

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  
TO THE RECOMMENDED DECISION  
OF THE  
RENEWABLE ENERGY TECHNOLOGY AND ENVIRONMENT COALITION<sup>1</sup>

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<sup>1</sup> RETEC members include: American Lung Association of New York State; American Wind Energy Association; Citizen's Advisory Panel; Community Energy; Fuel Cell Energy, Inc., Hudson River Sloop Clearwater; Natural Resources Defense Council; New York Lawyers for the Public Interest; New York League of Conservation Voters; New York Public Interest Research Group; New York Renewable Energy Coalition; New York Solar Energy Industries Association; Pace Energy Project; Plug Power; PowerLight; Public Utility Law Project; Riverkeeper; Scenic Hudson; Sierra Club Atlantic Chapter; Solar Energy Industries Association; Sustainable Energy Developments, Inc.; and Union of Concerned Scientists.

TABLE OF CONTENTS

|      |  |    |
|------|--|----|
| I.   | INTRODUCTION AND STATEMENT OF THE CASE.....  | 1  |
| II.  | SUMMARY OF RETEC POSITION.....   | 3  |
| III. | RETEC’S EXCEPTIONS TO THE RECOMMENDED DECISION.....  | 4  |
|      | A. Establishment of the Target .....   | 4  |
|      | B. Eligibility - Technologies .....  | 7  |
|      | 1. Hydropower .....  | 7  |
|      | 2. Solid Waste .....   | 10 |
|      | 3. Biomass.....  | 12 |
|      | C. Eligibility - Vintage .....   | 17 |
|      | D. Tiers .....   | 18 |
|      | 1. The Recommended Decision overstates the cost of an SBC-like tier by more than 100%. .....     | 18 |
|      | 2. The SBC-like tier should be at least twice the size recommended in the RD. .                  | 19 |
|      | 3. The SBC-like tier should contain a provision for small customers. ....                        | 21 |
|      | 4. Distributed generation should be integrated directly into the RPS in its later years.....     | 21 |
|      | 5. The Commission should broaden the definition of small wind under the SBC-tier up to 1 MW..... | 22 |
|      | E. Baseline and Inclusion of Green Marketing .....   | 23 |
|      | F. Overall Structure of an RPS.....  | 23 |
|      | 1. Individual Compliance – Determination of Participating Entities.....                          | 23 |
|      | 2. Central Procurement .....   | 25 |
|      | G. Credit Trading.....   | 26 |
|      | H. Deliverability Requirement.....   | 28 |
|      | I. Reliability.....  | 31 |
|      | J. Costs and Benefits.....   | 32 |
|      | K. Balance of the RPS Inquiry.....   | 33 |
|      | L. Minor Corrections/Updates to the RD .....   | 35 |
| IV.  | CONCLUSION.....  | 36 |

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**I. INTRODUCTION AND STATEMENT OF THE CASE**

This proceeding commenced on February 19, 2003, when the Public Service Commission (“Commission”) issued an Instituting Order “to develop and implement a renewable portfolio standard for electric energy retailed in New York State.” Order Instituting Proceeding, Case 03-E-0188, at 1 (February 19, 2003). The Commission, expressing concern about “the effects on our climate of fossil-fired generation and the security implications of importing much of the fuel needed to supply our electricity

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needs,” noted that that it “would be in the public interest” to have 25% of New York State’s electricity come from renewable resources,” and instituted this proceeding on an expedited basis. Id. at 2.

Over the next sixteen months, Administrative Law Judge (“ALJ”) Eleanor Stein presided over an intensive and orderly process involving over one hundred parties, which included at least four opportunities to comment, including the opportunity to submit sworn affidavits; several technical workshops, including the opportunity for on-the-record questioning of technical experts; and the preparation of several iterations of cost studies by the Department of Public Service (“DPS”), New York State Energy Research Authority (“NYSERDA”) and outside experts on renewables. On June 3, 2004, ALJ Stein issued a 108-page Recommended Decision (“RD”) in this proceeding which sets forth a series of recommendations to the Commission on many crucial RPS issues, from eligibility to administration and implementation.

The Renewable Energy Technology and Environmental Coalition (“RETEC”) hails the Public Service Commission and DPS Staff for the thought, skill and energy that have been devoted to this proceeding. Overall, the RD is an impressive presentation of well-supported recommendations on the key RPS policy issues that the Commission must determine. As is discussed below, however, there are several key areas where the Commission should correct and clarify the RD. RETEC urges the Commission to act swiftly to adopt the RD, as modified by RETEC’s exceptions, and to swiftly implement the RPS. The points to which RETEC takes exception are discussed, to the extent possible, in an order consistent with their presentation in the Recommended Decision, and should not be taken as an illustration of the order of importance with which RETEC

views these issues. In fact, without a clear “roadmap” that results in rapid and effective implementation, all other issues become secondary.

## **II. SUMMARY OF RETEC POSITION**

RETEC’s central exceptions to the RD include the following:

Eligibility: The RD erred in rejecting in toto the biomass eligibility provisions agreed upon by the Biomass Working Group and substituting an untested set of eligibility rules for biomass. The Working Group provisions, agreed to by environmentalists as well as biomass industry representatives, for the most part strike the right balance between protection of the environment and ensuring the vitality of the biomass industry. The RD erred in finding existing wind projects ineligible for the RPS. These facilities merit inclusion as innovative risk takers and are in no different position than the small, existing hydropower facilities the RD has recommended for inclusion.

Tiers: The System Benefit Charge-like SBC tier for solar, fuel cells and small wind recommended by the RD is too small: the Commission should create an SBC-like tier that is twice as big. In addition, the Commission must include in the RPS wind energy projects above 300 kw but below the size of utility-scale wind farms.

Green Market: The Commission should remove Green market demand from the baseline of existing renewable resources; including Green Marketing in the baseline creates confusion and undermines consumer confidence.

Exclusion of NYPA and municipal utilities: The RD erred in recommending on an advisory basis that NYPA and municipal utilities not be included in the RPS. Participation of all utilities, private and public, is essential for reasons of equity and to ensure that the requirements of the RPS are met.

Roadmap for RPS implementation: The RD provides insufficient clarity on how the Commission should proceed with the implementation of the RPS after the Commission's adoption of an RPS policy statement. In order to ensure that the RPS meets its goals in reality, as well as on paper, the Commission should explicitly and fully outline the process by which the RPS will be implemented, with a swift timetable for moving forward.

### **III. RETEC'S EXCEPTIONS TO THE RECOMMENDED DECISION**

RETEC's exceptions to the Recommended Decision (RD), the grounds on which these exceptions rest, and argument in support of these exceptions, are outlined below. There are several areas of the RD where RETEC agrees with a particular recommendation but objects to options that are listed as alternatives to the recommendation for possible consideration by the Public Service Commission. In such cases, RETEC identifies the listed options to which we object and states the grounds for our objections.

