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September 26, 2003

Hon. Jaclyn A. Brillong, Acting Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

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

Dear Acting Secretary Brillong:

#### Introduction

The New York Power Authority (“NYPA”) is a corporate municipal instrumentality and political subdivision of the State of New York, and it is not subject to the jurisdiction of the Public Service Commission (“Commission”) in this matter. See Public Authorities Law, § 1014. However, NYPA, as the major supplier of renewable energy in the State and a major promoter of new renewable energy projects, is deeply interested in the subject of renewable energy, and is pleased to be voluntarily participating in this proceeding (see Order Instituting Proceeding, issued February 19, 2003, p.3). It hereby respectfully submits its initial comments pursuant to Administrative Law Judge Eleanor Stein’s procedural rulings and Outline for Comments, issued June 10, 2003.

## I. Summary of Comment

NYPA supports the Commission's efforts to develop a renewable portfolio standard ("RPS") that will assure that 25% of the electricity retailed in the State in 2013 be produced from renewable energy resources. As discussed in the Order Instituting Proceeding, approximately 17% of the electricity currently retailed in New York is produced by such sources.

As noted, NYPA is the State's leader in providing and fostering renewable energy resources, with its two large (Niagara and St. Lawrence – FDR) and five small hydroelectric projects alone accounting for approximately 55% of the existing, "baseline" renewable energy retailed in New York.<sup>1</sup> In 2013, assuming the Statewide 25% RPS goal is achieved, NYPA's existing hydroelectric projects would account for more than one-third of that Statewide renewables total.<sup>2</sup> To maintain those hydroelectric projects in service, NYPA will expend approximately \$1.0 billion on life extension, modernization and relicensing of its Niagara and St. Lawrence – FDR projects to assure that New York State can continue to rely on these facilities as sources of emission-free, renewable energy. In addition to its stewardship of hydropower resources, NYPA, as noted, has a long record of investing in a range of other renewable energy resources<sup>3</sup> and is a nationally recognized leader in energy efficiency services, having undertaken over 1200

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<sup>1</sup> NYPA hydropower retailed in the State during the "baseline" period (12 months ending March 2002) was approximately 16 million megawatthours, and total renewables retailed in New York during this period was approximately 28.9 million megawatthours. See, e.g., Department of Public Service Staff Cost Study Report, dated July 28, 2003 ("DPS Staff Cost Study"), p. 9.

<sup>2</sup> The Statewide 25% RPS goal in 2013 is approximately 45.7 million megawatthours of renewable energy. See, e.g., DPS Staff Cost Study, supra, p. 9.

<sup>3</sup> These renewable resources include NYPA's recently announced intent to purchase up to 50 MW of wind power from two projects to be built in upstate New York; solar power photovoltaic applications (690 kw existing and in progress) at 20 sites across the State; the installation of numerous fuel cells, including several powered by anaerobic digester gas at sewage treatment plants (4,000 kw existing and in progress); microturbines (300 kw existing and in progress) using waste gas as the fuel source; and landfill gas power projects (12,200 kw in progress) which capture methane emissions to use as fuel.

energy efficiency projects at 2500 public buildings across the State. These projects (which have been conducted independently of the SBC programs administered by the Commission and the New York State Energy Research and Development Authority) have resulted in an aggregate demand reduction of over 175 MW and reduced emissions of greenhouse gases of approximately 580,000 tons annually.

As is evident, NYPA has played and will continue to play a major role in ensuring that renewable energy resources are available in New York State. Nevertheless, its preeminent statutory role is to provide low cost power to New York State, including business and industry, municipal and rural electric cooperatives, and governmental entities. Indeed, NYPA's mission is to reduce the cost of electricity for customers, in order to assist economic development and reduce the cost of government. NYPA's Trustees have consistently heeded this mandate and remain vigorously committed to maintaining low cost rates to our customers. NYPA's substantial investments in renewable energy and energy efficiency have been implemented in an economically viable manner so as to not adversely affect customer rates. Whether the Commission's RPS program would increase NYPA customer rates cannot be determined until the structure, substance, and actual costs of the program are established. Thus, NYPA cannot yet determine the extent to which it may voluntarily participate in aspects of that program. Considerations that will bear on NYPA's determination to participate include: (1) the extent to which participation will increase rates to its industrial, business and governmental customers; (2) whether its customers are prepared to accept rate increases to cover "above market" RPS costs; (3) the fact that NYPA functions in competitive wholesale markets and does not have a franchised retail customer base from which to

