



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
**STATE CONSUMER PROTECTION BOARD**

**George E. Pataki**  
Governor

**Teresa A. Santiago**  
Chairman and Executive Director

September 26, 2003

Hon. Jaclyn Brilling  
Acting Secretary  
NYS Public Service Commission  
Three Empire Plaza  
Albany, NY 12223

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

Dear Acting Secretary Brilling:

Enclosed please find for filing an original and five copies of the Comments of the New York State Consumer Protection Board in the above-referenced proceeding.

A copy of these Comments has been hand-delivered today to Judge Stein. In addition, the active parties have been served via electronic mail and first class mail.

Respectfully submitted,

Seth R. Lamont  
Intervenor Attorney

Enclosure

cc: All Parties

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission  
Regarding a Retail Renewable Portfolio  
Standard

Case  
03-E-0188

COMMENTS OF THE  
NEW YORK STATE CONSUMER PROTECTION BOARD

Teresa A. Santiago  
Chairperson and Executive Director

Douglas W. Elfner  
Director, Strategic Programs

Tariq N. Niazi  
Chief Economist

Dated: September 26, 2003  
Albany, New York

NYS CONSUMER PROTECTION BOARD  
SUITE 2101  
5 EMPIRE STATE PLAZA  
ALBANY, NEW YORK, 12223-1556  
<http://www.consumer.state.ny.us>

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission  
Regarding a Retail Renewable Portfolio  
Standard

Case  
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COMMENTS OF THE  
NEW YORK STATE CONSUMER PROTECTION BOARD

In his 2003 State of the State Message, Governor George E. Pataki directed the New York State Public Service Commission (“PSC” or “Commission”) to implement a renewable portfolio standard (“RPS”) to ensure that within the next 10 years, at least 25% of the energy bought in New York State will be derived from renewable energy sources. Shortly thereafter, the PSC convened this proceeding to “develop and implement an RPS for electric energy retailed in New York State.”<sup>1</sup> The New York State Consumer Protection Board (“CPB”) submits these comments on policy and implementation issues associated with an RPS consistent with the procedural rulings issued by Administrative Law Judge (“ALJ” or “Judge”) Eleanor Stein.<sup>2</sup>

As directed by Judge Stein, the CPB’s comments use as a starting point, the consensus of the working groups in this proceeding, where applicable. These comments follow the format and outline developed by the Judge, except that the CPB does not comment at this time on technical RPS implementation issues of credit trading and contracting standards.

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<sup>1</sup> Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Instituting Proceeding, February 19, 2003 (“Order Instituting Proceeding”), at 2.

<sup>2</sup> Case 03-E-0188, Ruling Concerning Procedure and Schedule, February 20, 2003; Ruling Revising Schedule, March 6, 2003; Ruling Establishing Comment Procedures, June 19, 2003 (“June 19, 2003 Ruling”); Ruling Granting, In Part, Motions to Amend the Comment Schedule, August 18, 2003; Further Ruling Concerning Schedule and Procedure, September 19, 2003.

## I. SUMMARY OF COMMENT

An RPS holds the promise of providing significant benefits to consumers, the environment and the State's economy. The task before the ALJ and the Commission is to resolve the contested policy and implementation issues in a manner that secures these important benefits. The CPB has several specific recommendations that will help achieve that result.

To guide the development and implementation of an RPS, the CPB recommends that the Commission use the Revised Working Objectives reflected in the ALJ's June 19, 2003 Ruling. However, the Commission should keep two objectives paramount: minimize adverse impacts of an RPS on energy costs and ensure that an RPS is consistent with, if not enhances, reliability of the electric system in New York State.

Implementation of an RPS should reflect as broad a definition of renewable resources as possible, consistent with the public's expectations that renewable resources provide environmental benefits. Consistent with that objective, new high-impact hydro projects should not be eligible for an RPS. The CPB takes no position at this time on whether municipal solid waste projects should be eligible for an RPS. Renewable energy price premiums should not be applicable to renewable resources developed before January 2003, when the RPS was announced.

Imports should be eligible for New York's RPS as long as: (1) they are derived from resources classified as renewable under eligibility criteria to be established in this proceeding, and (2) the energy is contractually delivered to New York. The use of tiers to define the level of participation in and/or benefit from, the RPS, should be restricted to focused areas of compelling state interest.

The CPB recommends that an RPS be implemented in a manner that maximizes reliance on market forces where practical. In particular, we recommend that the

Individual Compliance Model be used. However, since centralized procurement of renewable resources may, in some instances, impose fewer burdens on the industry and result in lower overall costs, individual load serving entities (“LSEs”) should have the option of complying with an RPS through centralized procurement in the early years of an RPS program. Such procurement should be conducted by the New York State Energy Research and Development Authority (“NYSERDA”), which has ample expertise in renewable energy issues. As renewable resource markets mature and LSEs acquire more experience, NYSERDA should exit this function and the RPS should be implemented with the Individual Compliance Model.

Finally, the CPB generally supports the study of the costs and benefits of an RPS submitted by DPS Staff. That study more reasonably reflects the price and environmental benefits that can be expected to result from proper implementation of an RPS in New York State than does the alternative study.