RETEC also will identify areas where there appears to be no recommendation, yet a recommendation is needed, or where the recommendation is unclear and requires clarification.

#### **A. Establishment of the Target**

RETEC strongly supports the recommendation that the RPS policy should include a target of 25% renewable resources by 2013. RD at 39, 47-48. The RD, however, also proposes that the Commission review this target in 2008 in order "to evaluate the costs and benefits, invite more generation resources to participate, adjust incentives for incremental renewable acquisition, or otherwise modify the RPS." RD at 48. While

RETEC does not oppose a review mechanism for the RPS in principle, this mechanism must be carefully designed and timed so as not to jeopardize the success of the RPS by sending the renewable energy industry the signal that the RPS is provisional, which would have a strong chilling effect on renewable industry investments in New York. Specifically, RETEC objects to the recommendation that the first Commission review take place in 2008. To have such a review potentially just two years after the start of the RPS would cast doubt on the Commission's commitment to the RPS, and encourage stalling and obstructionist tactics by opponents to the RPS. Moreover, a review in the infancy of the program would yield little hard data on which to judge the success of the program. RETEC recommends that such a review occur no earlier than 2010, at least four years after the start of the program. Finally, it is vitally important that any program modification be applied prospectively and not affect any long-term contracts with renewable generators entered into prior to the milestone review. Contracts entered into prior to the Commission review date must not be subject to review or early termination as a result of the Commission's review. It is not clear whether the RD contemplates this or not. It should be clearly stated that the level of renewable resources required for the review year should remain as a minimum requirement for at least another 10 years regardless of any changes that are made as a result of the review. Any mandated increase in the percentage requirement which takes effect during the review likewise should be clearly stated as enforceable during the review period. In other words, all contracting for new renewables should proceed as envisioned in the original RPS. This is essential to instill confidence in building a robust market for renewable energy.

More broadly, RETEC disagrees with the RD's apparent uncertainty as to whether the 25% renewable target by 2013 is achievable. The RD states that "[t]here is little disagreement, on this record, that this target will be challenging, in light of New York's geography and climate, siting obstacles, and distribution of load in relation to resources." RD at 48. RETEC submits that the only challenging obstacles to meeting the RPS targets are political and regulatory. As studies conducted for NYSERDA, by other experts and RETEC's own comments demonstrate, the potential for economically achievable renewable energy in New York far surpasses the incremental 7.5 percent increase contemplated by the RD.

RETEC also strongly objects to the proffered (but not recommended) option of extending the target year for achievement of the 25% goal to 2014 or 2015. RD at 39-40, 48. As noted in the RD at 39-40, such an extension only modestly reduces the compliance milestones in the earlier years. RD at Appendix B, Table 21. Thus it will have only a negligible impact on cost, and yet will certainly discourage renewable industry investments in New York and will defer the full environmental and energy benefits of the RPS.

RETEC also excepts to the recommendation that the RPS start in 2006 instead of in 2005. The New York Renewable Portfolio Standard Cost Study Report II ("Cost Study II") and the benefits discussed in all of RETEC's comments clearly show that the sooner the RPS starts the sooner New York will start to reap the rewards of the RPS. To this end, RETEC reiterates our call that the RPS be implemented as soon as possible. Given that our target for 2005 is less than 1%, we are confident that "adequate renewable resource projects would be available to meet an RPS target in year 2005." Cost Study, Volume A

at 23 n.6. As Judge Stein observed in a slightly different context, “[d]eterminations for which there is a complete record include the objective of the RPS to encourage the construction of new renewable generation facilities that would not be built absent the RPS. The consequence of postponing these decisions is that developers postpone action until the program is launched.” Ruling On Motion to Further Postpone, April 7, 2004, at 7. Just as delays in RPS decision-making can discourage renewable construction, so too can unnecessary delays in program implementation. RETEC continues to believe that a 2005 start date for the RPS is critical.

**B. Eligibility - Technologies**

*1. Hydropower*

RETEC excepts to the RD’s definition of RPS eligible hydropower. RETEC has proposed a site-specific certification process that takes into account that the size of a hydropower project is not necessarily determinative of its environmental impact. In a single sentence, the RD rejects RETEC’s proposal as “inadvisable.” RD at 53, adopting instead the hydro RPS eligibility criteria set forth in the Draft Generic Environmental Impact Statement (“DGEIS”). RETEC’s objections to the RD thus mirror our comments on the hydro eligibility section of the DGEIS.

The DGEIS correctly identified a number of potential adverse impacts from inclusion of hydroelectric facilities in the RPS. DGEIS at 62-66. Furthermore, the DGEIS correctly stated that “[t]he environmental impacts of hydroelectric facilities depend on a number of variables, including the location, type and operational characteristics of a facility,” and that “[i]t is difficult to generalize about these impacts because they will be site specific and will depend on factors such as geology, river flows

and the aquatic and riparian ecology of the area.” DGEIS at 62. However, the eligibility provisions for hydro set forth in the RD and DGEIS do not sufficiently address the site-specific nature of hydroelectric impacts.

In RETEC’s comments, we have proposed that the Public Service Commission develop a set of regulations whereby the site-specific impacts of each hydro project could be separately examined to determine whether specific projects could be certified as “low-impact.” See RETEC September Comments at 15-20. RETEC explained that “low-impact” is a function of the site-specific impact of a hydro project on aquatic resources and the environment, and that “low impact” is not a function of size: some large hydro projects may be environmentally benign, whereas some small hydro projects, dependent on design, location and operating regime, may be environmentally very harmful. Id.

The hydro eligibility provisions of the RD and the DGEIS, however, fail to take these important distinctions sufficiently into account. Instead, the DGEIS proposes three main eligible categories of hydroelectric resources: 1) new low-impact hydro projects, defined as new facilities of up to 30 MW, so long as they are run-of-river, with no storage impoundment and 2) the incremental production associated with any upgrades to existing facilities so long as no new impoundments are created, and 3) existing small hydropower, 10 MW or less as their above-market contracts expire. RD at 18 (Table 3); DGEIS at 61. These eligibility categories are insufficiently protective of the environment and aquatic resources.

First, the DGEIS states that “[s]ince hydro facilities proposed to be eligible for the RPS only include run-of-river facilities, many of the impacts described above will be avoided.” DGEIS at 66. This is not entirely accurate. While it is certainly commendable

that the preliminary criteria limit eligibility to run-of-river projects without storage (peaking capability), such projects can nevertheless cause considerable environmental harm. For instance, they can interfere with fish reproduction and migration or disrupt highly valued scenic and recreational values. See RETEC September Comments at 15-20. The DGEIS does not prevent adequate justification for the presumption that all run-of-river projects under 30 MW are environmentally benign. Moreover, there is no environmental justification for the inclusion of existing hydro projects (apparently of any type) under 10 MW when their contracts expire.