recover above market costs<sup>4</sup>; (4) the fact that NYPA has statutory and contractual limitations on which costs can be passed along to customers; and (5) the significant level of NYPA's existing and ongoing contribution to achievement of the Statewide 25% RPS goal which is financed by customers through their rates.

#### IV. Eligibility

##### C. Target Resource Eligibility

###### 1. Hydropower

NYPA believes that all hydroelectric resources, including all existing hydroelectric projects, should be deemed eligible resources for all aspects of the Commission's RPS program, including qualification for renewable energy credits. Simply stated, hydropower is the quintessential "renewable" resource. It also is subject to the most comprehensive environmental licensing procedures of all the renewable energy sources. Further, hydropower clearly fulfills the first two "Working Objectives" of this proceeding in light of its emissions-free nature (including no greenhouse gases) and its substantial contribution to New York's energy diversity, reliability and security. See Ruling Establishing Comment Procedures, issued June 19, 2003, pp. 3-4. Indeed, NYPA's Niagara and St. Lawrence-FDR hydroelectric facilities were the only major power plants in the State to continue to generate power when the blackout occurred on August 14, 2003, serving as vital electrical building blocks as the statewide system returned to service. Finally, existing hydropower should be deemed an eligible resource

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<sup>4</sup> In this regard it should be recognized that NYPA's customers are not permanently bound to NYPA as their electricity supplier. They can choose other providers if NYPA's prices are unacceptable.

for all RPS purposes inasmuch as these resources are to be counted toward achievement of the Statewide 25% RPS goal.<sup>5</sup> See, e.g., Order Instituting Proceeding, p. 2.

### 3. – 7. (Biomass, Fuel Cells, Solar, Tidal, Wind)

NYPA supports the inclusion of these resources as eligible for the Commission’s RPS program. With specific regard to biomass, NYPA believes that landfill gas and sewage treatment gas projects (which use methane gas as fuel that would otherwise be flared off into the atmosphere) should be eligible resources, as well as the biomass portion of co-fired generating facilities.

### 8. Other Resources

NYPA believes that energy efficiency/demand side management (“DSM”) resources should be included within the RPS program as eligible resources. For example, verified energy savings resulting from a load serving entity’s implementation of energy efficiency/DSM measures could be credited against that load serving entity’s renewable energy target. Inclusion of energy efficiency/DSM resources within the RPS program is appropriate inasmuch as these resources directly advance important Working Objectives of this proceeding. See Ruling Establishing Comment Procedures, pp. 3-4.

Specifically, energy efficiency/DSM measures improve New York’s environment by reducing air emissions and greenhouse gas emissions, improve New York’s energy security and reliability, and provide economic development benefits. Id. Further, a kilowatt saved or offset by energy efficiency/DSM contributes as much to the State’s emissions inventory as a renewable kilowatt generated, and generally does so at significantly lower cost. See DPS Staff Cost Study, p. 37.

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<sup>5</sup> With specific regard to existing small hydro resources, the DPS Staff Cost Study (p. 45) estimates that approximately 22,000 megawatthours of annual production could be at financial risk in the future. These resources would benefit from inclusion in the RPS.

NYPA also recommends that an “emerging clean energy technology” category of eligible resources be included in the RPS. In addition to fuel cells powered by natural gas falling within this category, NYPA recommends that the category include integrated coal gasification combined cycle plants. This emerging technology is capable of a very high environmental performance level, with air emissions being less than 10% of existing New York State coal plants. Moreover, encouragement of this efficient, baseload generating technology will complement the predominately intermittent, low capacity factor resources to be developed under the RPS, thereby advancing New York’s vital interest in maintaining system reliability. Deployment of this emerging technology also will enhance the State’s generation diversity and security. See Working Objectives, No. 2.

