STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Request for an Exception to the Recommended Decision

Introduction:

The Recommended Decision of Administrative Law Judge Eleanor Stein in the above proceeding was issued on June 3, 2004, and an erratum was issued on June 16, 2004 (hereinafter together the "RD"). The RD dealt with multiple issues associated with the development of a retail renewable portfolio standard (hereinafter "RPS") for New York State. The RD addressed the issue of timing by stating: "The Instituting Order can best be read to assume that today's existing or baseline renewable resources need not, generally, be offered further ratepayer price support to succeed." (Emphasis added). Accordingly, the position taken in the RD is that only new resources developed after January 1, 2003, will be eligible for the RPS. The RD then abides by this general position except for one exception: certain small hydropower facilities with above-market costs and expiring above- market energy price contracts.

The logic of this analysis is sound in most respects; however, as will be discussed herein, the existing Lyonsdale Biomass Facility should also be eligible for participation in the economic price supports of the RPS as an exception to the general assumption. The rationale applicable to the exception for small hydro facilities already enumerated in the RD applies equally to the Lyonsdale facility. In addition, the Lyonsdale facility is a critical component to the local economy and offers other compelling reasons why the continued viability of the facility is critical to achieving the goals of the RPS.

History and description:

The Lyonsdale Biomass facility (hereinafter "LBF") is located in Lyonsdale, New York approximately 90 miles northweast of Syracuse in Lewis County. The facility has an in service date of August 12, 1992 and has a long history of changing ownership and financial instability. The plant has a capacity of approximately 19 mw and produces that power by burning over 750 tons of wood chips per day as fuel. The plant currently employees 16 full time employees (21 when fully staffed) at an average salary and benefits package of $ 61,000 per year. In addition, the LBF provides a market for forestry products and thereby impacts nearly 400 loggers located across Lewis, St. Lawrence, Onieda, Onondoga, Jefferson, Herkimer, and Oswego Counties. The LBF is critical to the economy of Lewis and the surrounding Counties as a purchaser of goods and services including fuel for trucking, electricity for operations, and as a major employer and taxpayer.

The relatively stable periods of the plant history coincide with operating under a long term contract. The initial owners of the plant had a long term PURPA contract with Niagara Mohawk that was bought out in 1998. Similar to the small hydro example, this long term contract was critical to offsetting above market production costs and ensuring the plant's viability. The plant attempted to sell into the spot market until 1999, but was forced to shut down because the spot market prices were too low to support the plant operations. All of the then current employees except one were laid off. Efforts were made in early 2000 to contract with another power purchaser, but that contract expired in December 2001, and was not renewed. Another attempt to operate the plant by selling into the spot market was initiated in early 2002 but was also unsuccessful. Operational losses were mounting and the plant was unable to pay loggers for wood delivery or to acquire funding for capital projects.

On June 1, 2003 the LBF was sold to the current owner, NGP Power Corp. NGP Power Corp. acquired LBF as an initial investment to build into a larger investment in New York. Since the acquisition the company has invested significant capital to improve the efficiency and reliability of the LBF and to reinvigorate the logging industry thereby rebuilding the fuel delivery system. Since that time the plant has operated by selling into the market and has incurred substantial operational losses; mitigated only by the recent higher market prices. In addition, all employees and management of the LBF have been under salary reductions ranging from 25% to as high as 85%. Only by participating in the RPS and thereby being as competitive as possible in its efforts to obtain a long term contract for its output will this facility continue to operate.

The LBF is included in the RD as part of the baseline renewable portfolio. The history of the plant since the extinction of the PURPA contract has demonstrated that the LBF continues to need certain economic supports to remain viable, and because the LBF otherwise advances the goals of the RPS, it is essential that the Commission allow the LBF to participate in the economic benefits of the RPS.

Including LBF in the RPS is consistent with the goals of the RPS.

ALJ Stein includes in the RD a recommendation that the working target of the RPS should provide that by the year 2013, at least 25% of the electricity retailed in New York State will be derived from renewable resources. Included in that overall working goal are the objectives of (1) improving New York's environment by reducing any adverse environmental impacts derived from electricity generation in New York State; (2) diversifying New York's electricity mix and improve energy security and reliability; (3) developing, advancing, and attracting renewable resource generators, manufacturers, and installers to New York State; (4) providing an economically efficient RPS portfolio that minimizes adverse impacts on energy costs; (5) developing an RPS that is compatible with competition in New York's energy markets; (6) developing an RPS that is administratively transparent and efficient.

As discussed below, allowing the LBF to participate in the economic benefits available as part of the RPS is consistent with and advances the goals of the RPS. In addition, inclusion of LBF will have virtually no adverse impact upon energy costs.

1. Improving New York's environment.

Biomass has been included in the RPS, and LBF is included in the baseline. There is no debate regarding the beneficial impact of biomass wood burners such as LBF being part of the RPS. In fact, the LBF was used by the working groups as the model for how to ensure that biomass generation was properly structured and monitored to maximize the environmental benefit of biomass as a renewable energy supply. As enumerated in the RD, the LBF is an important part of the current efforts to reduce adverse environmental impacts associated with electricity production in New York State. The LBF provides approximately 19mw of renewable power to the New York market that helps to offset otherwise required fossil fuel generation. The RPS recognizes this in the RD by including the LBF in the baseline of 19.5 %.