Second, with respect to hydroelectric upgrades, increasing the installed capacity of peaking plants leads inevitably to a modification in the operating regime, and to increased variability between the flows during peak and off-peak periods. In some cases, this may be of no ecological significance, but in others, it can significantly increase the environmental harm caused by the project's ongoing operations. Thus, blanket inclusion of such upgrades is not advisable, unless careful study shows that the additional environmental impacts are acceptable. In Canada (and the vast majority of expected upgrades are in Canada), turbine additions or repowerings are relatively rare, but many projects have been proposed and/or constructed which increase a hydro facility's annual generation by diverting additional waterways into its reservoir system. It is not entirely clear if the language is meant to include such upgrades. If so, it should be modified to exclude them. River diversions are among the most destructive modifications possible, as the water is not returned to the watercourse downstream, as it would be with a new dam project. In substantially and permanently reducing the stream's flows downstream of the diversion point, diversion projects can cause very significant permanent

environmental harm. For the reasons stated herein and in our previous filings in this case, RETEC recommends the development of a certification framework to determine which such projects (if any) should be eligible to be characterized as low-impact and made eligible for the RPS. In the absence of such a certification framework, diversion projects should be definitively excluded from the RPS.

## 2. *Solid Waste*

RETEC strongly supports the RD's recommendation to exclude MSW "because it is not sufficiently consistent with the proposed RPS environmental objectives." RETEC addresses this section of the RD only to propose certain necessary clarifications.

First, the RD states that "[t]here is also no dispute that to the extent a waste-to-energy facility complies with the criteria for eligible biomass, it may participate in the RPS on that basis for the biomass portion of its fuel." RD at 60. RETEC does not object to this assertion to the extent that it refers to a biomass facility that can devise a means to separate out from biomass waste a stream of uncontaminated biomass that is RPS eligible under the Biomass Working Group definition and can convert this stream to electricity while meeting the agreed upon emissions standards. However this is simply not currently possible with mixed MSW and this is part of the reason that the Biomass Working Group specifically excluded MSW from the definition of eligible biomass. Furthermore, RETEC would strongly except to this statement in the RD, if interpreted to mean that an MSW incinerator could somehow declare a portion of its wastestream as RPS eligible on the basis that a portion of MSW might meet the broadest possible definition of biomass. The Commission should clarify this provision of the RD.

Second, the RD also includes two additional options, in addition to the recommendation on MSW. Under one option, the Commission would “engage in a process with other affected State agencies, to define specific emission and other criteria under which MSW technology would be considered eligible in the future.” RD at 63. RETEC objects to this option. First, mixed MSW can never be characterized as renewable: as the RD finds, MSW includes substantial amounts of nonrenewable materials. Second, as RETEC’s experts have established, the nitrogen oxide (“NOx”) and mercury emissions rates from New York’s MSW facilities are orders of magnitude higher than those from combined cycle natural gas plants, and are even somewhat higher than emissions rates from New York’s coal-burning power plants – which are currently not subject to any federal or state mercury emissions standards whatsoever.<sup>3</sup> See Affidavits of Samuel Swanson and Allen Hershkowitz, submitted with RETEC’s September 2003 Initial Comments. New York’s MSW plants, even if their emissions rates for mercury and NOx decline somewhat, will never achieve lower or even comparable emissions rates to natural gas combined cycle power plants.

The RD also notes that some parties have suggested that “new waste-to-energy technologies are under development and should have the opportunity to participate in the RPS.” RD at 63. This is an apparent reference to the possible development of WTE facilities other than MSW incinerators that might separate out components of MSW and create electricity without combustion. The RD includes an option (which is not recommended) in the RD, which would be for the Commission to establish “a set of

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<sup>3</sup> RETEC’s comparison focuses on emissions rates per unit of electricity produced, not total gross emissions. We note that the Commission should clarify the RD at 62-63 to ensure that this distinction is made clear (e.g. in the first line of p. 63, the word “rates” should be inserted after “emissions” and before “of mercury and NOx”).

specific goals or criteria for waste-to-energy facilities [other than MSW] at a later date to qualify for eligibility.” RD at 63. RETEC submits that this option is premature. Such facilities do not currently exist in New York, the processes and technologies that could be used are unclear, and the standards and monitoring needed to regulate the separation process to ensure that only untreated and unadulterated biomass is burned are not in place. Under these circumstances, development of goals or criteria for such hypothetical WTE facilities at this time would be futile and absent the regulatory monitoring in complete.

### 3. *Biomass*

RETEC strenuously excepts to the RD’s definition of RPS eligible biomass. RD at 19. Biomass is a broad category of energy resources with widely diverging environmental impacts, some of them substantial and damaging. RETEC’s endorsement of biomass as RPS eligible throughout this proceeding has been conditioned on defining biomass to include only those biomass materials that can be converted to electricity without substantial negative environmental impacts, and subject to fair but protective air emissions standards. The balance on biomass that RETEC sought was reflected in the consensus agreement reached by the Biomass Working Group, which included conditions on eligibility that are both environmentally protective and that the biomass industry is confident that it can meet, allowing the biomass energy industry to flourish in New York without negative environmental consequences.

Unfortunately, and inexplicably, the RD chose to reject the fair and environmentally protective set of recommendations on biomass eligibility developed by the broad array of stakeholders who formed the Biomass Working Group, including both

biomass industry representatives and environmentalists.<sup>4</sup> This is despite the fact that the Biomass Working Group was the only working group to reach substantial consensus and that most elements of the agreement were unchallenged by any party. As a result, the definition of RPS eligible biomass resources in the RD is too far broad, including broad categories of biomass that could cause substantial air pollution emissions, threatening to contaminate this category and undermine the goals of the RPS. The definition in the RD includes outright sources of biomass only identified for further consideration by the working group and omits environmental safeguards, including emissions standards, endorsed by the Working Group. RETEC objects to the inclusion of biomass in the RPS under the eligibility provisions set forth in the RD. RETEC only supports inclusion of biomass in the RPS if the Biomass Working Group agreement is accepted by the Commission, with the exceptions noted by RETEC.

While various parties may have taken a general position in favor of broad definitions of renewables, no parties that we are aware of offered any justification for disregarding the Working Group's recommendations as a whole. RETEC believes that the justifications offered in the RD may be based on misunderstandings of the Working Group's recommendations. We hope that the following clarification will assist the Commission in concluding that the Biomass Working Group agreement should be accepted.