## II. COMMENT ON THE REVISED WORKING OBJECTIVES

As explained in the ALJ’s June 19, 2003 Ruling, the Revised Working Objectives of this proceeding are:

1. New York’s Environment  
Improve New York’s environment, by reducing air emissions, including greenhouse gas emissions, and other adverse environmental impacts on New York State of electricity generation.
2. Generation Diversity  
Diversify New York State’s electricity generation mix and improve energy security and reliability.
3. Economic Benefits  
Develop renewable resources and advance renewable resource technologies in, and attract renewable resource generators, manufacturers, and installers to New York State.

4. Equity and Economic Efficiency  
Develop an economically efficient RPS requirement that minimizes adverse impact on energy costs, allocates costs equitably among ratepayers, and affords opportunities for recovery of utility investment.
5. Competitive Neutrality  
Develop an RPS compatible with competition in energy markets in New York State.
6. Administrative Fairness and Efficiency  
Develop an RPS that is administratively transparent, efficient, and verifiable.<sup>3</sup>

These objectives are consistent with those identified in the CPB's March 28, 2003 Comments in this proceeding.<sup>4</sup> The CPB recommends that they be used to help guide the development and implementation of an RPS in New York State. However, we urge the Commission to keep two objectives paramount: minimize adverse impacts of the RPS on energy costs and ensure the reliability of the electricity system in New York State.

Energy costs have a direct bearing on the discretionary income of New Yorkers as well as the State's ability to attract, retain and expand businesses and to create and maintain jobs. By directly affecting New Yorkers' discretionary income, energy costs influence the State's economic activity and the quality of life. According to data in the State Energy Plan, retail electricity prices in New York are generally higher than the national average, although the differential has been narrowing in recent years for some customers.<sup>5</sup> Since electricity is currently generally more expensive to produce from

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<sup>3</sup> June 19, 2003 Ruling, pp. 3-4.

<sup>4</sup> Case 03-E-0188, Comments of the New York State Consumer Protection Board on Selected Legal and Policy Issues Concerning a Retail Renewable Portfolio Standard, March 28, 2003, pp. 3-8.

<sup>5</sup> New York State Energy Plan and Final Environmental Impact Statement, New York State Energy Planning Board, June 2002 ("State Energy Plan"), at 2-25 – 2-30.

renewable technology, other than hydro, than from fossil fuels, it is imperative that the RPS be introduced in a manner that minimizes upward pressure on energy prices.

Second, emphasis should be given to ensuring that the RPS is consistent with, if not enhances, the reliability of the State's bulk power system. It is incontrovertible that increased use of energy from renewable sources will diversify the State's energy supply portfolio which, in turn, will lead to greater reliability. However, as explained in comments filed by the New York State Reliability Council, connecting large amounts of renewable resources to the transmission system may negatively affect reliability through the impact on capacity reserves, transmission system design and transmission system operations.<sup>6</sup> These impacts must be understood and addressed before large-scale implementation of the RPS can commence.

### III. THE RETEC STRAW PROPOSAL

RETEC<sup>7</sup> presented its proposals regarding the Individual Compliance Model on June 24, 2003.<sup>8</sup> Approximately one month later, RETEC presented its recommendations regarding the Hybrid/Central Procurement Model.<sup>9</sup> The CPB addresses many of the issues raised in RETEC's submissions in subsequent sections

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<sup>6</sup> Case 03-E-0188, Comments of the New York State Reliability Council, August 20, 2003 and September 8, 2003.

<sup>7</sup> RETEC members include: American Lung Association of New York; American Wind Energy Association, Citizen's Advisory Panel; Community Energy; Hudson River Sloop Clearwater; Natural Resources Defense Council; New York Lawyers for the Public Interest; New York Public Interest Research Group; New York Renewable Energy Coalition; New York Solar Energy Industries Association; Pace Energy Project; Plug Power; Riverkeeper; Safe Alternatives for Energy Long Island; Scenic Hudson; Sierra Club Atlantic Chapter; Solar Energy Industries Association; and Union of Concerned Scientists.

<sup>8</sup> RETEC, New York Renewable Portfolio Standard Discussion Proposal, Individual Procurement/Compliance Method, issued June 24, 2003 ("RETEC's June Proposal").

<sup>9</sup> RETEC, New York Renewable Portfolio Standard, Hybrid Procurement Model, issued July 23, 2003 ("RETEC's July Proposal").

of these comments, consistent with the ALJ's Ruling.<sup>10</sup> For example, we address RETEC's detailed proposals regarding resource eligibility and additional incentives for certain types of renewable energy in Point IV. For convenience, in this section, we summarize our position on RETEC's main proposals.

The CPB generally supports the following RETEC proposals:

- Under the Individual Procurement Model, the RPS requirement should apply to all LSEs.
- RPS target requirements should be adjusted periodically, with sufficient advance notice.
- A certificates-based accounting and verification system for tracking and verification of renewables is appropriate.
- Some focused additional incentives for emerging technologies such as PV, fuel cells and small wind are reasonable.
- Utilities entering into long-term contracts should have an opportunity to recover prudent costs.
- An alternative compliance mechanism in lieu of renewable energy purchases of 150% of the average market price for RECs or \$50/MW, whichever is less, is reasonable.
- Compliance with an RPS is separate from any "green market" premiums sold by the LSE.

