

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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

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Case 03-E-0188

**COMMENTS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**I. Summary of Comments**

Department of Environmental Conservation (“DEC” or “Department”) Staff submits the following comments for consideration as the Public Service Commission designs a Renewable Portfolio Standard (“RPS”) for New York State. The Department recognizes and appreciates the challenges faced by PSC in devising a program that achieves the goals of the State Energy Plan for an adequate and reliable energy supply, competitive energy prices, fuel diversity and clean and efficient energy resources. It is DEC’s intent to offer the following comments to assist the PSC in determining the environmental merits of including different electric generation resources under the umbrella of renewable resources for purposes of the RPS. As DEC stated in our initial comments filed on March 28, 2003, a great number of issues discussed in connection with the RPS, such as reliability and market impacts, are outside the province of DEC’s central environmental and regulatory mission. Therefore, DEC’s comments are directed solely at the environmental scope of the RPS and are made recognizing that PSC must ultimately weigh these considerations against other policy goals in its final decision.

With such a large number of parties with such diverse interests, it is important that certain priorities are set out clearly and decisively early in the process. The set of revised working

objectives established for this proceeding, which included the improvement of New York's air quality and the diversification of fuel sources, are an adequate starting point upon which to build this important initiative. However, the objectives need to be refined further if they are to be used to guide decisions on the inclusion or exclusion of sources from the RPS. There are a number of other policy interests raised by parties in the RPS that merit consideration and should be adopted as a further refinement of the listed objectives. These include the desire to reduce the environmental and health impacts from toxics and to prevent environmental impacts from additional energy production in environmental justice communities.

On the issue of eligibility, parties have pointed to the definition of "renewable" in RPS programs in other states and it is natural to look to other states as guidance for New York's program. However, the decision of each state to include some sources and exclude others from the definition of renewable is undoubtedly influenced by a number of factors. For the purposes of this proceeding, DEC holds that what is "renewable" in New York should be reconciled with both the past use of the term renewable in New York and the policy objectives to be adopted by the Commission in this proceeding.

In New York's *State Energy Plan*, renewables are defined as energy from resources that "are not depletable or are naturally replenished when used at sustainable levels." (*State Energy Plan*, June 2002, pg. 3-40.) Further guidance on what constitutes renewable energy in New York can be ascertained from Governor Pataki's Executive Order which recognized wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells as renewable sources whose power should be purchased by state agencies. (Executive Order 111, June 10, 2001.) Consistent with that Order, DEC supports the inclusion into the RPS those technologies referenced in Executive Order 111, such as photovoltaics, wind power, and

biomass, provided that in the case of biomass plants from wood harvests, the wood is sustainably produced using practices protective of forest health. For reasons explained more fully below, the Department continues to maintain that environmental impacts from certain energy facilities should be carefully weighed in determining their inclusion in PSC's definition of renewable.

DEC contends that one of the principal forces behind the effort to establish an RPS in New York State is the need to foster the development of new technologies, powered by diverse fuel sources with negligible environmental impacts compared to fossil fuel fired energy production. It is with that purpose in mind that DEC encourages the PSC to carefully consider the suggestions below in designing New York's RPS.

## **II. Comments on the Revised Working Objectives**

One of the main objectives of the RPS is to "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." There were a number of other objectives for the RPS program developed early on in the proceeding including generation diversity, economic benefits, and administrative fairness, all of which may or may not be adopted as the official RPS objectives. Through written submissions to the ALJ, some parties elaborated on these policy goals by suggesting additional benefits sought by the RPS. In connection with the objective to improve New York's environment, DEC notes the suggestion that New York should favor renewables that emit less air pollution per unit of energy than the average fossil fuel combustion source. Although DEC Staff will address each technology below, this statement is an interesting construct on which to elaborate on the environmental objective of the RPS. Further, DEC supports the inclusion of some other suggested benefits of the RPS including the

improvement of the local, regional and global environment, and the alleviation of environmental impacts from electric generation on environmental justice communities. These are all worthy of inclusion in the RPS objectives.

On occasion, parties advocating for the inclusion or exclusion of sources from the RPS used the working objectives to help define what sources are renewable. This is a more holistic approach to qualifying eligible sources as opposed to determining eligibility on the plain meaning of renewable. That is, rather than defining renewables solely by whether the primary fuel is replenished by natural ecological cycles or proper management practices, some argued for inclusion based on, for example, whether a technology diversified the state's fuel sources. Though not impossible, this type of approach requires PSC to more carefully consider the potential net environmental impacts from each industry and then balance those benefits against other important benefits that will accrue to the state from the RPS. This is certainly a more complicated means of identifying eligible resources, especially if the working objectives are to be weighted equally.

DEC contends that the simplest means of identifying eligible resources is preferable and that relying on comparisons between each technology choice and the RPS working objectives may unnecessarily complicate the eligibility phase of the RPS. Nevertheless, should PSC adopt a system of qualifying resources for the RPS that includes non-environmental considerations, it should be clearly set out in the details of the program.