We note that reliance on interruptible energy from low capacity factor renewable sources may not fully achieve the environmental benefits contemplated by an RPS program unless the development of those resources goes hand in hand with development of highly efficient, state-of-the-art baseload generation to displace the older generating facilities operating in the market today. In this regard, the maintenance of older generating facilities in “stand by” mode to supplement the intermittent generation provided by renewables may not result in the emissions reductions sought to be achieved by the RPS program.<sup>6</sup>

#### 9. Customer-Sited Resources

NYPA’s position is that “behind the meter” fuel cells (such as those powered by anaerobic digester gas produced at wastewater treatment plants) and other

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<sup>6</sup> For example, the DPS Staff Cost Study (p. 16) predicts that implementation of the RPS program will result in ten times more gas-fired generation being displaced than either coal or oil-fired generation.

“behind the meter” renewable resources (such as solar photovoltaic) should be eligible for RPS program participation, as should their grid-connected counterparts. While these power sources are typically quite small (for example, a number of the fuel cells running on anaerobic digester gas installed by NYPA are 200 kw), they clearly accomplish the Working Objectives of reducing air emissions, increasing generation diversity, and providing economic development opportunities. Accordingly, the Commission should facilitate these important resources’ participation in the RPS program and make it administratively feasible for these small projects to do so.

#### D. Tiers

In the interests of RPS program simplicity and transparency, and to facilitate a market-based approach to renewable energy resources to the extent possible, NYPA recommends that there be no tiering of eligible resources. However, in the event the Commission determines that existing hydropower should not be eligible for full renewable energy credits (see Section IV.C.1. above), at the very least the Commission should establish a “maintenance tier” for this resource category.<sup>7</sup> This action would recognize, to some degree, both the significant monetary costs involved with maintaining the availability of existing hydropower facilities and the important role these resources will play in reaching the Statewide 25% RPS objective.

#### V. Overall RPS Structure

##### A. Preferred Structure – Central or Individual Procurement

For two principal reasons, NYPA recommends that the Commission adopt an individual procurement structure rather than a centralized procurement structure for its

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<sup>7</sup> Under a maintenance tier approach, the value of renewable energy credits for existing hydropower would be lower than other eligible resources.

RPS program. First, the individual procurement structure does not involve approvals by independent entities such as the New York Independent System Operator (“NYISO”) and FERC, as does the centralized procurement-NYISO model. Thus, as a practical matter, the individual procurement approach offers considerably more certainty an RPS program will, in fact, be implemented in New York and implemented relatively promptly.

Second, NYPA believes that the individual procurement structure (as opposed to the centralized procurement-NYSIO or State agency models) is most consistent with the ongoing development of competitive energy markets in New York and the continued implementation of market-based approaches to meeting the State’s energy goals. In this regard, an individual procurement model will avoid to a significant extent an administrative “command and control” structure and thereby maximize opportunities for flexibility, experimentation, and innovation by load serving entities and renewable energy developers in bringing to market renewable energy resources at least cost.

## B. Individual Compliance

### 1. Determination of Participating Entities

The applicable “Strawman” proposal of Department of Public Service (“DPS”) staff and the proposal of RETEC (dated June 26, 2003) both recognize that any NYPA participation in the Commission’s RPS program would be voluntary given NYPA’s nonjurisdictional status. Both parties recommend that NYPA be asked to commit to fully participate in whatever RPS program is ultimately implemented by the Commission. As discussed at pages 2-4, supra, NYPA has played and will continue to play a substantial role in ensuring that renewable energy resources are available in New York State. However, until the structure, substance and actual costs of the Commission’s

RPS program actually are established and any potential adverse affect on NYPA or its customers' rates are determined, NYPA's Trustees cannot reasonably decide whether NYPA will voluntarily participate in aspects of the program. In any event, NYPA will continue to pursue renewable energy initiatives (together with energy efficiency initiatives) independently of Commission and NYSERDA-administered programs. Id.