The LBF also contributes to the improvement of New York's environment by supporting forestry management practices. LBF supports SUNY's forestry school and had been an active participant in projects such as the development of fast growing willows. LBF also provides a stable market for low valued wood products including lumber, pallet, and furniture waste wood that would otherwise be land filled or left to decay on the forest floor.

Unfortunately, this power will not continue to be there without some assistance. Clearly, erosion of the baseline is contrary to the goal of achieving 25% renewable power generation. The ALJ acknowledges this in her discussion of the other two warranted exceptions.

2. Diversifying New York's energy mix.

Biomass and the clean burning of wood products is an important component of a renewable energy portfolio. The RD states that biomass facilities similar to LBF should be included in the baseline and new biomass facilities should be encouraged using economic incentives in the RPS. The goal of diversity is best served by increasing the amount of energy produced by proven technologies such as biomass. This goal will be easily thwarted if the baseline deteriorates because the existing biomass facilities cannot remain viable.

It should be noted from the diversity perspective that there are only **two** biomass facilities located and operating in New York State at this time. While the

RPS addresses diversity as a whole, the biomass component of the portfolio is already under duress.

3. Developing, attracting, and advancing renewable generators.

NGP Power Corporation is the current owner of the LBF. The company has a long term strategy to pursue additional renewable generation opportunities in New York State due to New York's significant natural assets. However, with only two functioning biomass facilities, it is critical to the existing and future biomass marketplace that the State demonstrates its commitment to these projects. The RD acknowledges that it is a worthy policy goal to attract new manufacturers, but without a demonstration that the current generators can be economically sustainable, there will be little economic incentive strong enough to encourage new investment. The LBF enjoys an economic advantage over a new biomass facility in that it must recover its operational costs and some capital costs while a new plant must recover both operational and extensive capital costs. The RPS must include some level of financial incentive to allow the LBF to recover its operational costs of production if only to demonstrate to potential new development that the future of biomass generation in New York is feasible.

4. Providing an economically efficient RPS.

In the course of the instant case many parties have argued that the RPS must be as efficient as possible and that the impact to the ratepayers mitigated as much as possible. The RD contemplates using financial incentives to encourage new biomass generation. As discussed above, the existing LBF enjoys a significant cost advantage over a new facility because it does not require its price to include recovery of capital at a comparable rate to a new facility. A strong case exists for the Commission to promote renewable energy at the lowest possible cost. The most efficient method of doing this would be to first ensure that the existing baseline is sustainable. As discussed, while the general view is that the existing renewable generation will continue even without any ratepayer subsidy, that is not the case with respect to the LBF. Therefore, as discussed in the RD with respect to small hydro, the LBF should be included in the economic benefit portion of the RPS regardless of when the plant became operational.

The LBF is only 19mw and there is only one other biomass facility in operation in New York State. Also, the burning of wood biomass to produce energy is relatively simple technology. There is no technological benefit that would be enjoyed by a new biomass facility that would make the new facility more efficient or environmentally friendly than the existing LBF. Therefore, the impact of the ratepayers from the RPS could be made most efficient by ensuring the viability of the LBF. The overall impact upon ratepayers would be insignificant because of the small size of the existing biomass facilities. The LBF's continued viability is clearly the most economically efficient method of achieving the environmental benefits if the economic development considerations are factored in. Biomass is a job and labor dependent technology and therefore the ratepayers get the most benefit for their buck by ensuring its viability.

5. Providing an RPS compatible with competition.

Including the LBF in the RPS will assist biomass to remain competitive with respect to the New York marketplace and with respect to other renewable technologies. Creating a small exception to allow economic incentives for the existing LBF will have no negative impact upon the competitive marketplace. The RD acknowledges this by its willingness to create the other small exception. With only two existing biomass facilities in New York, any impact will be negligible. In fact, because biomass facilities like LBF are proven and simple technology, and because LBF does not have extensive new capital to recover, this is one of the best ways to achieve the environmental goals of the RPS while maintaining competitive integrity.

6. Providing administrative transparency.

Including the LBF in the RPS as an exception to the general rule will have no impact on the issues raised under this subject. The RD contemplates an exception for small hydro facilities with expiring above market contracts in recognition that a subsidy is essential to ensure viability. The LBF has demonstrated, since the loss of its above market contract, that it is not sustainable. Under the same rationale a second exception for the LBF should be made.

Conclusion:

For all of the reasons discussed herein, the Commission should allow in its final order, as an exception to the Recommended Decision, the LBF to participate in the RPS. The Lyonsdale Biomass Facility is an exception to the general findings of the ALJ because it does indeed require ratepayer price support to succeed. The small number of similar facilities (2) combined with the job intensive nature of this technology dictates that this would be the most economically efficient method of pursuing the goals outlined in the Instituting Order and made the subject of this proceeding.