

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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

BRIEF ON EXCEPTIONS OF INDEPENDENT  
POWER PRODUCERS OF NEW YORK, INC.

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INTRODUCTION

In February 2003, the Public Service Commission (“Commission”) instituted the above-captioned proceeding to develop and implement a renewable portfolio standard (“RPS”) for retail electric sales. On June 3, 2004, Administrative Law Judge (“ALJ”) Stein issued a decision recommending (“RD”) that the Commission adopt a policy statement designed to achieve the goal that 25% of energy sold at retail in New York be provided by renewable resources by 2013.

Pursuant to the Commission’s June 3, 2004 Notice of Schedule for Filing Exceptions, Independent Power Producers of New York, Inc. (“IPPNY”) hereby files its exceptions to the RD. IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include more than 100 companies involved in the development, operation and ownership of electric generators and the marketing and sale of electric power in New York. As an active participant in the RPS proceeding, IPPNY’s interest lies mainly in ensuring the RPS is developed in a manner that is consistent with, and does not undermine in any respect, the continued functioning of reliable, non-discriminatory, competitive energy markets in New York and its surrounding regions.

As discussed below, IPPNY respectfully requests that:

1. Prior to ordering load serving entities (“LSEs”) to comply with any RPS targets, the Commission address the results of the Phase 2 reliability study being conducted by the New York Independent System Operator (“NYISO”) and New York State Energy Research and Development Authority (“NYSERDA”).
2. The Commission’s RPS policy statement make clear that any action it takes as a result of its review of the RPS in 2008 will not reduce the target levels that previously were established for 2007 for a ten-year period.
3. The Commission’s RPS policy statement allow out-of-State renewable energy resources to trade renewable energy credits (“RECs”) in New York without having to demonstrate delivery of the associated energy into New York. If the Commission implements a deliverability requirement, it should permit renewable generators to sell RECs in New York so long as they deliver the associated amount of energy into New York within one calendar year of the time in which the RECs are sold.
4. The Commission set a 20 MW requirement on a facility basis as the only requirement for existing renewable resources, such as small hydroelectric and biomass projects, to be eligible to participate in the RPS program.

**I. PHASE 2 OF THE NYISO/NYSERDA RELIABILITY STUDY MUST BE COMPLETED AND ITS RESULTS MUST BE ADDRESSED BEFORE THE COMMISSION SETS, AND ORDERS COMPLIANCE WITH, RPS TARGETS.**

Throughout this proceeding, IPPNY and a number of other parties have advocated that maintaining reliability of the State's transmission system and competitive wholesale electricity markets must be a primary concern in developing RPS policies. To date, the record on reliability impacts has not been sufficiently developed to recommend or adopt major policy issues that could adversely affect reliability.

The only analysis of reliability impacts conducted to date, the Phase 1 Reliability Study ("Phase 1"), issued on February 2, 2004, merely provides an initial, high-level response to many important issues related to the effects of integrating wind power into the New York State bulk power system ("NYSBP"). Many important issues are not adequately addressed in Phase 1. Indeed, by its express terms, many of these issues are reserved for more extensive study in Phase 2 of the reliability assessment ("Phase 2"), including load following issues, unit commitment, the calculation of operating reserves and the expected impact on hourly and daily operations. Phase 1's conclusion on the amount of wind generation that can be safely and reliably integrated into the NYSBP is therefore premature at best. Given the large number of issues identified in Phase 1 but expressly left unanswered until the completion of Phase 2, it alone cannot form an adequate basis for the Commission to set the RPS target levels or implementation time frames.

The RD recounts IPPNY's and other parties' requests to the ALJ that an RD be delayed until Phase 2 has been completed, Department of Public Service ("DPS") staff

has revised its *New York Renewable Portfolio Standard Cost Study II Report* (“*Cost Study*”) to recognize the reliability impacts found pursuant to Phase 2, and parties have been given a fair opportunity to analyze, evaluate and comment on Phase 2 and the revised *Cost Study*.<sup>1</sup> In concluding that the record is sufficient for the Commission to rule on fundamental RPS design policies such as portfolio design, funding mechanisms, eligible technologies, and other policy issues that would allow a generation attributes trading program to develop, the RD relies on the NYISO’s recommendation that the Commission move forward on these basic infrastructure issues.<sup>2</sup>