## **IV. Eligibility**

### **A. The Baseline**

How the 25% is achieved obviously depends on which renewables are eligible for RPS premiums. As indicated in the *June 25, 2003 Summary of Working Group Discussions*, DPS provided a table listing the percentage of energy derived from existing renewable technology in New York State, according to information generated by the Environmental Disclosure Program. The parties in Working Group One were not able to reach agreement on whether renewables as defined in the Environmental Disclosure Program categories should be carried over to the RPS.

DPS Staff offered a baseline proposal that

“for the purposes of setting an incremental target to reach the 25% goal, it will be assumed that the incremental target is 25% of projected statewide electricity usage in New York State in 2013, minus a baseline of 28,896,189 MWHs. The collaborative will not make attribution as to the specific sources that make up the baseline. Any future adjustments to targets will be made in the context of designated ‘eligible’ resources without attribution back to the effect, if any, on the makeup of the baseline.” *June 25, 2003 Summary of ALJ Stein, fn 1.*

The inclusion of waste-to-energy, or municipal waste combustors (MWCs), in the baseline number generated significant controversy. As a compromise, DPS’ baseline proposal includes some component of MWCs’ output along with existing hydro and biomass facilities. DEC supports this is a reasonable approach that puts parties on both sides of the municipal solid waste issue on equal footing as the parties explore ways to define eligible sources as renewable for the incremental percentage of the RPS.

### **B. Target Levels**

DPS Staff’s ramp-up targets, derived from the State Energy Plan, increase yearly by 0.6% until the 25% goal is reached in 2013. DEC defers to PSC’s expertise in this regard but agrees with the suggestion that incremental targets should be gauged according to realistic expectations

for growth. DEC does not oppose periodic adjustments to the targets to account for changes in actual growth or other unforeseen factors.

### **C. Target Resource Eligibility**

#### **Hydropower**

The Department supports the inclusion of hydro facilities in both the baseline and the incremental portion of the RPS as hydro is widely accepted as a renewable resource. DEC advocates that hydro facilities should be considered on a case-by-case basis, considering compliance with all federal and state environmental laws and the minimization of adverse impacts. Consistent with criteria, DEC supports the inclusion of low-impact hydro facilities towards the RPS and DEC also supports the inclusion of improvements to increase capacity at existing plants, provided environmental impacts to fish, wildlife and habitat are minimized.

#### **Solid Waste**

In our March 28, 2003 letter to ALJ Stein, DEC stated that waste-to-energy plants, or MWCs, should not be included in the additional 8% of the Governor's 25% goal. In light of the degree of conflict surrounding the waste incineration issue, the Department provides some additional comments for consideration.

One of DEC's initial concerns is that parties do not consistently distinguish between biomass facilities and waste-to-energy facilities. In discussions of how renewables were previously defined in this state and on how waste-to-energy is categorized by the federal government, it is not always clear if a distinction was made between the two types of facilities. For instance, in the definition of renewable energy resources at Energy Law Section 1-103(12) the word "wastes" is included but it does not specifically identify waste as municipal waste. Absent a more elaborate definition, this example cannot be used as clear argument in support or

opposition of the inclusion of MWCs in the RPS. In addition, a party in this proceeding implied that EPA definitively believes municipal waste incineration is a renewable form of energy. Although DEC did not do an exhaustive search of every reference to renewable energy by EPA, there is some evidence to the contrary. EPA's website carefully describes municipal waste incineration as a mixed source of both renewable and non-renewable resources.<sup>1</sup> Also, EPA's Clean Power Partnership program, designed to "expand awareness of renewable energy" defines eligible resources as solar electric, geothermal, wind, small or low-impact hydro facilities and eligible biomass.<sup>2</sup> There appears to be a distinction between a renewable *source* of energy and defining an entire energy production process as renewable. DEC simply requests PSC to recognize those distinctions when they are made.

Second, a number of parties referred to DEC's definition of renewable energy projects in its regulations for the NOx budget program (6 NYCRR Part 204) as precedent for the classification of renewables in New York. DEC's Part 204 regulations define a renewable energy project as a, "power generation technology that produces electricity from wind energy, solar thermal energy, photovoltaics, methane waste, or sustainably managed biomass; but not the combustion or pyrolysis of solid waste."<sup>3</sup> Under DEC's NOx budget program, renewable energy projects are eligible for part of the energy efficiency and renewable energy set-aside allocation. Clearly, for the purposes of developing the State's NOx budget program, the Department decided to expressly exclude waste incineration as renewable.<sup>4</sup> While it is true this definition was created for a specific purpose, DEC agrees the Part 204 definition is instructive of how the state has

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<sup>1</sup> See, <http://www.epa.gov/cleanenergy/renew.htm>

<sup>2</sup> <http://www.epa.gov/greenpower/whatis.htm>

<sup>3</sup> 6 NYCRR 204-1.2(b)(67).

<sup>4</sup> The complete text of the Department's response to comments on the Part 204 definition of renewable energy project can be found at: <http://www.dec.state.ny.us/website/dar/reports/noxbudgt/082699rev.pdf>

defined renewable energy sources in other contexts. There is nothing to suggest that PSC must apply the same definition of renewable for the RPS, but DEC's definition should not be dismissed because the environmental goals of the NOx budget program and the RPS are not identical.