### 3. Determination of Individual Entity Target Levels

Both the DPS staff "Strawman" proposal and the RETEC proposal start with an assumed "baseline" of existing renewable energy retailed in the State (the "compromise" figure is approximately 28.9 million megawatthours) and then calculate the amount of new, incremental renewable energy that will be necessary (approximately 16.8 million megawatthours) in order to reach the Statewide 25% RPS goal in 2013 of approximately 45.7 million megawatthours of renewable energy. See, e.g., DPS Staff Cost Study, p. 9. Both proposals then recommend that each load serving entity's RPS "target", or responsibility for achieving the Statewide 25% RPS goal in 2013, be determined solely by reference to that entity's pro rata share, based on retail load served, of the new, incremental renewable energy amount that will be necessary to achieve the 25% goal (i.e., approximately 16.8 million megawatthours). In other words, in setting each individual load serving entity's RPS target, these proposals would not take into account an entity's existing contribution to the RPS renewables "baseline" which in 2013 will constitute almost two-thirds of the total Statewide 25% RPS goal.

As applied to NYPA, the proposed methodology is inequitable as it ignores NYPA's major contribution to the RPS baseline and would unfairly and inappropriately shift RPS compliance costs to NYPA's customers from customers of other load serving

entities that have yet to acquire significant renewable resources. As noted, NYPA's facilities will account for over one-third of the Statewide 25% RPS renewables goal in 2013 and NYPA is expending approximately \$1.0 billion (which will be paid by its customers) to relicense and modernize its hydroelectric facilities so that they will continue to be available throughout this period. Thus, as a matter of fairness to NYPA's customers in setting individual RPS targets, NYPA's existing contribution to the Statewide 25% RPS goal should be taken into account in determining any proposed going forward responsibility of NYPA so that other load serving entities which have contributed far less to the Statewide renewable power goal are required to bear their fair share of complying with the overall RPS goal.

Finally, in a related matter, the DPS staff Strawman and RETEC proposal recommend that if NYPA determines not to participate in the Commission's RPS program, the targeted amount of new, additional renewable energy to be procured under the program should be correspondingly reduced. See, e.g., Summary of Working Group Discussions, issued June 25, 2003, p. 6. The effect of this reduction would be to impute to NYPA a pro rata share, based on retail load it serves, of the new, incremental renewable energy necessary to achievement of the Statewide 25% RPS goal. Again, NYPA disagrees with this approach because in assigning (or imputing) responsibility for reaching the Statewide 25% RPS goal, it would unfairly ignore the significant costs borne by NYPA's customers in financing NYPA's substantial contribution toward achievement of that Statewide goal. NYPA's and its customers' contribution to the Statewide 25% RPS goal plainly has economic value which should be recognized in the RPS program design.

## 6. Cost Recovery for Delivery Utility Compliance

NYPA agrees with the DPS staff Strawman proposal and the RETEC proposal that Commission-jurisdictional entities (e.g., investor-owned utilities) should be allowed rate recovery from customers of their prudently incurred, above market costs that are associated with their purchase of renewable energy. NYPA simply points out here that unlike the Commission-jurisdictional distribution utilities, NYPA does not have a franchised, retail customer base from which to recover above market costs. More important, while the Commission through regulatory decree can insure that the regulated companies collect the costs of the RPS program from consumers, NYPA, in contrast, may be unable to collect such costs due to statutory, contractual or competitive barriers.

### C. Central Procurement

First, for the reasons set forth in Section V.A. above, NYPA recommends that the Commission adopt an individual procurement structure rather than a centralized procurement structure for acquisition of additional renewable resources. See pages 7-8, supra. Second, should the Commission adopt a central procurement structure, NYPA reiterates its position that as a matter of equity, any proposed target (or cost responsibility) for NYPA in achieving the 25% State RPS goal should take into account all existing renewable energy resources contributed by it. See pp. 9-10, supra. Further, to the extent such target (or cost responsibility) for NYPA ultimately is proposed to be set on the basis of retail load served, it should be based at most on NYPA's full requirements retail load.<sup>8</sup>

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<sup>8</sup> For example, NYPA is the NYSIO-registered load serving entity or load serving entity agent for many municipal and cooperative systems as well as for certain economic development customers that are actually the retail customers of other entities.