However, while the RD ruled on the basic infrastructure issues recommended by the NYISO, the RD went well beyond the NYISO’s recommendation by proposing that the Commission adopt and implement specific targets and objectives. In fact, while the RD acknowledges that the NYISO urged the Commission to refrain from setting targets until after Phase 2 is issued,<sup>3</sup> the RD inexplicably goes on to ignore the NYISO’s caution in this regard. In its comments on Phase 1, the NYISO stated that the Phase 2 results are necessary before final conclusions can be drawn as to the exact magnitude of wind penetration that can be added without adverse consequences. The NYISO stated:

The Phase I analysis focused solely on the thermal impact of the prospective 3,300 MW of wind generation on the transmission network. As a consequence, voltage or stability constraints, from a network security point of view, may decrease this figure, as may operational considerations. Phase II evaluations should supply this additional information. The NYISO cautions, therefore, that firm conclusions in the crucial reliability area cannot

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<sup>1</sup> See RD at 25-30.

<sup>2</sup> RD at 29.

<sup>3</sup> RD at 28.

be made until the conclusions of Phase II are reviewed and analyzed.

The NYISO also agrees with the Phase I Report's conclusion that further work is necessary to better understand how best to integrate these resources into the New York wholesale market, particularly with respect to valuing their capacity contribution. As the Phase I Report notes, the addition of wind generation, particularly west of the Central East Interface, will provide only a fraction of the reliability value of capacity added downstate. Although this, in and of itself, will not degrade the reliability of the system, as measured by Loss of Load Expectation, it could adversely impact existing, marginally operating, thermal generation. If such generation retires, or if expected new generation is deferred or cancelled as a result of wind additions, then system reliability may be impacted, although the NPCC minimum reliability threshold would be maintained. The Phase I Report did not examine the effects of new wind generation on existing generation.<sup>4</sup>

The NYISO also explained that it is working on a parallel track with Phase 2 to examine in greater detail the operational and reliability implications and impacts on market efficiency and competition of adding significant amounts of wind power and other intermittent resources to the State's generation fleet. The NYISO stated that it will share the results of its analysis with the Commission to help the Commission avoid unintended, adverse economic consequences.

As the RD also recognizes, the NYISO recommended that if the Commission decided to offer financial incentives to RPS participants before Phase 2 has been analyzed and its recommendations incorporated, the Commission should impose a Statewide interim limit on wind eligibility, as well as locational limits where physical

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<sup>4</sup> Comments of the New York Independent System Operator, Inc., on Phase I Effects of Integrating Windpower on Transmission System Planning, Reliability and Operations at 2-3 (March 13, 2004).

transmission limitations may be implicated.<sup>5</sup> To help guide the Commission in setting an interim limit, the NYISO pointed to its tariffs which presently exempt up to 500 MWs of intermittent resources from the operation of certain market rules that would otherwise penalize units that cannot control their fuel resources.

In recommending the adoption of specific targets, the RD did not, however, explicitly address the NYISO's request that an interim limit on wind generation be established. While the RD recommends that the Phase 2 Reliability Study, as well as other issues, should be considered in a separate implementation process subsequent to the Commission's order adopting a policy statement, the details of how the implementation process will be conducted and its impacts on the previously issued policy statement are unclear.<sup>6</sup> The RD is silent as to whether the *Cost Study* should be revised to incorporate the results of Phase 2, whether the parties should have an opportunity to comment on Phase 2 and a revised *Cost Study* and, most importantly, whether the Commission's order addressing the implementation process could potentially modify any targets adopted in the Commission's RPS policy statement.

Consistent with IPPNY's prior comments in this proceeding and the NYISO's March 13, 2004 comments on Phase 1, IPPNY requests that the Commission address the results of Phase 2, a revised *Cost Study* reflecting the results from Phase 2, parties' comments on Phase 2 and the revised *Cost Study* and the NYISO's independent analysis of reliability impacts, before it sets and orders compliance with any RPS targets. The Commission should be flexible in choosing a commencement date for compliance with

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<sup>5</sup> RD at 28.

<sup>6</sup> See Rd at 29.

