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September 26, 2003

Hon. Eleanor Stein  
Administrative Law Judge  
Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

Re: Case No. 03-E-0188 – Proceeding on Motion of the Commission Regarding a  
Retail Renewable Portfolio Standard.

Dear Judge Stein:

Tannery Island Power Corporation,<sup>1</sup> Hydro Power, Inc. and Energy Enterprises, Inc. submit these comments pursuant to the Ruling Granting, In Part, Motions to Amend the Comment Schedule, issued August 18, 2003 and the Further Ruling Concerning Schedule and Procedure, issued September 19, 2003.

Tannery Island Power Corporation,<sup>1</sup> Hydro Power, Inc. and Energy Enterprises, Inc. support the Joint Utilities' proposal to reconvene the collaborative process as achievement of a consensus on the issues of costs, reliability and credit trading, among other things, is vital to implementation of an effective renewable portfolio standard in New York State.

Respectfully submitted this 26<sup>th</sup> of September 2003.

                  /s/                    
Paul V. Nolan, Esq.

cc: Hon. Jaclyn Brilling  
Active Party List

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<sup>1</sup> Tannery Island Power Corporation also participated in the comments filed by the Small Hydro Facility Owners.

**State of New York  
Public Service Commission**

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**Proceeding on Motion of the Commission |**  
**Regarding a Retail Renewable Portfolio |**  
**Standard. |**  
-----X

**Case No. 03-E-0188**

**Comments of Tannery Island Power Corporation,  
Hydro Power, Inc., and Energy Enterprises, Inc.**

Tannery Island Power Corporation, Hydro Power, Inc. and Energy Enterprises, Inc. provide the following comments on the issues raised during the collaborative phase of this proceeding:

**Summary**

As a threshold issue, it is important that consensus be reached in this proceeding, which has involved a wide array of stakeholder interests, before the Commission is asked to consider adoption of an administratively determined renewable portfolio standard for New York. If a consensus cannot be reached on the entire standard, then it is urged that consensus be reached by subgroups on as many components and principles thereof as possible in order to expedite the administrative process. For example, as the Summary of Working Group Discussions circulated on June 25 demonstrates, the working groups were unable to reach consensus on such issues as eligibility and the proposed DPS Staff baseline. Given the potential impact of adopting a renewable portfolio standard in New

York, it would best serve New York if these issues were further discussed among the parties prior to a Recommended Decision being issued.

### **III. The RETEC Straw Proposal**

This proposal should be reviewed in comparison to the Massachusetts renewable portfolio standard and any other existing renewable portfolio standards already in place in other states. New York does not need to reinvent the wheel and can benefit from analyzing any standard for this state in comparison to those previously adopted. Additionally, an analysis of existing renewable portfolio standards in other states should be conducted with an eye towards what is working and what has been found to be a deterrent or impediment to the stated goals of each state.

### **IV.B Target Levels**

Interim targets would be beneficial in any renewable portfolio standard adopted. Target levels should, however, be set using a measurable process allowing for fine-tuning if the minimum percentage goal is not likely to be reached.

### **IV.C Target Resource Eligibility - Hydro**

Existing hydroelectric facilities should be eligible for participation in any renewable portfolio standard adopted in New York. Existing hydroelectric facilities should not be placed in a DPS Staff baseline but rather should be included as eligible Target Resources. One of the arguments for inclusion of existing hydroelectric facilities as eligible Target Resources is their clear reliability benefit. There is no basis to

discriminate among new versus existing hydroelectric plants. Existing hydroelectric plants, which are subject to regulatory oversight at the Federal level in most instances, and in the absence thereof at the State level, must maintain the integrity of water retention structures, e.g., dams, penstocks, diversion structures, flashboards, etc., that can impose significant capital and O&M costs. Similarly, these plants are responsible for increasing levels of costs for the enhancement of public safety including homeland security.

Further, the benefits of hydroelectric power received by the consumer are the same as are those from wind power, tidal, biomass, etc., without differentiating and should be differentiated now based upon age. If discrimination is called for, as apparently, some parties want, then discriminate based on size of portfolios and ownership, e.g., owned by large faceless state bureaucracies or multi-national corporations versus owned by small municipalities, small corporations or individuals serving local loads.

System reliability is an integral piece of the renewable portfolio standard puzzle, as it is an integral piece of the New York State electric grid puzzle, and recent events exemplify how significant the reliability piece is to the State's electric system. The events of August 14 demonstrate that hydroelectric facilities enhance the State's electric system reliability and this proceeding should acknowledge that benefit.