The environmental impacts of MWCs were discussed at length during the RPS proceeding and proponents of MWC inclusion in the RPS pointed out that these facilities currently meet state and federal environmental standards. However, this is not the test for inclusion in the RPS. Like other combustion sources, MWCs have an impact on the environment. They emit numerous pollutants including mercury, toxics and particulate matter. Mercury deposition poses a significant threat to New York's environment, a fact presented in EPA's 1997 Mercury Study Report to Congress. While MWCs may comply with federal Maximum Achievable Control Technology standards, DEC submits that all pollutant sources should be complying with environmental standards regardless of their inclusion in subsidy programs. One of the DEC statistics cited by other parties during discussions on the eligibility of MWCs in the RPS, was that in the year 2000 MWCs were responsible for 26% of mercury emissions in New York. This calculation was based on a comprehensive mercury inventory effort conducted by DEC to evaluate the emissions of mercury for every air pollution source in the state including municipal waste incinerators. Since the 2000 data was calculated, recent regulatory efforts are responsible for a decline in mercury emissions in the state including a reduction in mercury emissions for MWCs. However, DEC is continuing in its efforts to reduce mercury in the environment in the near and long term.

Some questions were raised about the future of the MWC industry if all existing MWCs are excluded from the State's RPS since current contracts are set to expire. Despite this fact,

public policy goals of the RPS include the need to reduce environmental impacts from the electric generation industry and to diversify the state's fuel mix, but does not include the goal of ameliorating industry specific market conditions. There are other potential means available to the state that can separately address the concerns of the MWC industry, freeing up the PSC to tailor the RPS to its stated goals.

That notwithstanding, the waste-to-energy projects do have a place in the solid waste management scheme embodied in the Environmental Conservation Law, following source reduction and recycling in the list of DEC's solid waste management priorities. As a result, the Department does not oppose counting the MWC industry in the baseline percentage of the RPS and supports efforts to preserve its continued inclusion in the waste management hierarchy. However, in the context of the goals of the RPS and given the environmental impacts of MWCs, the Department does not support including waste-to-energy in the incremental portion of the RPS.

### **Biomass**

The Department participated in the biomass sub-working group and supports the concepts embraced in the written agreement reached by parties in that collaborative. Briefly, the agreement provided a process to ensure the sustainability of wood resources by advocating for forestry standards and requiring a verification process to monitor harvesting procedures. The agreement also addressed the eligibility of processed or treated biomass resources, by suggesting a framework for certifying the environmental performance of certain feedstocks, and the agreement also suggested emissions standard for biomass facilities that secure environmental benefits from this energy source. Although some issues remain unresolved, the working group accomplished a great deal in a short time frame and developed an agreement aimed at ensuring

that the potential economic benefits made available to the biomass industry do not come at the expense of the environment. DEC programs, specifically the Forest Products Utilization Program, foster ways to promote sustainably forestry and the market incentives for the biomass industry which may result from the RPS will further assist in the state's goal to encourage proper management of forested land.

### **Other**

As to the remaining resources identified in ALJ Stein's June 10, 2003 outline, the Department also supports the inclusion of solar energy, fuel cells, tidal, methane waste and wind power in the RPS, acknowledging that some accommodation should be made to foster additional emergent technologies that will need additional time in development to demonstrate sustainability.

### **D. Tiers**

There were several tier structures presented for consideration which assign a portion of the RPS to certain technologies. The Department conceptually agrees that some portion of the RPS should be allocated to emergent technologies that, at present, are not economically competitive with other renewable facilities. However, DEC is not a proponent of any of the tier structures offered to date. Respectfully, some of the suggestions involve either too many tiers using criteria too complicated to administer effectively or are too rigid in their allocation of the RPS percentage for yearly targets. While some of the suggestions, like the concept of applying credit multipliers, holds some promise as an equitable way to distribute incentives among all

participating renewable sources, DEC defers to Commission on how to keep the RPS simple in design but fair in implementation.

## **V. Overall RPS Structure**

DEC Staff did not proactively participate in the remaining working groups who were assigned to the compliance and procurement aspects of the RPS. Therefore, the Department does not have specific comments on the output of those groups. However, DEC is amenable to an alternative compliance mechanism that secures investment for the development of other renewables which today do not qualify as eligible resources for the RPS but have the potential to provide measurable environmental benefits to the state in the future.

Further, DEC supports the trading of renewable credits with out-of-state resources, provided the resources provide energy consistent with New York's definition of renewable. Consistent with federal and state environmental programs that address air pollution on a regional basis, New York should promote renewable energy production in states with facilities that impact New York's environment.

## **X. Conclusion**

DEC Staff appreciates the opportunity to provide these comments for the Commission's consideration. Consistent with the general directive under the Public Service Law §5, that the Commission should encourage long-range programs with "economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources," the RPS presents a unique opportunity to develop a cooperative among public and private entities for the benefit of the health and welfare of the people of the state and the

environment. The Department is available to provide any information needed by the Commission in connection with this proceeding.

Dated: September 26, 2003

Albany, N.Y.

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