STRATEGIC ENERGY LLC
45 MAIN STREET · SUITE 608 · BROOKLYN, NY 11201
718-246-1840 · FAX 718-246-1599 · www.sel.com

Francis E. Pullaro
Regulatory Affairs Manager
fpullaro@sel.com

June 22, 2004

The Hon. Jaclyn A. Brilling
Secretary to the Commission
New York State Department of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

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

Secretary Brilling:

Strategic Energy L.L.C., submits an original and twenty-five copies of its exceptions to the Recommended Decision in the above referenced proceeding.

Sincerely,

Francis E. Pullaro

c: Parties to the proceeding (e-mail)

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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

BRIEF ON EXCEPTIONS OF STRATEGIC ENERGY, L.L.C., TO THE RECOMMENDED DECISION ON A RETAIL RENEWABLE PORTFOLIO STANDARD

Strategic Energy, L.L.C. ("Strategic Energy") respectfully submits this brief containing its exceptions to the Recommended Decision issued on June 3, 2004, by Judge Eleanor Stein on the development and implementation of a renewable portfolio standard ("RPS") for electricity in the State of New York. Overall, Strategic Energy commends the ALJ for advancing the Governor's goals in establishing an RPS. Nevertheless, Strategic Energy excepts to some of the ALJ's recommendations that, if adopted, will disadvantage retail competition in the State.

Strategic Energy is an Energy Service Company ("ESCO") serving commercial and industrial customers in New York and eight other States.

Strategic Energy opposes the recommendation that the utilities recover RPS costs through a wires charge instead of the energy charge.[1] Under the RD's call for mandatory ESCO participation, utility RPS cost recovery through a wires charge will result in ESCO customers subsidizing utility customers' commodity supply thereby placing the ESCO at a competitive disadvantage to the utility. The utility's cost of renewable supply should be fully reflected in the monthly energy charge. Moreover, it should not be averaged over a term of months or years to ensure that the bundled customers see the true cost of commodity supply in the competitive market.

Strategic Energy holds that the lack of an alternative compliance mechanism will be costly to ESCOs if an insufficient amount of renewable capacity exists for them to meet their requirements. An alternative compliance mechanism should be adopted to ensure that, during times of insufficient renewable resources, the State may reach its renewable target while limiting the risk to ESCOs from renewable supplier market power. The State might auction off those funds collected through the alternative compliance mechanism to lowest cost bidders who will build renewable supplies; the auction could even set a deliverability requirement.

Strategic Energy reiterates its support for the individual compliance model coupled with an alternative compliance mechanism, not the hybrid procurement model preferred in the RD.[2] Bilateral contracting alone, in contrast to central procurement or a hybrid, will most effectively spur the market into finding innovative approaches to fulfill the requirements while likely accomplishing this goal at a lower cost to consumers and

---

[1] Case 03-E-0188, Retail Renewable Portfolio Standard, Order Instituting Proceeding (issued June 3, 2004), Recommended Decision, Appendix C, iii.
[2] Id. at 75.

with more environmental benefits than the alternatives. In a competitive market, each seller will seek to maximize their share of the rent created by the RPS requirement by building the lowest cost renewable supply; ESCOs will seek out the lowest cost suppliers or negotiate arrangements that best serve their customers' needs or their business model. Only the individual compliance model satisfies the Commission's principles for the State's competitive electricity market: "Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit of greater choice, value and innovation."[3] The central procurement system model, like the State's so-called market for installed capacity, represents a disturbing trend in the State of preferring administrative solutions despite the availability of market-based alternatives. While the hybrid model advanced by the RD allows for bilateral contracting, the State's large procurement role would provide less market liquidity than the individual compliance model. The hybrid model also will not necessary result, as some market participants contend, in smaller ESCOs receiving a price for renewable supply through state agency procurement that is lower or equal to utility costs through the bilateral market. If the utilities decide to enter bilateral contracts for their renewable requirements, they will reduce the amount of supply that participates in the central system thereby driving up the price of the centrally procured attributes. Strategic Energy recommends that the RPS not require utilities to enter into long-term contracts for their renewable requirement. Yet the only truly effective solution to ensure the utility procurement of renewable supply does

---

[3] Case 00-M-0504, Proceeding on the Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of the Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, Notice Seeking Comments (issued January 27, 2004), p. 3.

not disadvantage ESCO is to reach an end-state for electric deregulation in New York that consists of the utility exiting the merchant function.

Finally, Strategic Energy supports the RD's proposal for a certificates-based renewable energy attributes trading system. This will enhance market liquidity and reduce the cost and seems of trading renewable energy between New York and New England.

Respectfully Submitted,

____

Francis E. Pullaro
Regulatory Affairs Manager
Strategic Energy
45 Main St., Suite 608
Brooklyn, NY 11201
Phone: 718-246-1840
fpullaro@sel.com

June 22, 2004