The CPB generally disagrees with the following RETEC proposals:<sup>11</sup>

- Resources that began operation after January 1, 2000 are eligible for inclusion in the RPS.
- Only certain imports of renewable energy delivered in New York should be considered eligible for the RPS.
- Additional incentives for high value locations are necessary.

#### IV. ELIGIBILITY

The CPB recommends that implementation of the RPS reflect as broad a definition of renewable resources as possible, consistent with the public's expectation that renewable resources provide environmental benefits. A broad definition of eligible resources would help secure the anticipated benefits of an RPS while minimizing

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<sup>10</sup> Case 03-E-0188, Letter from ALJ Eleanor Stein to Active Parties, June 10, 2003.

<sup>11</sup> The CPB's alternative proposals regarding these issues are discussed in Points IV B, C and D, respectively.

upward pressure on energy prices and minimizing adverse impacts on existing renewable energy projects in New York State.

A. Baseline

For purposes of estimating the percentage of the electricity purchased in New York that is currently derived from renewable sources, the CPB supports the compromise proposal advanced at the working group level. That proposal quantifies a baseline of 28,896,189 MWh from renewable sources, without any attribution of the sources that comprise the baseline. That proposal reflects a reasonable resolution of a contentious issue and should be adopted.

B. Target Levels

An RPS is intended to promote the development of additional renewable resources in New York State. Accordingly, energy price premiums or incremental incentives should not be applicable to renewable resources that were developed before January 2003, when the RPS was announced. Additional compensation for renewable resources available before that time would amount to a windfall to those suppliers, and would harm consumers and the State's economy. Implementation of the RPS should begin no later than 2006.

The CPB supports RETEC's proposal that RPS targets be adjusted periodically to reflect actual load growth, in recognition of the imprecision of load forecasts.<sup>12</sup> There is also merit to RETEC's recommendation that the Commission provide minimum notice of two years before resetting yearly target levels. Such advance notice will help ensure that participating entities can comply with the new requirements.

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<sup>12</sup> RETEC's June Proposal, p. 2.

## C. Target Resource Eligibility

### 1. Eligible Resources

The CPB supports a broad definition of renewable resources, consistent with consumers' expectations regarding the environmental benefits associated with such resources. In particular, the CPB recommends that new high-impact hydro projects not be deemed eligible resources for purposes of the RPS because of their negative impact on the environment. We take no position at this time on whether municipal solid waste projects should be eligible for purposes of the RPS. We recommend that the Commission carefully review the facts concerning the emissions from these projects to determine whether solid waste burning projects should be considered eligible resources. Other biomass, wind, hydro, fuel cells, solar and tidal resources discussed in this proceeding should be deemed eligible for the RPS.

### 2. Imports

The CPB recommends that energy from all resources classified as renewable under eligibility criteria to be established in this proceeding be deemed eligible for New York's RPS as long as the energy is contractually delivered to the New York Control Area. This will secure the environmental benefits associated with an RPS without unnecessary restrictions.

RETEC proposes that to be eligible to participate in New York's RPS, out-of-state resources must meet the following criteria:

- Renewable Energy Certificates ("RECs") should be from an eligible generation source located in a region that is defined as part of New York State's air shed or regional electricity market.

- The state or RTO/ISO where the eligible generation source is located should have an RPS system similar to that in New York. Moreover, the RPS of the originating state must provide reciprocal trading (without a delivery requirement) to New York eligible generation and their REC trading system must be compatible.
- RECs should come from new renewable generation sources.
- RECs should come from generation that would be eligible under New York's RPS.<sup>13</sup>

As explained above, the CPB recommends that certain out-of-state resources be eligible for the New York RPS. A regional approach that encourages REC trading makes sense and is consistent with other efforts to address electricity issues on a regional basis. A regional approach has also been encouraged by the Federal Energy Regulatory Commission's ("FERC's") Standard Market Design ("SMD") and other initiatives to eliminate seams issues and export charges that discourage inter-regional trade. A regional approach is also critical in achieving both reliability and efficiency. The benefits of a regional approach also apply to an RPS. Drawing upon regional resources will lead to greater efficiency, lower costs and a more effective RPS program.

However, RETEC's proposed conditions for out-of-state renewable resources to be included in New York's RPS are, in some cases, too restrictive. The CPB recommends that all energy resources classified as renewable under eligibility criteria to be established in this proceeding, be included in New York's RPS as long as the energy is contractually delivered to the New York Control Area. The delivery requirement we recommend ensures that the fossil fuel generation will actually be displaced, thereby providing environmental benefits anticipated under an RPS. It also achieves that

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<sup>13</sup> RETEC's July Proposal, p. 2.

objective without unnecessary restrictions, thereby helping minimize adverse impacts on the cost of energy.

#### D. Tiers

Several parties proposed in the working groups that an RPS be implemented using tiers, which would define levels of technologies' participation in, or benefit from, an RPS. As a general matter, the CPB opposes the use of tiers to implement an RPS. Instead, we recommend that for the most part, competition among various renewable energy technologies in the market determine the value of renewable energy technologies and whether they are used to satisfy RPS requirements. By minimizing use of tiers, renewable energy technologies would compete against each other under the same rules.

Minimizing use of tiers would also help achieve the CPB's objectives of ensuring that an RPS minimizes upward pressure on energy prices and that it is implemented in a manner that maintains flexibility to respond to unanticipated circumstances, such as technological advances which reduce the cost of energy from renewable sources.<sup>14</sup> By minimizing use of tiers, technologies would compete against each other, thereby helping preserve the opportunity for consumers to benefit from reduced prices resulting from technological advances.