The inclusion of hydroelectric and waste-to-energy facilities is important in the development of New York's renewable portfolio standard. This would include both existing and new plants. The State's current generation mix is comprised of 17.58% hydroelectric generation and 0.98% solid waste fueled generation. If the State currently has over 18% of its generation derived from these two sources it would seem reasonable to include these two sources of generation in the definition of renewables in the

renewable portfolio standard, so as to maintain generation diversity in achieving the renewable portfolio standard's goal of 25% of the State's generation coming from renewables. Order at 2. In order to achieve the 25% goal identified in the Commission's Order, it would be not only appropriate to encourage new renewable technologies, but equally important to include existing renewable resources with encouragement to upgrade and stabilize these existing facilities to ensure their continued contribution to a safe, reliable and secure source of renewable energy.

It should also be noted that there are significant public benefits associated with the proper operation and maintenance of existing hydroelectric facilities as those facilities support dam safety, public recreation, environmental monitoring, fish passage, etc. The importance of these existing facilities is best exemplified by the 1999 microburst in Upstate New York, the 1965 Blackout, and more recently the August 2003 Blackout. In each event, the lights were kept on in local communities by the presence of small operating hydroelectric projects.

Hydroelectric power is one of New York's most abundant sources of renewable energy. During the early 1980s when New York was seeking alternate energy sources to decrease the State's over-dependence on imported oil, hydroelectric developers rose to the challenge. In today's market, where once again New York needs to focus on diversifying its generation base, hydroelectric producers can again assist the State in providing clean, and environmentally friendly, generation through the inclusion of existing hydroelectric facilities in the renewable portfolio standard. By including the existing hydroelectric facilities in the RPS, small hydroelectric producers would be better situated to perform

the necessary upgrades and system reinforcements needed to maintain their contribution to the State's energy mix.

Any renewable portfolio standard proposal adopted in New York should not require any certification of hydroelectric facilities beyond the requirements of FERC licensing or re-licensing. The renewable portfolio standard proceeding should not adopt any standard that would preempt FERC licensing requirements.

#### **IV.C Target Resource Eligibility - Other**

Pilot programs should be available so that emerging technologies have a platform from which to participate in the renewable portfolio standard adopted in New York. The design and implementation of any such pilot programs could possibly be overseen by NYSERDA as demonstration projects.

#### **IV.D Tiers**

The renewable portfolio standard adopted in this proceeding should not include any tiers. Tiers would merely add another layer of administrative design potentially hindering implementation of the adopted renewable portfolio standard. An emerging technology tier is not necessary in an open market, if the technology works then the owner will be paid. The same applies to development of a high value location tier. The market will dictate the need and locations for new generation. Further, a developing tier would appear to encroach upon NYSERDA's role of encouraging new technologies.

#### **IV. Overall RPS Structure**

With regard to the issue of a preferred structure of the renewable portfolio standard, be it a centralized or individual procurement model, there would need to be changes at the NYISO to accommodate market participation, aggregation and bi-lateral arrangements as well as trading. It is believed that a centralized clearing house, which could be an adjunct to the NYISO, would facilitate quicker and broader development, e.g., both by type and geographically, of projects and contracts for renewable attributes.

Regarding individual compliance, it should be created along the lines of FERC qualifying facility self-certification. In other words, if you are in compliance then nothing needs to be done, however, if you later are not in compliance then the entity must face penalties with above-market payments. This penalty structure would make financiers careful of “paper projects” and thus would be self-enforcing without the addition of undue regulatory oversight.

#### **VI. Credit Trading**

With regard to credit trading, whether a credit trading system is implemented for New York State alone or a regional trading system is created, the generator of the renewable resource should retain the credit for the energy produced. This trading should allow for the trading of all renewable attributes, e.g., NO<sub>x</sub> allowances, and should ensure that the benefits of those trades go to the generator and not the monopolies holding the wires.

## **VII. Contracting Standards**

The renewable portfolio standard should include a uniform power purchase standard contract and also a standardized interconnection agreement for eligible renewable resources. The use of standardized contracts will add certainty to the renewable resources available for accounting in the renewable portfolio standard and add to reliability in the system. The standardized interconnection agreements also provide for increased transmission system reliability, clearly an important issue in the current environment. The interconnection agreement should be a “stand alone” document that does not rely too heavily, if at all, upon evolving national and regional standards. Instead, the requirements and expectations should be clearly set forth with a view to ensuring, at minimal costs, system reliability based upon the experience of numerous small power generating facilities that have operated well for the past fifteen or more years. In short, the agreements should not be used as a vehicle to gold plate small generator facilities when no measurable benefit to the public is discernable.

### **Conclusion**

Tannery Island Power Corporation, Hydro Power, Inc., and Energy Enterprises, Inc. believe: that consensus must be reached by the parties; that existing hydroelectric resources be eligible for participation in the renewable portfolio standard; that no additional certification requirements for hydroelectric facilities be imposed beyond those already implemented by the FERC; that any “green credits” be retained by the eligible generator rather than the purchaser; and that standard contracts for power purchase and standard interconnection agreements be made available to renewable portfolio standard eligible resource generators.