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<sup>4</sup> The full membership of the biomass working group: Jaime Ethier, The Adirondack Council; Sam Swanson, PACE Energy Project; Nathanael Greene, NRDC; Tom Congdon, NYS Attorney General; Sloane N. Crawford, NYSDEC Forest Products; Jeffrey Petterson, NYSERDA; David Morrell, NYS DPS; Chris Hogan, NYSDEC; Mike Jennings, NYSDEC Air Resources; Jennifer Hairie, NYSDEC; Kevin King, Empire State Forest Products Association; Edward Gray, Antares; Bob Cleaves, Wheelabrator; Doug Balliene, Primary Power; Jeff Williams, NY Farm Bureau; Timothy Volk, SUNY-ESF; Stacie Edick, RC&D; Bill Short, Ridgewood Power; Tom Kacandes, Taylor Recycling Facility, LLC; John Irving, Burlington Electric.

First, the summary in the RD of the Working Group’s recommendations contains a number of omissions and misunderstandings. RD at 60-61. For instance, the Working Group did not agree to “review net air emissions of biomass facilities and recommend standards.” RD at 60. The Working Group recommended adoption of a specific set of standards, which are presented again below.

| <b>RPS Emission Limits for NOx for Biomass Fueled Facilities in Marginal or Moderate Non-Attainment Regions (Limits in lbs/MWh)</b> |      |           |
|---|------|-----------|
| <b>Biomass Solid Fueled Facilities</b>  | New  | Existing  |
| Built Near Term (2003 - 2008)   | 2.63 | 3.0       |
| Future (2009 and beyond)  | 2.25 | No Change |
| <b>Biomass Landfill Gas Facilities</b>  | New  | Existing  |
| Built Near Term (2003 - 2008)   | 2.90 | 3.0       |
| Future (2009 and beyond)  | 2.63 | No Change |

The only air standards that were not agreed to by the Working Group were those for biomass fueled facilities in severe non-attainment areas. In these areas RETEC maintains that stricter standards are needed to protect public health. To this end, RETEC recommends that the following additional standards be required of facilities in severe non-attainment areas.

| <b>Proposed RPS Emission Limits for NOx for Biomass Fueled Facilities in Severe Non-attainment Regions (Limits expressed in lbs/MWh)</b> |     |
|--|-----|
| Built Near Term (2003 - 2008)  | 0.6 |
| Future (2009 and beyond)   | 0.3 |

These emissions standards are essential given the potentially very high NOx emissions from biomass facilities even burning the cleanest of biomass resources. The RD not only misstates the Working Group’s position, it totally omits any type of air emissions standard for biomass facilities. The stricter emissions standards in severe non-attainment areas are needed given the acute human health cost imposed by air pollution in these

areas. To have a RPS eligible resource emitting more than the emissions rates proposed by RETEC and those proposed by the working group would undermine one of the main goals of the RPS—improved air quality for New York.

Similarly, the Working Group did not recommend the allowing combustion of up to 30% “alternative fuels” without restriction. RD at 61. The Working Group recommended that any biomass that might potentially contain contaminants (e.g. residuals from engineered wood products and wood furniture manufacturing) be subject to a testing process that includes the following steps:

- Ultimate and proximate analysis of the proposed fuels
- Complete description of the chemical composition of the proposed fuel
- Stack and ash testing for any components of the alternative fuel that could increase emissions of criteria pollutants or air toxics over the traditional fuel or produce a hazardous ash
- An assessment by an environmental agency or third party of any potential health risks based on the test results
- Final approval or rejection of a proposed alternative fuel for use at the biomass facility by an environmental agency or third party
- A formal QA/QC program for maintaining the quality of the alternative biomass fuel supply as originally tested and approved.

The 30% figure comes from NYSDEC’s Alternative Fuels Policy “DAR-3.” The working group merely mentioned DAR-3 as a framework that would need to be strengthened with period sampling and testing.

Ironically, in rejecting the mischaracterized position of the Working Group on “alternative fuels,” the RD adopts categories of biomass resource that need the working group’s actual recommendations and other stricter standards. The definition of eligible sources of unadulterated biomass includes “Refuse Derived Fuel” and “Urban Wood Waste.” RD at 19. While the definition of each fuel type includes a requirement that the biomass be “unadulterated and uncontaminated,” the RD offers no guidance on how to

ensure that these requirements are met. There are no standards for separation methods that are capable of ensure an entirely clean stream of biomass from urban settings or from construction and demolition debris. As a result RETEC recommends that these categories be dropped until such standards are developed. When they are developed, the resulting fuel will still contain some trace level of contamination and this is where an “alternative fuel” testing protocol is essential.

The RD also includes “Mill Residue Wood” and explicitly references residues from the secondary wood products industries. RD at 19. These residues are exactly what the working group had in mind when it recommended an “alternative fuel” testing protocol. These residues may well be contaminated with glues and other wood treatments. Without a rigorous monitoring and testing requirement in place, combustion of this material may well lead to unacceptable toxic air pollution.

Finally, the RD incorrectly states that the Working Group recommended that 25% of the fuel input for biomass co-firing with coal must be from energy crops. RD at 61. The actual recommendation was that through 2008 10% of the biomass fraction of the fuel for co-firing be from energy crop and 25% starting in 2009. Considering that biomass would probably make up only about 10% of the fuel content when co-fired, this requirement is only for about 1% and 2.5% of the total energy input respectively. It is worth noting that the Working Group included a co-firing project developer that planned to meet these standards.

RETEC urges the Commission to adopt a definition of biomass based on the Working Group’s recommendations. The Commission should:

- Adopt the air standards proposed by the working group and supplement these with the severe non-attainment standards proposed by RETEC;

- Remove “refuse derived fuels” and “urban wood waste” from the definition until a rigorous standard is developed that would ensure that only “unadulterated and uncontaminated” wood is being used;
- Require the development of a rigorous testing and monitoring standard that builds on DAR-3 to ensure that any treated or processed wood used does not threaten the public health; and
- Adopt the Working Group’s requirements for the use of energy crops for a fraction of the biomass used in co-firing.

**C. Eligibility - Vintage**

RETEC takes exception to the RD’s position on eligibility for existing wind projects in the State of New York as expressed in the Errata issued on June 16, 2004. While the general criteria of using January 2003 as a start date for eligibility conforms with the intent of the RPS to stimulate new renewable generation, we believe the position of both RETEC and Staff to include all wind projects is appropriate. In addition, the RD argues for the inclusion of existing small hydropower projects with expiring above market contracts, RD at 18 and the arguments used for this exception are applicable to existing wind projects as well. The approximately 48 MW of existing wind power in New York State were developed by innovative risk takers who should not now be penalized for their efforts. In addition, the lack of State policies and procedures for ensuring that existing wind project owners are able to receive payment for their renewable attributes continues to hamper these projects’ economic viability (i.e., see Section F on credit trading). Therefore, inclusion of these resources within the eligibility limits of the RPS is essential.

