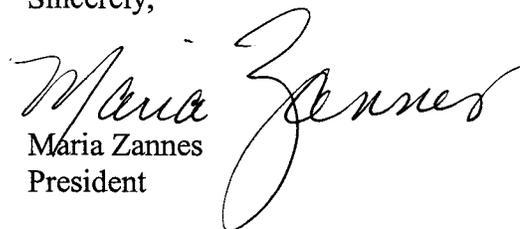
Overall, existing waste-to-energy facilities have always been considered to be renewable, and have been developed and operated under that regulatory framework. To unilaterally decide after years of reliable service as both energy generating facilities and solid waste disposal facilities that waste-to-energy is no longer renewable is fundamentally unfair and inappropriate.

A variety of documents are provided to support the position taken herein. We also wish to submit for the record a number of letters written in support of inclusion of waste-to-energy technology in the New York State RPS. In addition to the letter written by the New York State AFL-CIO, mentioned above, we have attached correspondence from Daniel B. Walsh, President and CEO of The Business Council of New York State, Inc.; New York Senator Byron Brown; New York Senator Owen Johnson; New York Senator George D. Maziarz; New York Assemblyman Ronald C. Tocci; New York Assemblywoman Francine DelMonte; New York Assemblyman William Magnarelli; New York Assemblyman Jeff Brown; Dr. Nickolas J. Themelis, Director, Earth Engineering Center, Columbia University in New York; Onondaga County Resource Recovery Executive Director A.T. Rhoads; City of Lockport Mayor Thomas C. Sullivan; City of Lancaster Supervisor Robert H. Giza; Villiage of Williamsville Mayor Basil J. Piazza; Hudson Valley Gateway Chamber of Commerce; City of Peekskill Mayor John G. Testa; and the Town of Cheektowaga, New York. (Attachment 8)

We also wish to update information entered into the record by IWSA on May 30, 2003, in response to a document submitted by NRDC and other entities opposed to waste-to-energy. Since May 30, Minnesota has passed into law a bill that includes waste-to-energy as a renewable power source in the state's RPS provided full benefits including tradable credits. The May 30 submission also listed 13 waste-to-energy plants awarded the coveted Occupational Health and Safety Administration's VPP Star Status. We are pleased to announce OSHA's selection of another Star Site at South Broward, Florida, bringing the industry's total to fourteen award-winning OSHA safety worksites. OSHA also has nominated Covanta's Haverhill facility in Massachusetts and Wheelabrator's McKay Bay facility in Tampa, Florida, and North Andover facility in Massachusetts for Star Status. A number of other facilities currently are working towards their OSHA Star.

IWSA appreciates this opportunity to comment on the proceedings, and looks forward to development of a RPS that takes full advantage of the state's renewable resources.

Sincerely,


Maria Zannes
President