

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

Case 03-E-0188

BRIEF ON EXCEPTIONS OF KEYSpan CORPORATION

I. INTRODUCTION

The Commission commenced this proceeding by its Order of February 19, 2003, in which the Commission cited the environmental and resource initiatives in the New York State Energy Plan of 2002. In that Order, the Commission established as a working target that 25% of the electricity sold in New York State be generated from renewable resources.¹ This proceeding was structured to draw from the expertise and perspectives of a variety of stakeholders to design a renewable portfolio standard (RPS) that would increase the proportion of renewable resources in the state's electric supply mix. On June 3, 2004, Administrative Law Judge Eleanor Stein (ALJ or Judge Stein) issued her Recommended Decision (RD) on a proposed design for the RPS. Pursuant to 16 NYCRR §4.10 and the RD, briefs on exceptions are due June 23, 2003, and briefs opposing exceptions are due on July 9, 2004.

A. Statement of the Case

KeySpan Corporation (KeySpan) adopts the statement of the case set forth in the RD at pp. 4-14.

B. Summary of KeySpan's Position and Grounds for Exceptions

¹ Case 03-E-0188, "Order Instituting Proceeding" (February 19, 2003).

KeySpan supports the Commission's objective of creating an RPS as a means of enhancing the diversity and security of New York State's electric energy supply.

KeySpan also commends the ALJ for her diligent review of the voluminous materials offered for consideration in this proceeding, and for her overall success in recommending an RPS plan that balances the important goals in this proceeding of protecting and enhancing the security, diversity, and affordability of the state's electric energy supply.

KeySpan has several exceptions to the RD, which relate to the overly restrictive definitions of renewables eligible for main-tier incentives, as well as to the limited flexibility in the RPS design to accommodate uncertainties regarding reliability and cost. Specifically, KeySpan notes exceptions to the proposed conditions for landfill projects qualifying for main tier incentives, and also to the overly restrictive list of eligible biomass sources. In addition, KeySpan notes exceptions to the RD based on its concern that the design of the RPS not be rigid given the uncertainties regarding what generation resources can be eliminated without sacrificing reliability, and what the cost impact will be.

II. DISCUSSION

A. The Definition of Eligible Biomass Resources Is Too Narrow.

At Table 3 (pp.17-19 of the RD), the ALJ sets out her recommended list of renewable resources that should qualify for main-tier incentives. KeySpan maintains that the ALJ's recommendations with respect to eligibility for biogas and eligible biomass sources are unnecessarily restrictive, and would deny eligibility to clean and efficient renewables that could assist the state in meeting its ambitious renewable portfolio objectives.

1. Resources From Existing Landfill Projects Should Qualify For Main-Tier Incentives.

Landfill gas is among the eligible renewables listed in Table 3. However, at the top of Table 3 are general eligibility requirements, including that “the generation facility must have been developed after January 1, 2003....”²

The scope of this restriction is not clear, and, in its decision, the Commission must resolve ambiguities as to which renewable resources will qualify for incentives. It could be inferred from the foregoing language that the landfill project and the generating facility must be on the same site, and that landfill gas purchased by and transported to a generation facility situated elsewhere in New York State would not qualify as a renewable resource. There is no reason for such a restriction. Whether the generation of electricity fueled by landfill gas is accomplished at the landfill site or not is irrelevant to the achievement of the objectives of the RPS. Unless main-tier incentives apply, it is unlikely that generators will pay a premium for landfill gas in lieu of less costly fuels. Accordingly, if landfill gas is to play a role in the RPS, rather than being flared into the atmosphere, the Commission must clarify that main-tier incentives will apply to landfill gas that displaces non-renewable resources in fueling newly operational, highly efficient generation located remotely from the landfill site.

In addition, it is not clear what the ALJ means by saying that the generation facility would have had to be “developed” after January 1, 2003. KeySpan understands that the ALJ wants to encourage the development of incremental renewables, and to protect electric ratepayers from paying for incentives that are not needed to maintain the renewable in the portfolio. However, it is not clear what is meant by the term

² RD at 17.