## VI. Credit Trading

### A. Consensus Issues

NYPA believes that implementation of a renewable energy credit (or attributes) trading system will be important to the success of the Commission's RPS program.

NYPA agrees with the numerous consensus items reached by the parties on a wide range of credit trading issues. See RPS Working Group No. 4 Final Report.

### B. The Deliverability Requirement

The issue presented is whether the energy associated with a renewable energy attribute (or credit) must be physically delivered into the New York State grid in order for that attribute to be bought/sold in the New York credit trading system that would be established. In the interests of RPS program credibility and public acceptance of a credit trading system, as well as to promote the development of renewable resources within New York State, NYPA recommends that the Commission adopt such a deliverability requirement. Otherwise, attributes generated from renewable facilities located in distant states could be bought and sold (and paid for by New York State consumers) as part of the New York RPS program.<sup>9</sup>

## VII. Contracting Standards

### A. The Role of Long-Term Contracts

Considering New York's experience with mandated, long term purchase power contracts executed in the 1980s and early 1990s, NYPA recommends that the Commission not mandate entry into long term purchase contracts with renewable energy

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<sup>9</sup> In addition, the purchase of attributes alone without the delivery of the associated energy into the New York market will likely have little influence on the wholesale price of electricity, which price the DPS Staff Cost Study predicts will be reduced by implementation of the RPS program (and thereby offset RPS implementation costs).

developers. Instead, the Commission should set (and periodically update as necessary) renewable energy RPS targets and authorize load serving entities to procure the renewable energy amounts in the manner of their choosing and in the exercise of their business judgment.<sup>10</sup> NYPA believes that this type of a flexible, market-based approach to the RPS program will maximize opportunities for renewable energy to be procured in efficient, innovative ways and at least cost to New York State consumers.

### VIII. Cost and Benefit Considerations

With regard to the DPS Staff Cost Study, we have two comments concerning NYPA's facilities. First, the study appears to assume that the ongoing life extension and modernization program at NYPA's St. Lawrence-FDR project, when completed, will result in an increase of capacity of 320 MWs. See DPS Staff Cost Study, Appendix A, p. 32, footnote 33; see also id., Appendix A, p. 30, Table 13 (Hydro Upgrades NY Zone 1). This assumption is incorrect as the increase in capacity at St. Lawrence-FDR resulting from the program actually will be approximately 20 MWs.<sup>11</sup> We note also that the life extension and modernization program at NYPA's Niagara project will result in an additional 35 MWs in firm capacity. Compare with DPS Staff Cost Study, Appendix A, p. 30, Table 13 (Hydro Upgrades NY Zone 1).

Second, it appears that the DPS Staff Cost Study's treatment of incremental capacity resulting from upgrades of existing hydroelectric facilities is internally inconsistent. This is because while it is stated in the study that such incremental capacity is assumed to be an eligible RPS resource (DPS Staff Cost Study, p. 5) and 385 MWs of

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<sup>10</sup> Of course, the actions of Commission-jurisdictional load serving entities would be subject to supervision by the Commission.

<sup>11</sup> Each of the 16 generation units at the project are nominally rated at 57 MWs and at the end of the program, the total incremental capacity increase of the project will be approximately 20 MWs – not 20 MWs per unit as assumed in the study. Id., Appendix A, p. 32, footnote 33.

such capacity is identified (id., Appendix A, p. 30, Table 13), the “Quantity of Renewable Resources Reached Through 2013” presented in the study does not include any incremental capacity from existing hydroelectric facilities in New York State. See DPS Staff Cost Study, p. 10, Table 5B-1. Instead, it shows such capacity being available only from Ontario and Quebec. Id. NYPA believes it would be inequitable for the RPS program to promote out-of-state hydropower resources while ignoring the contributions of in-state hydropower facilities to New York’s environment, energy security, and electric system reliability.

#### X. Conclusion

For the reasons stated, it is requested that NYPA’s recommendations concerning establishment of an RPS program be adopted.

Respectfully Submitted,

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cc: Hon. Eleanor Stein (by e-mail)  
Active Party List (by e-mail)