The CPB supports the use of tiers only to help address issues of compelling state interest in a very focused manner, such as to provide support for small wind and fuel cell projects similar to those currently administered by NYSERDA from the System Benefits Fund ("SBC"), to help ensure the maintenance of very small hydro projects or

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<sup>14</sup> See, Case 03-E-0188, Comments of the New York State Consumer Protection Board On Selected Legal And Policy Issues Concerning A Retail Renewable Portfolio Standard, March 28, 2004, p. 5.

to assist in supporting renewable resources in specific geographic locations where the environmental need is greatest. Support for other technologies provided through use of tiers should be considered only following a showing that such projects are necessary to achieve a compelling state objective.

## V. OVERALL RPS STRUCTURE

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

The CPB recommends that procurement of renewable resources be conducted in a manner that maximizes reliance on market forces where practical, thereby helping secure an economically efficient portfolio of renewable resources at just and reasonable prices. Reliance on market forces may also lead to innovative approaches that result in low and stable prices for consumers.

For this reason, we recommend that an RPS be implemented through the Individual Compliance Model. However, to help jump-start implementation of an RPS, the CPB recommends that in the early years of an RPS, LSEs have the option of meeting their RPS targets through procurement of renewable resources by NYSERDA. In some cases, such centralized procurement would impose fewer burdens on the industry, especially small ESCOs, and may result in lower overall costs associated with implementation, monitoring, oversight and enforcement than if each LSE was required to purchase renewable resources individually. As renewable resource markets mature and LSEs acquire more experience in this arena, NYSERDA should exit this function and the RPS should be implemented with the Individual Compliance Model.

Notwithstanding this recommendation, either the individual or the centralized procurement models for implementing an RPS could, if properly implemented, be used to achieve the State's goal of obtaining 25% of energy bought in New York State from

renewable sources. However, we recommend that the centralized procurement method, if adopted, be conducted by NYSERDA, not the NYISO.

#### B. Individual Compliance

Should the PSC determine that an RPS will be implemented through purchase of renewable resources by each LSE individually, that individual compliance method should include the following provisions.

##### 1. Determination of Participating Entities

The CPB agrees with the consensus reached by the working group analyzing the individual compliance approach (“Working Group Two”) that this approach should include all LSEs, including the New York Power Authority (“NYPA”), Long Island Power Authority (“LIPA”), municipals, cooperatives and energy delivery companies.<sup>15</sup> We recognize that LIPA and NYPA have the legal right not to take part in the RPS being developed in this proceeding. Instead those entities may choose to comply with the State’s RPS goals on their own. However, it would be preferable if LIPA and NYPA were part of the RPS being developed here since that would lead to a more integrated program that is less confusing to both customers and sellers. It is noteworthy that the decision now faced by LIPA and NYPA as to whether to participate in the RPS is similar to their decision on whether to join the NYISO. LIPA’s and NYPA’s decision to join the NYISO was correct, as evidenced by the benefits provided to their customers and the State as a whole. We believe that similar benefits would result from their participation in the RPS being adopted in this proceeding.

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<sup>15</sup> Case 03-E-0188, Summary of Working Group Discussions, issued by ALJ Eleanor Stein, June 25, 2003 (“Working Group Summary”), p. 6.

Working Group Two also suggested that the individual compliance mandates be applicable to all ESCOs.<sup>16</sup> The CPB agrees with that proposal. That suggestion is also consistent with the Revised Working Objectives in this proceeding, which, as explained in Point II, state that objectives in this case include the need to “allocate costs equitably among ratepayers” and “develop an RPS compatible with competition in energy markets in New York State.”<sup>17</sup> Participation by all ESCOs would help achieve those goals by ensuring that all customers and ESCOs are treated equitably since all would contribute to achieving RPS targets. Alternatively, if all or some ESCOs did not participate in the RPS, customers served by these companies would not contribute to achievement of the State’s RPS goals. Moreover, entities not participating would be subject to different requirements than their competitors. Such results would be unfair to consumers and market participants and would have the potential to undermine confidence in the entire RPS program.

The proposal developed in Working Group Two also indicates that self-generation load should be excluded from RPS targets, since it does not involve retail sales and may have an administrative burden that outweighs any potential benefits.<sup>18</sup> We agree with that suggestion. As explained in the Order Instituting Proceeding, the Commission convened this proceeding to develop and implement an RPS “for electric energy retailed in New York State.”<sup>19</sup> Therefore, self-generation load is outside of the scope of the RPS being considered in this proceeding. Moreover, since it would be very

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<sup>16</sup> Id.

<sup>17</sup> June 19, 2003 Ruling, pp. 3 – 4.

<sup>18</sup> Working Group Summary, p. 6.

<sup>19</sup> Order Instituting Proceeding, p. 2.

difficult to identify and track all instances of self generation, the net benefit of including it in an RPS appears to be limited.

Finally, the Judge has invited comments on whether these requirements would impede the ability of ESCOs to compete.<sup>20</sup> The CPB believes that the framework discussed above would help ensure the development of a level playing field among ESCOs and between ESCOs and other LSEs, rather than impede fair competition. Requiring all LSEs to participate would ensure that an RPS does not inherently advantage or disadvantage any retail provider of energy.