RPS targets to allow sufficient time to complete its reliability and cost impact review. If the Commission decides to require compliance with targets prior to the completion of Phase 2, it should adopt the NYISO's recommendation to impose an interim limit of 500 MW on wind eligibility. Only after the Commission fully reviews Phase 2 and appropriately addresses any adverse impacts revealed by Phase 2 should it set targets that would allow the addition of greater than 500 MW of wind generation to the electric system.

**II. THE COMMISSION'S RPS POLICY STATEMENT SHOULD MAKE CLEAR THAT ANY ACTION IT TAKES AS A RESULT OF ITS REVIEW OF THE RPS IN 2008 WILL NOT REDUCE PREVIOUSLY ESTABLISHED 2007 TARGETS FOR A TEN-YEAR PERIOD.**

The RD recommends that the Commission adopt a policy statement designed to achieve the goal that 25% of energy sold at retail in New York be provided by renewable resources by 2013. The RD proposes targets to be reached from 2006 to 2013 to achieve the 25% goal but recommends that the Commission review the 2013 schedule in 2008 (the "2008 Review"). Noting that meeting the 25% target will be challenging and recognizing "the vicissitudes of project development, site selection, fuel prices, and the economy," the RD recommends that the 2008 Review permit the opportunity for the Commission to evaluate costs and benefits, adjust targets or otherwise modify the RPS.<sup>7</sup>

IPPNY fully supports the need for, and the completion of, the 2008 Review. As the RD noted, IPPNY and other parties strongly challenged the Cost Study for its reliance

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<sup>7</sup> RD at 14, 45.

on flawed assumptions that likely exaggerated environmental benefits while understating cost impacts. The 2008 Review will provide the Commission with two years of real-world experience and data and will allow the Commission to tailor its policies and targets going forward from that point to ensure that reliability and competitive markets are not harmed and the State's citizens obtain cost effective benefits from the RPS.

While the 2008 Review is warranted, the Commission should be careful that the 2008 Review not undermine the development of a robust competitive market for RECs. Unless the State executes long-term contracts with developers, it is unlikely that any renewable resources will be built to satisfy the 2006 and 2007 RPS targets if there is any threat that the subsidies necessary for construction, operation and maintenance of these projects will be reduced or terminated in 2008. LSEs will not likely execute long-term contracts for fear they will be stranded with above-market payments for resources that are no longer needed to meet State policy goals.

IPPNY recommends that, to avoid these problems, the Commission's policy statement provide that the 2008 Review cannot be used to reduce targets below the target levels previously established for 2007 for a period of 10 years. By providing some level of certainty that subsidized payments will continue for 10 years, LSEs will be more likely to execute long-term contracts and renewable resources are more likely to obtain financing and be developed to operate in 2006 and 2007.

### **III. THE TRADING OF RECS SHOULD NOT REQUIRE DELIVERY OF ASSOCIATED ENERGY INTO NEW YORK.**

The RD recommends that the Commission permit otherwise eligible out-of-State renewable resources to sell RECs in New York only if it is demonstrated that the associated amount of energy tied to the RECs is delivered to the New York Control Area in the same calendar month. The RD states that RPS benefits such as “local air emission reductions, energy supply diversity and security, and protection from natural gas price spikes or possible supply disruptions, only accrue if the energy is actually delivered into New York State. In addition, only with a delivery requirement will New Yorkers enjoy the offset to RPS costs in lower wholesale energy prices.”<sup>8</sup> As an alternative to the State-specific deliverability requirement, the RD proposes that the Commission adopt a program that would require delivery of associated energy on a regional basis. The RD also proposes that the need for a deliverability requirement be assessed as part of the 2008 Review.

Pursuant to the Commission’s policies and orders to encourage competition wherever feasible and to develop markets with many buyers and sellers,<sup>9</sup> RECs should be allowed to trade in New York without requiring the delivery of the associated energy into the State. An efficient and broad-based market for renewable energy resources can develop more quickly if developers of renewable energy resources have greater freedom

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<sup>8</sup> RD at 79.

<sup>9</sup> Case 94-E-0952 *et al.*, *Re Competitive Opportunities Regarding Electric Service* (May 20, 1996).

to choose sites for their facilities. Broader site opportunities will also surely improve the economic viability of renewable technologies.

A requirement that renewable energy attributes be bundled with energy deliveries from out-of-State resources is also contrary to efficient markets. Such a requirement will make it likely that very few attributes will be acquired from out-of-State resources, due to the additional costs to reserve transmission capability to import energy into New York.

