

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

Brief on Exceptions  
New York State Energy Research and Development Authority

The New York State Energy Research and Development Authority (“NYSERDA”) hereby submits its exceptions to the Recommended Decision issued by Hon. Eleanor Stein on June 3, 2004 in the above-captioned matter.

Procurement Structure

NYSERDA is prepared to serve as the administrator (“CPA”) of the central procurement component of the Renewable Portfolio Standard (“RPS”), and is prepared to develop an implementation plan for the CPA component that will include input from interested stakeholders. NYSERDA’s commitment is conditioned on the inclusion within the final CPA implementation plan of certain operating rules and design features, as discussed below.

As was stated in our previous Comments, NYSERDA envisions the function of the CPA as the procurement of renewable credits from RPS eligible megawatt hours based on aggregate megawatt hour targets to be assigned to the CPA by the Commission. NYSERDA would procure only the renewable credits, and would not procure the associated energy. NYSERDA anticipates that a generation information system (“GIS”) will be established, which will provide a registry of renewable energy credits (“REC”) to allow the unbundling of the REC from the associated energy. It is expected that accomplishment of the procurement targets will require long-term contracting. NYSERDA would expect that a written agreement would be developed, identifying the responsibilities of NYSERDA and the Commission.

The funding stream to the CPA must imbue the CPA/generator contracts with sufficient cash flow assurance, over the duration of the contracts, to attract capital investment, and must be consistent with any existing fiduciary obligations and limitations. The mechanism must also protect the CPA from under recovery, ensure timely payments to generators, and otherwise enable efficient and cost effective project financing. In addition, the revenues must provide for

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all administrative expenses, including the initial expense of designing and establishing the system, and on-going expenses associated with the verification of resource eligibility, reporting and monitoring obligations, and other administrative requirements as determined by the Commission.

It is suggested that the design of the CPA revenue stream should be the subject of a detailed investigation by Commission staff in consultation with the CPA, all affected Load Serving Entities, project developers, and the financial community.

## Renewable Energy Certificates

NYSERDA strongly suggests that the development and implementation of a GIS including a REC platform should commence immediately. While this is suggested in the Recommended Decision, NYSERDA recommends that the Commission order direct the parties to begin the design and implementation of this system in advance of a final implementation phase ruling in this matter. As the Commission is aware, NYSERDA, through two separate contracts has explored the development (business plans and system specification) of a REC accounting and tracking system. Reports detailing both of these efforts are posted on the Commission's RPS webpage. NYSERDA is in a position to oversee and coordinate the design and development of the REC accounting and tracking system, consistent with wholesale power market administration and retail environmental disclosure (including RPS compliance). NYSERDA would enlist the support of the New York Independent System Operator and the Commission staff in this effort.

## SBC-Like Tier

NYSERDA is also prepared to administer the SBC-like Tier component of the RPS. The success of NYSERDA's current small photovoltaic, wind and fuel cell program, has been made possible by investments in infrastructure such as installer training and certification. Continued success as the program expands to meet the SBC-like tier goals may require additional investment in infrastructure, and NYSERDA requests that this be recognized in the implementation plan. In addition, the plan should provide for some flexibility in the delivery of incentives, in order to allow adaptation to changing market conditions and other possible federal and/or state incentives as such incentives may become available.

## 2006 Compliance Year

If the initial RPS targets are to be achieved in 2006, the Commission's Order must set an aggressive timetable for the prompt resolution of all remaining issues in this proceeding. Assuming the fulfillment of the conditions described above with regard to the central procurement component, NYSERDA would be prepared to issue a solicitation as early as the

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latter part of 2005. NYSERDA's ability to procure renewable energy credits (RECs) within the 2006 compliance year will depend on market and project development conditions.

### 2008 RPS Review

NYSERDA agrees with the recommendation that the RPS be reviewed by the Commission after some period of operation. Such a review may be productive as early as 2008, depending on the pace of design and implementation from this point forward. However, the Commission's Order should make it clear what components of the RPS will be subject to revision, based on the review, and which components will not.

In particular, the Commission should make it clear that no revision to the RPS compliance targets or the schedule set to meet them will be considered for any year preceding the review. The perception by LSEs that a 2008 review might lower the compliance targets for the first two years would discourage the LSEs from entering into the long term contracts with developers, and may encourage the LSEs to resort to alternative compliance payments for the initial, pre-review compliance years (i.e. 2006-07). Because the alternative compliance payments will be made on a year-by-year basis, they will not support a long-term contracting approach that appears likely to be essential to the financing of some renewable facilities. Experience from other states, including Massachusetts, indicates that when LSEs opt for alternative compliance payments, the pace of project construction, and RPS success, is diminished.

### Treatment of Carbon Attributes

The Recommended Decision includes a suggestion that the Commission should explore the possibility of separating the REC into the CO<sub>2</sub> component and the balance of the attributes. This option was not considered as a part of the collaborative process, and thus should not be adopted without further stakeholder input. The Commission should also recognize that uncertainty in the future direction and design of the RPS will threaten the pace of its development. As a practical matter, contracts for RPS-eligible RECs must identify with specificity what attributes are to be delivered to the purchaser. Uncertainty over what attributes must be included in the REC in order for it to be RPS eligible will bring considerable complication and difficulty into this process.

### Biomass Eligibility

The definition of eligible biomass as it appears in the Recommended Decision should be reviewed for consistency with the final recommendations of the biomass working group. The recommendation that the Commission adopt the definition of eligible biomass that appears in the Generic Environmental Impact Statement should be reviewed with reference to the working group's recommendations.

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NYSERDA looks forward to the opportunity to move forward with this important undertaking in the near future.

June 22, 2004

Respectfully submitted,

/s/

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