## 2. Adjustment of Target Levels

There was consensus among the parties participating in Working Group Two that if LIPA and/or NYPA elected not to participate in the RPS, their load requirements should be removed from RPS target calculations.<sup>21</sup> In that situation, the goal of the RPS would be that 25% of energy bought in New York State, excluding LIPA's and/or NYPA's load, would come from renewable sources. The CPB supports that conclusion.

## 3. Determination of Individual Entity Target Levels

The Individual Compliance Working Group reached consensus on a number of issues related to renewable energy target levels for individual entities: (a) credit trading and credit banking are important elements of the individual compliance model and a true-up period would be necessary to match tradable credits with load; (b) target levels would be a fixed percentage applied to actual load served, ramped up annually beginning in either 2005 or 2006; (c) there should be no adjustment for long-term power

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<sup>20</sup> Working Group Summary, p. 6.

<sup>21</sup> Id.

purchase agreements or full service requirement service from utilities, to ensure that all customers contribute fairly towards achieving the target and (d) credit trading and alternative compliance mechanisms, rather than target adjustment, should be used to account for weather.<sup>22</sup>

The CPB agrees with the consensus recommendations on these issues. Credit trading and credit banking provide the flexibility necessary for LSEs to comply with RPS requirements without compromising the overall achievement of the State's RPS goals. Credit trading would also lead to an economically efficient outcome, whereby entities with an abundance of renewable resources would be able to sell their excess, while LSEs having difficulty complying with RPS requirements would purchase credits to achieve their targets. We also agree that a true-up period is necessary to help facilitate the operation of credit trading and credit banking by providing flexibility to all buyers and sellers of renewable resources.

The CPB also believes that individual compliance target levels should be established by applying a fixed percentage to each LSE's actual load served, ramped up yearly through 2013. A fixed percentage target is superior to a MWh target since actual load cannot be forecast with precision. A MWh target could leave entities above or below the yearly target depending on actual load. Conversely a percentage target approach would track the yearly target. Although a MWh target may be easier to implement, credit trading and credit banking should allow for sufficient flexibility for entities to meet their fixed percentage requirements. During the Working Group process, some parties suggested that individual LSEs be assigned only a final renewable target for 2013 or a target every two years. However, a yearly target is a better approach, since it would provide for fine-tuning and adjustments to reflect

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<sup>22</sup> Id.

unanticipated circumstances, thereby helping facilitate achievement of the overall 25% RPS target.

The CPB also agrees with the proposal by Working Group Two that individual compliance targets should not be adjusted for long-term power purchase agreements or full service requirements. To adjust load required to meet the RPS targets based on those factors would unfairly reduce the contribution of utilities with such power purchase agreements or that provide full requirement service, as well as the contributions of their customers, toward meeting the State's RPS goal.

Finally, we also agree with the proposal that credit trading and an alternative compliance mechanism rather than target adjustment be used to account for the impact of weather on the availability of hydro, wind and solar power. Because of the difficulty in predicting weather, the impact of constantly adjusting the RPS target would create uncertainty in achieving the RPS goals. Instead, the CPB believes that the credit trading and/or alternative compliance mechanisms discussed below should be used to address this problem.

#### 4. Alternative Compliance Mechanism

Working Group Two did not reach consensus on whether LSEs should be permitted to satisfy their individual compliance targets through an Alternative Compliance Mechanism. However, the group's proposal suggested that participants that could not meet their RPS target would make \$/MWh payments into an Alternative Compliance Mechanism fund. Specifically, the straw proposal suggests payments of the lesser of \$50/MWh or 150% of the market value of renewables.<sup>23</sup>

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<sup>23</sup> Id., p. 7.

The CPB supports the use of an Alternative Compliance Mechanism. That approach would provide participating entities with the ability to meet their RPS targets when sufficient renewable energy is not available. Entities could meet their RPS targets by owning a renewable energy facility and producing their own power, purchasing renewable energy from someone else, trading RPS credits or making payments into the Alternative Compliance Mechanism fund. We believe that this mechanism would be especially helpful in the earlier years of the program as the renewable energy market matures.

#### 5. Enforcement Mechanism

Working Group Two did not reach consensus on whether an enforcement mechanism should be developed in conjunction with an Alternative Compliance Mechanism. However, the proposal suggests that there is no need for such a penalty or additional enforcement mechanism beyond the provisions of the Public Service Law.<sup>24</sup> The CPB agrees with that proposal. Payments into the Alternative Compliance Mechanism fund should be established at levels that, while not prohibitive, provide a substantial disincentive for LSEs not to meet RPS requirements. Those incentives, rather than explicit penalties for non-compliance, are preferable.

#### 6. Cost Recovery for Compliance by Delivery Utilities

Working Group Two reported the consensus view that utility cost recovery of costs associated with purchase of renewable resources should be assumed, subject to PSC prudence review.<sup>25</sup> We agree with the consensus view. Utilities are a critical

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<sup>24</sup> Id.

<sup>25</sup> Id.

component of the electric energy industry and their active participation is essential to achieving the State's RPS energy goals. Utilities should be given a full opportunity to recover their purchased power costs subject to the Commission's prudence review.