Pollution does not recognize state boundaries. Renewable technologies across the region, indeed the country, can serve to improve the air and water quality for all. The State's policy should be to encourage renewable resources both inside and outside of the State. New York could garner greater environmental benefits from an RPS if there was no market constricting deliverability requirement. New York has vigorously argued that coal-fired generation plants outside of the State need to reduce emissions and invest in state of the art pollution control technologies. To the extent New York seeks to improve air quality by influencing out-of-state generation, it should also seek to encourage renewable generation by adopting free and open regional trading of renewable attributes without deliverability requirements. While renewable resources may not sell electricity directly into New York, their output, made economic by the revenues they receive from selling their attributes in New York, may displace the output from other generators.

The concern that the lack of a deliverability requirement will harm the development of renewable resources in New York is narrow-minded and unfounded. Allowing attributes to be traded without a deliverability requirement in New York will encourage other states to allow renewable resources sited in New York to sell unbundled attributes into their states. IPPNY believes that this could be achieved if the New York

RPS includes a reciprocity provision that would permit out-of-State attributes to be sold in-State without a deliverability requirement only if the other state or province allows New York attributes to be sold within its borders without a deliverability requirement. The development of renewable resources in New York could also be encouraged when other states down-wind from New York recognize the environmental benefits of renewable resources operating in New York. Thus, there is no basis for the claim that local air emission reductions, energy supply diversity and security, and protection from natural gas price spikes or possible supply disruptions can only accrue to New York consumers if a deliverability requirement is imposed.

IPPNY requests that the Commission adopt the RD's alternative approach to the State-specific deliverability requirement, whereby the delivery requirement would be imposed on a regional basis. IPPNY urges the Commission to order DPS staff and parties to work with neighboring states to develop a regional REC trading system that would allow RECs to be sold throughout the region without requiring a state-specific deliverability requirement. If the Commission decides to adopt the State-specific deliverability requirement until at least the 2008 Review, the Commission should permit renewable generators to sell RECs in New York so long as they deliver the associated amount of energy into New York within one calendar year the RECs are sold, rather than one month as proposed in the RD. A calendar year will help reduce the costs and burdens on LSEs to comply with RPS targets by allowing renewable resources more flexibility in scheduling energy transactions into New York.

**IV. THE COMMISSION SHOULD SET MORE REASONABLE ELIGIBILITY REQUIREMENTS FOR EXISTING RENEWABLE RESOURCES, SUCH AS VERY SMALL HYDROELECTRIC AND BIOMASS FACILITIES.**

The RD recognizes the need to include existing very small hydroelectric facilities in the eligibility criteria to preserve their ongoing operations. Specifically, facilities that have capacity limited to 10 MWs and that have expiring above-market energy contracts will remain eligible. The technology, size and the contract requirement set forth in the RD arbitrarily will exclude facilities that should remain eligible, however. Thus, these requirements must be revised.

Currently, there are a number of small hydroelectric and biomass facilities that are not significantly larger than the cut-off proposed by the RD, many of which presently participate or have participated in the State's existing green power programs. Arbitrarily excluding these facilities from RPS benefits on the date that the RPS is implemented substantially will undercut the ongoing viability of these facilities. Thus, while a goal of the RPS proceeding is to enhance renewable resources, this requirement may very well eliminate facilities currently deemed "green power" in New York State. To avoid this unintended and illogical outcome, IPPNY requests that the Commission set a 20 MW size requirement on a facility basis as the only requirement for existing renewable facilities, such as hydroelectric and biomass facilities, to be eligible to participate in the RPS program.

CONCLUSION

As discussed above, the Commission should: 1. address the results of the Phase 2 reliability study before ordering compliance with any RPS targets, 2. make clear that any action it takes as a result of its review of the RPS in 2008 will not reduce the target levels that previously were established for 2007 for a ten-year period, 3. permit out-of-State renewable energy resources to trade RECs in New York without having to demonstrate delivery of the associated energy into New York, and 4. set a 20 MW requirement on a facility basis as the only requirement for existing renewable resources, such as small hydroelectric and biomass projects, to be eligible to participate in the RPS program.

Respectfully submitted,

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