

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

BRIEF OPPOSING EXCEPTIONS OF AES-NY, LLC

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INTRODUCTION

On June 23, 2004, parties filed briefs on exceptions to the recommended decision (“RD”) issued by Administrative Law Judge (“ALJ”) Stein on June 3, 2004 in the above-captioned proceeding. Pursuant to the New York State Public Service Commission’s (“Commission”) June 3, 2004, Notice of Schedule for filing Exceptions, AES-NY, LLC (“AES”) hereby files its brief opposing the following exceptions to the RD:

1. The Renewable Energy Technology and Environment Coalition (“RETEC”) excepts to the recommended implementation date of 2006 rather than 2005. The Phase 2 reliability study being conducted by the New York Independent System Operator (“NYISO”) and the New York State Energy Research and Development Authority (“NYSERDA”) and the independent market evaluation being conducted by the NYISO’s Independent Market Advisor must be completed prior to any implementation date being established. The ultimate goal is to create a Renewable Portfolio Standard (“RPS”) that properly evaluates all reliability, cost, and market issues to ensure an effective implementation.

Calendar year 2006, at a minimum, provides a more realistic timetable for the Commission to adequately consider and adopt final RPS policy.

2. RETEC excepts to the biomass definitions included in the RD in lieu of a more restrictive standard. Biomass renewable projects have the potential to offer a steady supply of renewable energy twenty-four hours a day and during peak conditions. Biomass projects offer greater system reliability benefits than other intermittent renewable resources. However, adequate and reliable fuel supply sources are the single most critical factor in determining the economic viability of a potential biomass project. The restrictive biomass definitions proposed by RETEC, if adopted, will significantly increase the supply and associated price risks and may prohibit such projects from being developed. The result may be an over-dependence on wind resource, contrary to the goal of the RPS to increase supply diversity. AES supports the more flexible biomass definition described by Taylor Recycling in its brief on exceptions.
3. The Joint Utilities except to the recommendation to require individual LSEs to meet annual RPS target obligations rather than place such obligation on a centralized procurement agency. The Commission should maintain its current flexibility of contracting originally recommended in the RD. Due to the higher cost nature of renewable projects, it is necessary to consider longer-term contracts to finance projects going forward.

4. RETEC excepts to the 2008 re-evaluation period and instead recommends a 2010 date. A review period approximately two years after initial implementation is necessary to address any unintended or unforeseeable adverse consequences of the RPS before a significant amount of renewable supply comes on-line.

I. THE COMMISSION SHOULD ORDER, AT A MINIMUM, A PLANNED IMPLEMENTATION DATE OF CALENDAR YEAR 2006.

The goal of the RPS is to introduce a renewable energy program that has a high probability of success and still maintains system reliability, competitive markets, and offers least cost solutions for consumers. The record to date is incomplete as evidenced by the outstanding Phase 2 Reliability Study being conducted by the NYISO/NYSERDA and the separate Independent Market Evaluation being conducted by the NYISO Market Advisor. The NYISO, being directly responsible for system reliability and operation of the competitive electric wholesale markets, has strongly encouraged that these studies be completed prior to any final decisions being made in this proceeding. A successful RPS demands a careful balancing of system infrastructure, maintenance of the existing competitive wholesale energy markets, and constant diligence to implement the least cost approach for consumers. With the Phase 2 reliability study not scheduled to be completed until early 2005, calendar year 2006, at a minimum, is the most realistic time to begin RPS implementation.

II. THE COMMISSION MUST IMPLEMENT A BIOMASS DEFINITION THAT OFFERS THE GREATEST FLEXIBILITY TO ENSURE ADEQUATE SUPPLY AND REASONABLE PRICING TO ENCOURAGE DEVELOPMENT OF BIOMASS PROJECTS.

RETEC's more restrictive biomass definition as outlined in its June 23, 2004 brief on exceptions will greatly reduce potential biomass supply options. A major consideration in any biomass project will be the ability to secure the necessary biomass fuel supply to maintain a steady state operation. A restrictive definition will result in price and supply risks that will create a disincentive for additional biomass renewable energy development in New York. Ultimately, a restrictive biomass definition could result in less biomass projects and a renewable outcome that is overly dependent on one resource, wind generation. This outcome would not meet the RPS' overall objective of enhancing fuel diversity. AES strongly supports Taylor Recycling's biomass recommendations outlined in its brief on exceptions.

III. THE COMMISSION SHOULD ADOPT A FLEXIBLE PROCUREMENT POLICY, WHICH INCLUDES CONTRACTING BETWEEN INDIVIDUAL LSES AND RENEWABLE, SUPPLIERS.

A model that imposes no procurement obligation on individual LSEs, as advocated by the Joint Utilities, will deter renewable market development, and place the total burden on one agency or body. Competitive market pressures will result in more innovation and potentially greater and more diverse renewable resources. A prime

objective of the RPS is to enhance fuel diversity. A competitive market versus a single agency central procurement model will result in less fuel diversity options and likely a default to one or two renewable options. The hybrid procurement approach, as recommended by the Commission, will promote individual contracts that can be tailored to the individual needs of each renewable project and ensure project viability. Finally, the Commission should reserve all judgment until the NYISO Market Advisor completes its analysis of RPS procurement on competitive markets.

IV. THE COMMISSION SHOULD ADOPT A 2008 REVIEW OF THE RPS AS RECOMMENDED IN THE RD.

RETEC excepts to the 2008 review and instead proposes a 2010 date. AES supports a 2008 review period with specific review criteria. The RPS when implemented will have some continuing uncertainty with respect to system reliability, ongoing anticipated costs, and other unanticipated consequences. A review period approximately two years after initial implementation provides a needed safety mechanism to make any necessary changes to ensure the long term objectives and success of the RPS are realized.

Respectfully submitted,

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