### C. Central Procurement

#### 1. Preferred Central Procurement Entity, with Rationale

Working Group Three proposed two Central Procurement Models: an NYISO Procurement Model and a State Agency Procurement Model. We prefer the later and discuss below why an NYISO Procurement Model should not be adopted.

#### 2. The NYISO Procurement Model

As explained in the Working Group Summary, the ISO Procurement Model would require the formation of a New York State Renewable Portfolio Board to facilitate a centralized Request-for-Bid market for renewable attributes.<sup>26</sup> The Renewable Portfolio Board would also forecast incremental renewable resource production required to meet RPS targets.

Working Group Three identified several advantages of the ISO Procurement Model, including the NYISO's experience in running other markets and the existence of a well-established payment and collection mechanism.<sup>27</sup> That Working Group also identified some disadvantages of the ISO Procurement Model.<sup>28</sup> The principle concern, in our view, is that the mission of the NYISO appears inconsistent with administration of the RPS. The NYISO is responsible for administering an open and non-discriminatory

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<sup>26</sup> Id., p. 7-8.

<sup>27</sup> Id., p. 8.

<sup>28</sup> Id.

wholesale electricity market. Both loads and suppliers bid into this market and the NYISO determines prices based on models approved by FERC. The NYISO has no role in determining the kind of supplies offered in the market or the type of LSE that is required to purchase those supplies. However, under the NYISO Procurement Model, that would change. The NYISO would be required to facilitate the acquisition of renewable resources and would also oversee determination of resulting market energy prices. This appears inconsistent with NYISO's role as an independent entity charged with ensuring that the wholesale electric market operates in an open and non-discriminatory fashion.

The CPB also agrees with other concerns raised by Working Group Three regarding the NYISO Procurement Model. For example, most NYISO actions are discussed in working groups and committees and are then voted upon by market participants. During this process, proposals can be rejected, modified or sent back to working groups for further development. Further, committee actions need ISO Board approval before filing with the FERC. These governance procedures may not be appropriate for implementation of requirements that are in the State's interest, but may be construed by individual market participants to be inconsistent with their own interests.

### 3. The State Agency Procurement Model

Under the State Agency Procurement Model, a designated State agency would be responsible for issuing a competitive solicitation for eligible renewable attributes and determining the winners based on bids received.<sup>29</sup> The process would apparently be

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<sup>29</sup> Id.

similar to the practice currently used by NYSEDA in competitively awarding System Benefit Charge (“SBC”) grants that are paid out over five years based upon kWh output.

We believe that a State Agency Procurement Model could effectively meet the State’s RPS objectives and that NYSEDA should administer this program. NYSEDA has accumulated significant experience in conducting similar solicitations as the administrator of the SBC fund. Further, NYSEDA has substantial expertise in renewable energy.

## VI. COST AND BENEFIT CONSIDERATIONS

Two comprehensive studies containing estimates of the costs and benefits of implementing an RPS have been submitted by parties in this proceeding. The “New York Renewable Portfolio Standard Cost Study Report” was jointly prepared by the New York Department of Public Service (“DPS Staff”) and Sustainable Energy Advantage, LLC (including its subcontractor, La Capra Associates) with assistance from NYSEDA.<sup>30</sup> The second study, entitled “Report of Initial Analysis of Proposed New York RPS” was prepared by ICF Consulting for the Joint Utilities.<sup>31</sup>

Overall, the CPB believes that the DPS Study more reasonably reflects the price and environmental impacts that can be expected to result from proper implementation of an RPS than does the Joint Utilities’ Study. The DPS study demonstrates that an RPS is expected to result in modest impacts on energy bills ranging from 0.2% to 0.5%, yet provide considerable environmental benefits including reductions in nitrogen oxide (“NOx”) emissions of 19% statewide and 25% in New York City and Long Island. In

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<sup>30</sup> We refer to this study as the “DPS Study.”

<sup>31</sup> Joint Utilities include Central Hudson Gas & Electric Corporation (“Central Hudson”), New York State Gas & Electric Corporation, Rochester Gas & Electric Corporation and Niagara Mohawk Power Corporation (“Niagara Mohawk”). We refer to this study as the “Joint Utilities’ Study.”

addition, an RPS is expected to suppress natural gas prices and reduce the likelihood and magnitude of electricity price spikes. These results demonstrate that an RPS is in the interest of New Yorkers and should be implemented as soon as practical.

A. The DPS Study

1. Price Impacts

The DPS study indicates that achieving the State's goal that at least 25% of the energy bought in New York State be derived from renewable energy sources by 2013 would have a modest impact on the price of energy paid by retail customers. Average bill impacts during the fourth year of the program (2009), when RPS costs are projected to peak at approximately \$53.6 million, are forecast to range from 0.21% to 0.52% depending on customer class.<sup>32</sup>

Table 5D-1 of the DPS Study indicates that a substantial reduction in wholesale electricity prices is projected to occur as large volumes of renewable resources enter the market.<sup>33</sup> The price suppression effects of renewable resources would significantly offset the impact of cost premiums necessary to achieve the RPS targets. For instance, in 2006, the first year of the program, the annual cost premium to reach the RPS target is projected to be approximately \$28.4 million. However, the net impact of an RPS on ratepayers is forecast to be approximately \$17.1 million, since wholesale electricity price reductions of \$11.3 million are anticipated as renewable resources enter the market. Similarly, in 2009, the annual cost premium to achieve an RPS target is estimated to be approximately \$117.9 million. However, the net annual cost to ratepayers would be approximately \$53.6 million since wholesale energy costs are anticipated to decline by

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<sup>32</sup> DPS Study, p. 2.