RETEC supports the intent of the RD to include as eligible projects that have commenced operation post-January 2003, with the exception argued for above for existing wind projects. RD at 17. However, RETEC believes that the Commission should

clarify the term “developed after” in this recommendation by substituting the words “begun operations after” in order to more precisely define this start date.

#### **D. Tiers**

The RD is correct in finding that additional incentives for emerging technologies are “essential.” However, in order to fully achieve the policy goals of the RPS, the Commission should improve upon the SBC-like tier recommended in the RD, for the following reasons:

1. Appendix B of the RD overstates the real cost of an SBC-like tier by more than 100%. An evaluation of the cost of an SBC-like tier must take into account the avoided cost of the electricity from the “main tier” that is displaced by the SBC-like tier.
2. The RD recommends an SBC-like tier comprising 2% of the incremental energy provided under the RPS. A target of 5% would more adequately achieve the purposes of the SBC-like tier.
3. The SBC-like tier should contain a provision ensuring the participation of small customers.
4. In the later years of the RPS, distributed generation technologies should be integrated into the trading system of the “main tier” of the RPS.
5. The Commission should broaden the definition of “small wind” up to 1 MW for wind turbines located behind-the meter. Alternatively, the Commission should ensure that RECs generated by projects between 300 kw and 1 MW can be tracked and traded through the system established for the “main tier” resources under the RPS as of the start date of the RPS.

1. *The Recommended Decision overstates the cost of an SBC-like tier by more than 100%.*

In Appendix B the Recommended Decision identifies the estimated cost of implementing an RPS containing provisions designed to achieve 2% participation from solar, fuel cells, and small wind. The total cost of the RPS is divided between the “main tier” and the “SBC-like tier,” reflecting the gross cost of each tier. The gross cost does not reflect the fact that a 2% SBC-like tier would back out the most expensive 2% of

generation in the main tier of the RPS. In deciding whether to adopt an SBC-like tier, the Commission should consider not the gross cost of the tier but rather the *net* cost, taking into account the displaced cost of the last 2% of the main tier, which would be purchased in the absence of an SBC-like tier.

These net costs are reflected in the worksheets accompanying the RD on page 31 of the worksheet entitled “RD Case Results 6-3-04” where the “replacement cost” of the displaced main tier resources is identified. The resulting net life-cycle cost of a 2% SBC-like tier is less than 50% of the gross cost (\$71,101,187 compared with the gross cost of \$148, 947,952 identified in Appendix B).

2. *The SBC-like tier should be at least twice the size recommended in the RD.*

Judge Stein correctly states that the creation of an SBC-like tier is “essential.” (RD at 68.) Because one of the main purposes of the RPS is to provide for greater long-term diversity in the generating mix, the roster of renewable energy sources under development must itself be diverse (without sacrificing environmental quality). For this reason, the SBC-like tier should be viewed as an “RPS within the RPS.”

The diversity offered by solar, fuel cells and small wind is diversity not only in generating source but also in size and location. These technologies will be applied, for the most part, on customer premises. As the Judge properly notes, “locating renewable generation near heavy load areas” is a value promoted by the SBC-like tier. RD at 64. In the case of fuel cells, a further type of diversity is represented because fuel cells produce power on demand, offering an ideal long-term complement to intermittent resources such as wind, solar and hydro.

Another reason to establish an emerging technologies incentive is to encourage the location of emerging industries within New York State. Location decisions made by manufacturers and research firms are strongly influenced by regulatory climate. NYSERDA has had success in causing companies involved with new energy products to locate and grow in New York. The State can now build on that success by establishing an RPS. Virtually every state has an energy policy that purports to favor clean and renewable resources. States that demonstrate a serious commitment to renewable resources by putting policies into action are the states that are favored by growing companies involved with new energy technologies. In that respect, the establishment of an RPS will have an economic multiplier effect.

To fully realize these opportunities, a larger SBC-like tier is appropriate. At two percent of the RPS, the SBC-like tier would represent less than two-tenths of one percent of the State's overall generation mix. This cannot be described as an overly ambitious goal. The proposal of RETEC is roughly reflected in the worksheets identified as "RD-Strawman B-Results 6-3-04." This indicates that the net life-cycle costs of a 5% SBC-like tier would be \$135, 245,301, which is less than the gross cost of a 2% tier identified in Appendix B to the RD.

The Commission must decide the extent to which the emerging energy technology industry in New York will be encouraged, and the extent to which the State is committed to developing a clean, diverse energy supply. RETEC's proposal strikes the right balance. The RD's recommendation on the SBC-like tier is insufficient.

3. *The SBC-like tier should contain a provision for small customers.*

RETEC proposed that 20% of the emerging technology incentive should be targeted to non-demand-billed customers. This is not proposed as a hard quota but rather as a target. The RD does not reject this proposal, but remains silent.

A 20% target for small customers would enhance the diversity of the RPS. Residential and small business customers represent nearly half of the electricity used within New York, and technologies specifically developed for on-site use by these customers should be an important part of a forward-looking program. Within the SBC-like tier, larger projects in sizes exceeding 100 kW will be competing with distributed generation projects of 5 kW or less. Establishing a modest target of 20% for small customers will ensure that technologies for small customers are part of the RPS.

4. *Distributed generation should be integrated directly into the RPS in its later years.*

RETEC proposed that the SBC-like approach for emerging technologies should be used during the first five years of the RPS, but that in following years the RPS should accommodate behind-the meter generation directly within the credit and trading programs of the RPS. In the long run, it is important for emerging technologies to be integrated into competitive energy markets rather than being funded through capital buy-downs.

The RD states that behind-the-meter generation is “not susceptible to administrative tracking as large-scale wholesale transactions are.” This is incorrect. As RETEC has noted in earlier comments, there are numerous methods for tracking the output of distributed generation units. Larger units can be directly metered and their outputs can be reported electronically. The output of small units can be estimated, and

verified either through statistical sampling or through periodic data collection by service personnel.

The RD is also correct in recommending that the SBC-like tier be “in addition to existing programs.” RD at 20. As a practical matter, the existence of other programs will not result in double subsidies, because the prices under the SBC-like program will be established to reflect the balance needed to make the products marketable.

The brief on exceptions being submitted by Plug Power discusses the above SBC-like tier issues in greater detail and RETEC supports the position of Plug Power.