“developed.” It would serve the objectives of the RPS to state that the generation facility must have commenced commercial operation after January 1, 2003. With this clarification, the Commission could be assured that any renewable to which incentives apply was not an established part of the generator’s resource mix when this proceeding was announced, and that any landfill gas used to fire such generation facilities will be a net gain for the economic and environmental security of New York’s electric supply.

The RD’s restrictive definition of eligible sources and the requirement that the generation facility must have been developed after January 1, 2003 could have the cumulative effect of excluding existing generators from contributing to or participating in the RPS goals by fueling generation with renewable resources. Certainly their participation would be unduly constrained. Indeed, the RD would allow incentives for co-firing biomass wood products with coal in existing coal plants, but not for co-firing other, equally legitimate renewables with oil or natural gas at existing oil or gas-fired plants.³ The objectives of RPS would be better served by a broader definition of renewable resources to include plant-based, animal-based, landfill-based, and other waste-based, sustainable, and carbon neutral resources which, if deployed to fuel generation, would reduce reliance on imported petroleum and reduce emissions at existing generation units. As existing generators represent 81% of the current New York State fuel mix, a small change in their fuel consumption behavior in favor of more broadly defined renewable resources could translate into significant renewable resource contributions and environmental benefits, as well as economic benefits. The Commission should encourage and facilitate the participation of existing generators in meeting the renewables target.

2. *The RD is too restrictive in its eligible sources for Biomass.*

Table 3 in the RD limits the eligible sources for biomass exclusively to wood and wood-based products. This restriction is overly broad, and, if adopted by the Commission, would exclude from eligibility some extremely efficient renewable resources. For example, KeySpan is aware that Changing World Technologies (CWT) has developed an efficient thermal conversion process for converting animal waste and other organic polymers into fuel oil. This innovative technology may not have been known or considered by the Biomass Eligibility working group, which may explain why agricultural and animal waste and other organic materials are not listed as eligible biomass sources.

Agricultural and animal waste are viable biomass sources, and the process developed by CWT is environmentally benign and carbon neutral, similar to the closed loop, woody biomass sources eligible for main-tier incentives, where wood is grown for the specific purpose of providing feedstock.⁴ As described in CWT's own filing in this proceeding, its technology uses as feedstock animal waste that is otherwise extremely difficult to dispose of. This feedstock is highly sustainable: 51% of the nation's solid waste is agricultural waste.⁵ Similarly, there seems no reason to exclude other organic materials, such as automobile fluff and tires, from being eligible biomass sources, provided they can be converted without combustion.

The exclusion of animal waste and other organic materials as eligible biomass sources appears arbitrary in light of the fact that animal and other organic waste, unless otherwise disposed of, will end up in landfills, and landfill gas is eligible for main-tier

³ RD at 18.

⁴ Case 03-E-0188, "Draft Generic Environmental Impact Statement," p.71.

incentives. There is also an inconsistency in that animal manure is an eligible biomass source, but offal is not. The Commission should correct this oversight in its decision, and include animal and other organic waste as biomass sources eligible for main-tier incentives. Specifically, the list of eligible biomass sources in Table 4⁶ should be amended to add an additional source: “Agricultural Residue, Animal Byproduct - Organic matter remaining after the harvesting of animals for food or other uses. The matter may be further refined into organic compounds to render it useful for combustion in boilers, turbines, engines, or any prime mover that converts chemical energy into electrical energy.” In addition, the existing definition of “refuse derived fuel” in Table 4 should be amended to refer to a broader range of sources, as follows:

Refuse Derived Fuel - The source-separated, combustible, uncontaminated portion of solid waste streams such as automobile fluff, tires or construction and demolition debris generally prepared by a densification process that results in a uniformly sized, easy to handle fuel pellet, briquette, or fluff material. The matter may be further refined into organic compounds to render it useful for combustion in boilers, turbines, engines, or any prime mover that converts chemical energy into electrical energy.

By encouraging the participation of existing generators in meeting the renewable objectives and broadening the definition of eligible biomass sources to include offal and other organic waste, the Commission will increase the likelihood of meeting the RPS targets and improving the state’s economic and energy security.