<sup>33</sup> Id., p. 13.

approximately \$64.3 million as a result of an RPS. Finally, in 2013, when the 25% goal is to be attained, the annual cost to achieve the RPS target is expected to peak at \$247.1 million. However, the net impact on ratepayers in 2013 is projected to be \$15.5 million, as a result of offsetting energy cost reductions from renewable resources of approximately \$231.6 million.

The DPS Study also includes a quantification of the projected bill impacts of net RPS costs. During 2009 when net RPS costs are forecast to be at their peak, bill increases for residential customers using approximately 500 kWh per month are projected to average \$0.15, an increase of approximately 0.21%. Similarly, the bill of the average commercial customer is projected to increase \$1.29 per month (0.24%) and the monthly bill of the average industrial customer is anticipated to increase by \$70.09 (0.52%) in 2009 as a result of an RPS.<sup>34</sup>

The bill impacts experienced by the different customer classes would vary across the six utilities serving New York. Projected impacts for residential customers range from a high of 0.31% for customers of Central Hudson to a low of 0.16% for customers of Consolidated Edison Company of New York, Inc. ("Con Edison"). Bill impacts for commercial customers are expected to range from 0.42% in Central Hudson's territory to 0.19% in Con Edison's service territory. Similarly, bill impacts for industrial customers are projected to range from 0.66% for customers of Niagara Mohawk to 0.20% for Con Edison customers.<sup>35</sup>

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<sup>34</sup> Id., p. 14.

<sup>35</sup> Id., p. 15.

## 2. Environmental and Other Benefits

The DPS Study shows that implementation of an RPS is projected to lead to significant reductions in air emissions statewide and particularly in the New York City Metropolitan Area including Long Island. Air emissions reductions would result from less reliance on fossil-fired generation facilities as more renewable energy generation facilities are used. By 2013, NO<sub>x</sub> emissions in New York State would be reduced from 42,000 tons to 34,000 tons, a reduction of approximately 19%. Similarly, an RPS is expected to lead to a decline in 2013 in sulfur dioxide (“SO<sub>2</sub>”) emissions from 125,000 tons to 111,000 tons (11%), and carbon dioxide (“CO<sub>2</sub>”) emissions from 50,978,000 tons to 45,036,000 tons (12%). In percentage terms, the reduction in air emissions in the New York City Metropolitan Area would be even larger. NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emissions are forecast to decline as a result of an RPS by 25% (4,000 tons), 39% (5,000 tons) and 13% (3,853,000 tons), respectively, in the New York City Metropolitan Area in 2013.<sup>36</sup>

The DPS study also identifies other anticipated benefits of an RPS program. For example, increased use of renewable generation is projected to reduce the State’s dependence on oil and gas for generating electricity. This would not only reduce air emissions as discussed above, but also enhance New York’s energy security. Diversifying our electric supply portfolio would reduce the State’s exposure to price hikes and supply interruptions when oil and gas markets are in turmoil. According to the DPS Study, by 2013 generation from renewable facilities would displace approximately 9,177,000 MWh’s or 12.89% of electric generation from oil and gas fired sources.<sup>37</sup>

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<sup>36</sup> Id., p. 17.

<sup>37</sup> Id., p. 18.

An additional potential benefit of greater reliance on renewable electric generation is the suppression in natural gas prices that would result from reduced use of natural gas to produce electricity. The DPS Study estimates a reduction of approximately 63,679,000 MCF of natural gas for electricity generation during 2013 as a result of an RPS. This equates to a reduction of 8,332,000 MWhs or 12% of electricity generated using natural gas as a fuel. The DPS Study does not quantify the suppression in gas prices as a result of reduced use of natural gas in electricity generation, since New York's natural gas consumption for electric generation is a fraction of total U.S. natural gas consumption. We agree with the DPS Study that more work is needed in this area to determine the magnitude of the benefit of reduced reliance on natural gas to New York consumers.<sup>38</sup> However, it is noteworthy that even if the impact of New York's RPS on natural gas prices is small, the cumulative impact of RPS programs throughout the country on natural gas prices is likely to be significant. Further research in this area should investigate the impact of RPS programs in the region and not New York alone.

#### B. The Joint Utilities' Study

The results of the Joint Utilities' Study diverge widely from those of the DPS Study. Although the Joint Utilities' Study does not quantify bill impacts, the results clearly indicate a much larger impact on customer bills than shown in the DPS Study. The Joint Utilities' Study indicates that the cost in Net Present Value ("NPV") terms of meeting the incremental 8% RPS target by 2013 ranges from \$1.24 billion to \$2.24 billion, depending on the particular underlying assumptions.<sup>39</sup> Similarly, the two studies

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<sup>38</sup> Id., p. 19.