5. *The Commission should broaden the definition of small wind under the SBC-tier up to 1 MW.*

The RD recommends that small wind projects up to 300 kw be included in the SBC-like tier. RD at 20. Smaller-scale utility-connected wind projects under the main tier may be as small as 10 MW (i.e. wind clusters), but there are a number of important applications of this beneficial renewable technology that will fall between these two categories. Projects composed of a 750 kw or 1 MW wind turbine located behind-the-meter, for example, will unfairly be kept from participating in the RPS. In theory, they will be providing their environmental attributes for free – they will not be paid for an important commodity they deliver. In practice, their exclusion will mean they will not be employed at all. This will have far-reaching economic impacts on the businesses that could best use these technologies to meet a portion of their energy needs as well as the firms that install these turbines and their suppliers. The RPS as envisioned in the RD appears to exclude, by default, the inclusion of certain-sized wind projects. In the interest of fairness and of achieving the goal of increased generation diversity, this oversight must be recognized and rectified. Therefore, either on-site generation of this scale must be

allowed to participate in the REC trading program (and used to fulfill main tier obligations) or must be included within the SBC-like tier.

**E. Baseline and Inclusion of Green Marketing**

RETEC takes exception to the baseline in the Recommended Decision (RD at 16, Table 2) and urges the Commission to exclude all Green Market demand for renewable energy from the baseline used to calculate existing use of renewable energy in New York.

The inclusion of Green Market demand in the baseline creates confusion and undermines consumer confidence in the Green Market. The Green Market by definition captures the desire of some individuals or businesses to provide support for more renewable resources than would otherwise be provided. The inclusion of Green Market demand within the baseline, which results in lowering the RPS requirement, sends the wrong message to consumers in the green market and jeopardizes the economic viability of Green Marketing companies in New York. Green Market consumers are no longer creating an absolute increase in demand for renewable energy but rather are merely shouldering the costs that would otherwise be shared by all. In the short-term, Green Marketing efforts can lower the cost of the RPS by enabling larger and cheaper projects to be constructed earlier, and in the longer-run, the Green Market can drive the use of renewables in New York beyond the 25% goal.

**F. Overall Structure of an RPS**

*1. Individual Compliance – Determination of Participating Entities*

The Commission should reject the Recommended Decision’s “advisory opinion” regarding exemption of NYPA and municipal utilities from the RPS program.

Acknowledging that her recommendation “is advisory only, not binding” the ALJ

suggests that the RPS be designed to exclude NYPA full requirements customers from participation in the RPS program. RD at 70, 71. In support of this determination, the ALJ cites several equity and public policy considerations, namely that: NYPA customers are already served through a supply portfolio heavily weighted towards renewables; the RPS subsidies run counter to the overarching purpose of NYPA's economic development program; and the bill impact of shifting NYPA customers' share of RPS costs to remaining customers is *de minimis*. RD at 69-71. None of these considerations hold up to closer scrutiny.

First, while it is certainly true that NYPA customer requirements are met through the deployment of renewable energy resources – overwhelmingly from existing large-scale hydropower projects – it is equally true that the emphasis of the RPS is to support *incremental* renewable energy development in New York State. As a public authority, NYPA is uniquely situated to leverage its buying power to support renewable energy development in the state<sup>5</sup>.

Second, any additional premium that NYPA's economic development customers might be asked to pay by virtue of the RPS program should be put in some perspective. These customers have for many years been the beneficiaries of extremely low-cost hydropower at subsidized rates well below what they would otherwise have incurred had they taken service through the otherwise applicable utility tariff. These historical benefits should not now be interposed to justify exemption from support of additional renewable energy projects that may command a price premium.

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<sup>5</sup> For example, NYPA will likely play a prominent role in satisfying Executive Order 111, requiring all state agencies to obtain 20% of their electricity from renewable sources by 2010.

Third, while the rate impact on remaining customers of a NYPA customer exemption is expected to be negligible, this should not be determinative. Diversification of the state's portfolio of supply resources provide extensive and broadly distributed societal benefits, and it is therefore reasonable to ask all customers to contribute to this outcome.

In a similar fashion the ALJ recommends that municipal power utilities be exempted from the RPS. This advisory opinion is similarly based on the existing municipal resource portfolio that is purportedly heavily weighted to hydropower; and on the unsupported assertion that municipals "practice aggressive energy efficiency and conservation." RD at 71

These discussions should have no bearing on the decisions that must be made by NYPA and municipal utilities on whether to opt-in to the RPS. Should these entities ultimately decide not to participate, their imputed RPS obligations should be reallocated to remaining program participants, as the RD suggests. RD at 70.

## 2. *Central Procurement*

RETEC supports the "hybrid" central procurement model and agrees that it can both maximize early and rapid implementation while also providing a basis for the development of a REC trading market. RD at 75. RETEC also concurs fully with the RD's position that the record of the proceeding demonstrates that: developers of renewable resources need long-term contracts for financing; the unit cost of such resources is considerably lower with long-term contracts; and such contracts will be necessary for a significant portion of the resources needed under the RPS. RD at 75.

However, as we note above, it is unclear if the RD envisions the ability to revisit such contracts during the proposed review (suggested for 2008 but which we believe should occur in 2010 or later). While it is true, as the RD states, that “the Commission retains the flexibility to review and modify the RPS,” RD at 75, existing long-term contracts with renewable generators cannot be subject to review or early termination. In addition, renewable energy developers must be confident of the State’s continued commitment to the RPS; any signal that the forecasted demand for renewable energy will be less than previously stated is likely to cause a bust in investment in New York. Market certainty is critical for ongoing investment renewable energy and the economic development, environmental and public health such investment brings.

**G. Credit Trading**

RETEC fully agrees with the RD that “(t)he Record is also sufficient to develop a generation attribute accounting/tracking system to register generation attributes and track their sale into various markets.” RD at 30. The RD, however, presents several possibly conflicting perspectives on how this will be accomplished. While the RD appears to favor the establishment of a certificates-based system, it also states that “[t]he recommendation is that the conversion transaction system should be revised to look more like a certificate trading system.” RD at 85. RETEC disagrees with the presumption that a revised conversion transaction system will be sufficient to operate a certificates tracking and trading system for unbundled attributes and energy in New York, which is what is needed for an effective and equitable RPS. The conversion transaction system should be replaced by a true certificates-based system for generation attributes.

The current conversion transaction mechanism creates inefficiencies and market barriers and is not able to fully support the needs consumers or generators in the ways that a certificates system can. The conversion transaction mechanism limits retailer suppliers' ability to compete based on transaction costs that are higher than necessary, because the only opportunity to purchase attributes without the associated energy is through the spot market. Similarly, the generators' ability to compete is compromised because they are forced to sell into the spot market for conversion transactions and cannot engage in bidding strategies that maximize return. The generators' ability to compete is further compromised by the current limitations on the markets they can access. The conversion transaction mechanism also lacks the flexibility to adapt to changing regulatory and market environments. Within the conversion transactions system, any "attributes" not accounted for by such a transaction must be left in the system residual mix, thereby "greening" the energy provided by the spot market without compensation to the generators involved. In essence, someone will not get paid for a valuable commodity they provide (the "environmental attribute"). A truly unbundled system will ensure that the generator retains possession of this commodity until it is sold.