B. The RD Is Based On Incomplete Reliability and Cost Data.

Even with the RD’s incremental approach to RPS design, KeySpan contends that the RD does not sufficiently consider the reliability and cost impacts of RPS

⁵ Gas Research Institute and American Gas Association, “Solid Waste Management,” June 1996.

implementation. The RD does not focus the necessary attention on reliability and concomitant cost issues that will be necessary for successful implementation of RPS. The RD relies upon data from Phase I of the NYISO/NYSERDA Wind Study that is incomplete and faulty. First, the Wind Study did not properly account for the unpredictability of wind production.⁷ Second, by utilizing an incomplete examination of the potential for re-dispatch of existing generation resources, the ALJ overstates the potential for eliminating such resources and any attendant cost savings.⁸

The RD states that the Wind Study provides sufficient certainty to allow the Commission to proceed with RPS design.⁹ While KeySpan does not necessarily disagree with that conclusion as it relates to continued RPS design, it advises continued vigilance of prospective reliability dangers that may arise, as well as corresponding cost increases. Renewable resources will likely not displace existing conventional resources at the rates estimated in the Wind Study and the various cost studies. Generating resources with quick start-up and ramp rates will continue to be necessary to maintain reliable operation of the electric system. These generating resources are often close to the margin with their operating costs, but are vital to ensuring system reliability in peak load conditions. Accurate modeling and evaluation of the continued need for such resources is essential to a full understanding of the long-term reliability and cost impacts of an RPS.

KeySpan respectfully argues that the RD should have included the results of Phase II of the NYISO/NYSERDA reliability study. However, based on the ALJ's decision to proceed with the RD before completion of the Phase II study, KeySpan urges

⁶ RD at 19.

⁷ RD at 87 (wind resources are not capable of day-ahead scheduling).

⁸ RD at 85, 91 (different generators have different re-dispatch capabilities based on their design characteristics).

a cautious approach and more flexible design for the RPS that will allow for the full integration of the results of the Phase II study,¹⁰ as well as any relevant new findings from additional reliability and cost studies.¹¹ The RD acknowledges that long-term uncertainties are inherent in the forecasting of the cost impacts of an RPS.¹²

In recognition of this uncertainty, the ALJ suggests an evaluation of RPS in 2008 as a means to account for the actual cost and reliability impacts of the RPS program.¹³ KeySpan contends that 2008 is too late to begin the critical evaluation contemplated in the RD. Renewable resources will require substantial lead times and commitments to long-term contracts before the beginning of construction, and well in advance of 2008. It is reasonable to assume that by 2008, load-serving entities will already have contracts for resources that will not be available until 2011 or even later. The RPS program will be well established when the recommended program evaluation begins in 2008. If the economics or reliable operation of the RPS is faltering in 2008, market participants will have little chance to unwind the arrangements they have for renewables procurement in the coming years. KeySpan urges the Commission to engage in continual evaluation of the RPS program through less formal procedures than the RD contemplates for 2008.

⁹ RD at 86.

¹⁰ This is in accord with the advice of the New York State Reliability Council in its letter to Judge Stein dated September 8, 2003, at p. 2, where, referring to the NYSERDA study, it states: "It is recommended that any decision in this proceeding be flexible enough to accommodate changes to the RPS design as we learn more from this research."

¹¹ The RD notes that the NYISO's Independent Market Advisor will study the effects of the RPS on existing generation resources. RD at 92. As the entity responsible for the reliable and efficient operation of New York's wholesale electric system, the NYISO is in a unique position to advise the Commission on RPS design. KeySpan encourages the Commission to utilize the expertise of the NYISO to ensure continued reliability during RPS implementation.

¹² RD at 98 (stating that the existing cost estimates are sufficient based on long-term uncertainties inherent in such forecasting). The RD, however, seems to discount an IPPNY argument on the overstatement of cost savings caused by flawed models, based on an inability to quantify the erroneous estimates. RD at 87.

¹³ RD at 15.

Any flaws in RPS design or implementation should be capable of adjustment at any time and should not wait until 2008.

III. CONCLUSION

KeySpan appreciates the opportunity to participate in this important proceeding, and requests that the exceptions it notes herein be considered and adopted in the Commission's decision.

Respectfully submitted,

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