<sup>39</sup> Joint Utilities' Study, p. 7.

reach vastly dissimilar results regarding the reduction in air emissions expected from an RPS. The Joint Utilities' Study reports only CO2 emissions, and projects a decline in 2013 of between 2.4% and 2.8%, depending on the underlying assumptions.<sup>40</sup>

### C. Comparison of Cost Studies

The substantial differences between the results of the two studies is attributable to large differences in underlying assumptions and methodology. First, it is difficult to even compare the projected bill impacts associated with the two studies. The Joint Utilities' Study measures the renewable premium in terms of NPV over the period 2006 to 2013. The DPS Study on the other hand, reports results in real 2003 dollars.<sup>41</sup>

As indicated in the August 28, 2003 letter from DPS Staff to the Joint Utilities, another key difference between the two studies concerns the treatment of wholesale energy price suppression attributable to the availability of additional renewable resources.<sup>42</sup> As discussed above, the DPS Study concludes that these additional resources will suppress market clearing prices, thereby significantly offsetting the costs of achieving RPS targets. In contrast, the Joint Utilities' Study does not reflect the impact of any wholesale energy price suppression, thereby overstating the cost impact of an RPS on consumers. We agree with DPS Staff that the Joint Utilities should incorporate energy price suppression in their estimate of the impact of an RPS on energy bills.<sup>43</sup>

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<sup>40</sup> Id., p. 31.

<sup>41</sup> DPS Information Request to Joint Utilities, p. 2. DPS Staff has unilaterally offered to prepare a NPV analysis of the results of its study, although that analysis has apparently not yet been provided to the parties.

<sup>42</sup> Case 03-E-0188, DPS Staff Information Request to the Joint Utilities, August 28, 2003.

<sup>43</sup> Id., p. 2.

Appendix A of Staff's August 23, 2003 letter to the Joint Utilities lists additional major assumptions that may explain the difference in projected cost impacts between the Joint Utilities' Study and the DPS Study. For example, the Joint Utilities' Study assumes, "a far more limited portfolio" of renewable resources can be used to meet RPS targets than is assumed in the DPS Study.<sup>44</sup> As a result, the Joint Utilities' Study reflects reliance on more expensive energy sources to meet RPS targets than does the DPS Study, thereby increasing the potential bill impacts of an RPS.

In particular, the Joint Utilities' Study assumes that no incremental hydro power will be eligible to meet RPS targets, while the DPS Study anticipates that low-impact hydro projects will contribute to achievement of RPS targets. Similarly, the Joint Utilities' Study assumes that only 5% of New York plants could co-fire with biomass resources. In contrast, biomass co-firing represents a significant source of low-cost renewable energy in the DPS Study. The Joint Utilities' Study also assumes that other low-cost biomass sources, such as combined heat and power sources and manure digesters are not available and that the only biomass source eligible for the RPS is the most expensive source, i.e., Greenfield IGCC plants. The DPS Study appropriately reflects other low-cost biomass sources. The Joint Utilities Study also assumes that no off-shore wind projects are available to meet RPS targets. In contrast, the DPS Study includes off-shore wind projects as part of the RPS. Finally, the Joint Utilities Study assumes that 10% of renewable energy supply would come from extremely high-cost sources including solar and fuel cells. The DPS Study on the other hand, assumes that only 1% of renewable energy is derived from these expensive sources.<sup>45</sup>

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<sup>44</sup> Id., Appendix A, p. 1.

<sup>45</sup> DPS Information Request, Appendix A., pp. 1 – 2.

There are other significant differences between the two studies.<sup>46</sup> The Joint Utilities' Study assumes that imports of renewable energy will not be eligible to meet RPS targets. On the contrary, the DPS Study assumes that imports with bundled delivery will account toward RPS targets. We agree with the DPS Study assumption and do not see the rationale for excluding imports. Imports should be relied upon to meet RPS requirements just as they are to meet overall electric energy requirements.<sup>47</sup>

The Joint Utilities' Study also overstates the price impact of an RPS by assuming that all renewable resources in latter years will sell at spot market prices. The DPS Study, on the other hand, allows for long-term contracts for each incremental round of RPS procurement. For the same supply curves, the Joint Utilities' approach would result in higher costs than the DPS approach since the former ignores opportunities to lock in lower-cost renewable resources in previous years. Such artificial restrictions on long-term contracts are unreasonable.<sup>48</sup>

Further, the Joint Utilities' Study does not take into account the significant reduction in import costs that will result from displacement of imports by incremental energy from renewable sources. We agree with DPS Staff that recognizing the reduction in import costs will appreciably reduce RPS cost.<sup>49</sup>

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Overall, the DPS Study conveys a more accurate quantification of the costs and benefits that can reasonably be expected to result from proper implementation of an RPS.

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<sup>46</sup> Id., Appendix A.

<sup>47</sup> Id., Appendix A., pp. 2 – 3.

<sup>48</sup> Id., Appendix A, p. 2.

<sup>49</sup> Id., Appendix A, pp. 3 – 4.

## VII. CONCLUSION

A Renewable Portfolio Standard holds the promise of providing significant benefits to consumers, the environment and the State's economy. The Consumer Protection Board urges the Administrative Law Judge and the Public Service Commission to implement an RPS in the manner recommended herein, to help ensure that these anticipated benefits are realized.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa A. Santiago". The signature is fluid and cursive, with a large initial "T" and "S".

Teresa A. Santiago  
Chairperson and Executive Director

Douglas W. Elfner  
Director, Strategic Programs

Tariq N. Niazi  
Chief Economist

Dated: September 26, 2003  
Albany, New York