Unbundling of energy and certificates provides a least-cost method for achieving the State's renewable energy goals by allowing the generation to be placed where resources exist while spreading the costs over all consumers and allowing for a market in tradable certificates. Such a system allows renewable generation owners to receive the full value of their environmentally preferable supply and can ensure consumer confidence in the renewables market. FERC has recognized New England's certificates system as a

best practice, and the RD itself acknowledges NARUC's support for certificate trading. RD at 78, 83.

We endorse the RD's recommendation that a draft proposal be prepared and presented to the Commission no later than December 2004. RD at 107. RETEC cautions the Commission that too much delay in resolving the tracking and trading issues may cause concern among renewable generators and their investment partners and thereby impede rapid development of new renewable generation. Clear market signals, including clear signals on how renewable attributes will be handled, are needed as soon as possible. While the RD calls for the draft rules to be prepared by DPS staff "in consultation with other state agencies," we respectfully suggest that it is essential for both NYSERDA and the NYISO to play a significant role in the development of these rules. Either entity, in fact, would be capable of developing such a system in consultation with Staff. NYSERDA has already had contractors prepare two reports on establishing a credit tracking and trading system in New York. There is no need to reinvent the wheel. Both organizations have done a great deal of research on the subject and have valuable expertise to contribute.

We also fully endorse the RD's finding that "...a New York attributes trading system should be established immediately and a trading system without borders should be developed as soon as possible." RD, Appendix C.

#### **H. Deliverability Requirement**

The Recommended Decision envisions that "[i]mports of all types of otherwise eligible resources should be eligible for renewable credits or certificates as long as an associated amount of energy is delivered to the New York Control Area in the same

calendar month.” RD at 24. This is predicated on the view that the benefits of an RPS will accrue to New York only in the event that renewable energy is actually delivered into New York State. RD at 86.

RETEC respectfully disagrees with the recommendation to impose a delivery requirement, and the factual predicate upon which it rests. Electrically and environmentally, New York is a part of an integrated, regional system, and the trading of renewable energy should reflect this fundamental reality. Moreover, requiring deliverability of energy unnecessarily increases transaction costs and constrains the flexibility inherent in unbundling energy and attributes. For the reasons stated below, the Commission should relax the delivery requirement and work in concert with surrounding states to establish reciprocal arrangements for the trading of renewable energy and associated attributes.<sup>6</sup>

The development of renewable energy in New York, and in the greater environmental air shed of which we are a part, should be a highly competitive market for buying and selling attributes. This market should be administratively efficient and transparent, and operated on a seamless regional basis. Since we exist at the downwind end of a multi-state “pollution corridor”, it behooves us strongly to encourage states around us to adopt progressive RPS programs also—we breathe the air they exhale, their pollution falls on our forests and lakes.

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<sup>6</sup> The RD argues that the Commission’s Instituting Order requires a finding that deliverability is a necessary condition to REC trading because the Order states that this proceeding aims to “develop and implement a renewable portfolio standard for electric energy retailed in New York State.” RD at 85. RETEC respectfully submits that this is a misreading of this phrase in the Instituting Order. Instead, the natural reading of the Commission’s statement is simply that the RPS requirement itself does not apply to electricity sold outside of New York State or sold at wholesale in New York for jurisdictional reasons. The Instituting Order does not discuss how the RPS requirements can be met, nor does it address the specifics of REC trading at all.

One way to assist the development of sustainable energy by other states is to offer the *quid pro quo* of reciprocity on buying and selling renewable attributes. By this, New York would agree to relinquish the deliverability requirement and have free, seamless trading of renewable attributes, with no deliverability requirement, with every state in our air shed that adopts an RPS standard similar to New York's.<sup>7</sup> Under this approach, deliverability would only be appropriate: 1) for state's lacking a comparable policy to encourage renewable generation; 2) as an interim policy, until compatible systems for trading and accounting of certificates are developed with neighboring states.

The Commission should embrace the concept of a seamless and efficient regional attribute market. The Commission should offer to lead, with other states, the development of a reciprocity-based market that does not require the added burden of transmission deliverability costs and constraints: the pollution travels for free, and so also should the solution.

Where no reciprocity exists, or if RETEC's position on delivery is denied, RETEC strongly urges the Commission to alter the RD's recommendation for monthly matching to a quarterly wholesale matching regime until such time the delivery requirement is revisited as recommended in the RD. RD at 24. The RD argues that monthly matching of transactions for attributes and energy is preferred, suggesting this is necessary due to NYISO financial settlement processes and the conversion transaction system. RD at 84. However, as RETEC has continually argued in this proceeding, the conversion transaction system should be replaced. We suggest a quarterly matching regime would be more appropriate, would still preserve the benefits of renewable

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<sup>7</sup> The air shed regional approach to REC trading proposed by RETEC is as consistent with the Commerce Clause, U.S. Constitution, Art. I, §8, as is the deliverability requirement recommended by the RD. RD at Fn. 109.

generation and would be easy to accommodate within the NYISO's current system for tracking and reconciling transactions. In other words, the import of RECs for New York RPS compliance purposes must be accompanied by a documented import of the equivalent amount of energy within a three-month period. It is unclear if the RD envisions that the generator must show delivery of energy actually generated by that renewable generator or if spot market or other purchases may be used ("relaxed wholesale matching"). RETEC believes such a relaxed delivery option is appropriate, if the Commission chooses, against RETEC's recommendation, to require deliverability. If the energy delivery must in fact be from the same generator that supplied the RECs, the period used for matching becomes critical. In fact, the RD itself envisions that a monthly matching system may not be the most appropriate for intermittent resources, "Sale of generation attributes certificates should be tied to delivery of the applicable volume of electricity on a monthly or *other periodic basis consistent with intermittent generation characteristics.*" (emphasis added). RD at 24. RETEC believes a generation attribute tracking and trading system can be used to for such transactions and that such a system can be made compatible with an environmental disclosure program for consumers.

#### **I. Reliability**

RETEC concurs with the RD's finding that The NYSERDA/NYISO Phase I report on wind integration provides sufficient certainty to proceed with the RPS design. RD at 93. However, RETEC believes the RD should have proceeded to state that the Phase I report also is sufficient to proceed with implementation of the RPS, rather than simply noting that the Commission will have the benefit of the Phase 2 report in time for implementation. As envisioned by all parties, the RPS will be implemented slowly over

at least the next 7 to 8 years and there will undoubtedly be a mid-course review at some point in time. As the RD acknowledges (RD at 89 and 90), the Phase I report found that the existing system can accommodate at least 3,300 MW of wind energy and also suggested that the NYISO begin documentation of operational experience with wind energy. The early years of the RPS are precisely the time during which such experience can be obtained with fairly modest amounts of wind integrated into the system.

**J. Costs and Benefits**

RETEC strongly agrees with the RD’s general conclusion that the RPS is good public policy for New York. RD at 4. However, while the potential costs of the RPS are discussed in great detail, the range of benefits not quantified by the various cost-studies are barely acknowledged. RD at 93-105. In RETEC’s comments on the second DPS cost study, RETEC estimated that the non quantified benefits have a value of over \$500 million. See Supplemental Comments of RETEC on NYRPS Cost Study Report II Volume A&B, April 8, 2004.

The various cost studies performed by DPS have not attempted to quantify three important benefits from the RPS: natural gas fuel price suppression, increased price stability, and emissions reductions. While forecasting values for these benefits is difficult, we know that their value is both positive and significant. The table below summarizes rough estimates that RETEC made for the life of the program in response to the second DPS cost study. These estimates are extremely conservative; the actual benefits are almost certainly higher.

|                               |               |
|-------------------------------|---------------|
| Natural Gas Price Suppression | \$297 million |
| Price stability/hedging       | \$110 million |
| Reduced air pollution         | \$117 million |

|              |                      |
|--------------|----------------------|
| <b>Total</b> | <b>\$524 million</b> |
|--------------|----------------------|

Even at this conservative level, the economic benefits that RETEC has estimated are nearly half again as large as the high end of the range of cost forecasted in RD (RD at 21) and more than three times the low end. Either way, the economic benefits of the RPS clearly outweigh its costs.

**K. Balance of the RPS Inquiry.**

The RD recommends that DPS should “draft rules with other state agencies as appropriate and that Working Group Four be reconvened for consultation, with a charge to present an implementation plan to the Commission no later than December 2004.” RD at 107. RETEC supports this recommendation but urges that it be clarified and expanded. The Commission should establish an aggressive schedule and efficient process for transforming its broad policy vision for an RPS into a program that can support contracting for renewable generation in 2005 and Renewable Energy Credit trading no later than January 2006.

The Public Service Commission’s official press release heralds the Recommended Decision as a “roadmap” for realizing the terminal RPS target of 25% by 2013. (“Eight Public Forums Scheduled to Provide Information, Receive Comments on Developing and Implementing a Renewable Energy Portfolio Standard in New York, New York Public Service Commission Press Release, dated June 3, 2004 at 1). While the RPS does offer specific recommendations on many key program elements, including annual targets, many other aspects of the RD are left for future resolution. In its Final Order, the Commission should lay out a clear and comprehensive process and timetable for reaching closure on critical design elements.

In some instances, the RD frames the discussion with alternative policy choices that find record support. On other issues, the RD recommends a specific policy outcome but fails to outline a process for effectuating these program elements. Areas of RPS program design which need considerably more implementation detail include:

- **Overall Program Structure:** The RD favors development of a “hybrid” procurement process for the securing of Renewable Energy Credits by program participants, as specified by Staff, and envisions the use of contracts for differences. While the RD thus provides appropriate policy guidance, a process must be put in place to timely and efficiently translate this model into a working system by the RPS start date. The Commission should identify the Agency charged with this responsibility (RETEC has proposed NYSERDA), direct the Agency to provide a mechanism for input from interested parties and provide a deadline for implementation. The Commission should acknowledge that the Agency, in consultation with Staff, must establish a contracting process that will ensure projects can obtain financing.
- **Credit Trading:** The RD suggests development of a REC tracking and trading system and for DPS staff to prepare the draft rules “in consultation with other state agencies.” The Commission should provide the opportunity for both NYSERDA and the NYISO to play a significant role in the development of these rules. These rules must be determined as soon as possible to provide clear market signals on how renewable attributes will be handled.
- **Deliverability:** The RD generally supports eligibility of “imports of all types of otherwise eligible resources...as long as an associated amount of energy is delivered to the New York Control Area in the same calendar month” (Appendix B at 12) and for the development of a real-time REC trading system to support regional markets for renewable attribute trading (RD at 78). Clearly, much work remains to operationalize this guidance, including but not limited to issues related to accounting, administrative, financial and credibility of transactions (See, e.g., Summary of Working Group Discussions, June 23, 2003 at 10-11; October 21, 2003, Further Ruling on Procedure). The Commission should direct the entity charged with preparing the credit trading system to also address these issues.
- **Technology Review:** The RD suggests an initial set of RPS eligible technologies and a mechanism for including additional technologies that come into conformance with RPS objectives. However, the RD does not supply necessary detail on: when this technology review is to occur; what are the environmental and other standards that non-eligible technologies must meet; and who is to undertake this review.
- **Analysis of Other Programs:** The RD says the Commission will need analyses of other programs before implementation and mentions interconnection, DSM and the SBC. RD at 106-107. IN fact, the Commission need not, and should not, evaluate

these programs prior to implementation as this would cause an unnecessary delay. These programs can easily be addressed in concert with implementation.

RETEC urges the Commission, in its Final Order, to lay out a comprehensive and integrated implementation plan leading to the commencement of full-scale RPS program implementation. In order to accomplish this objective, RETEC recommends that the Commission direct its Staff, in consultation with the New York State Energy Research and Development Authority, to develop all necessary design and operating rules and procedures in furtherance of the Commission's RPS policy framework. The Commission should also authorize and direct Staff to retain expert consultants with experience in drafting RPS regulations in other states to assist in this process and to avoid unnecessary reinvention of the wheel. These rules and procedures should be developed no later than December 2004, (as the RD alludes to at 107), with an opportunity, as necessary, for consultation with the parties before final adoption by the Commission.

**L. Minor Corrections/Updates to the RD**

RETEC also notes the following minor corrections or updates to the RD:

- p. 4. "To date, 13 states have commenced RPS processes." In April 2004, the Maryland State Legislature enacted HB 1308, which establishes an RPS for Maryland, and was signed into law by Maryland's governor on May 26, 2004. <http://mlis.state.md.us/2004rs/billfile/HB1308.htm>. Thus, there are now fourteen states (excluding New York) which have established RPSs
- p. 9, fn. 21. Because the names of several RETEC members have shifted, RETEC requests that RETEC membership be identified as listed in Footnotes 1 and 2 to this Brief, rather than as listed in fn. 21.
- p. 77. "As New York appears likely to be a net importer of renewables, there was consensus that eligible imports should be allowed to be traded here." RETEC notes that it does not agree that it is likely, nor was there consensus, that New York will be a net importer of renewables.

#### IV. CONCLUSION

RETEC applauds the Commission and DPS Staff for their skillful and orderly handling of this proceeding. RETEC urges the Commission to swiftly adopt the RD, with the exceptions noted above, and swiftly implement the RPS. All New Yorkers will benefit from New York's wise investment in the RPS and leadership on renewable energy.

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