

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 INDEPENDENT
POWER PRODUCERS OF NEW YORK, INC.

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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, the Independent Power Producers of New York, Inc. (“IPPNY”) hereby files its brief opposing the following exceptions to the RD:

1. The Renewable Energy Technology and Environment Coalition (“RETEC”) excepts to the recommendation that implementation of the renewable portfolio standard (“RPS”) begin in 2006 instead of 2005. As IPPNY, the New York Independent System Operator, Inc. (“NYISO”) and the New York State Reliability Council (“NYSRC”) discussed in their briefs on exceptions, the Commission must address the results of the Phase 2 reliability study (“Phase 2”) being conducted by the NYISO and New York State Energy Research and Development Authority (“NYSERDA”) before implementing the RPS. Since Phase 2 is now scheduled to be completed in early 2005, implementation of

the RPS for calendar year 2005 is not possible if the Commission is to adequately address Phase 2 in its implementation of RPS policy.

2. The Joint Utilities¹ except to the recommendation to require individual LSEs to meet annual RPS target obligations rather than require a centralized procurement agency be solely responsible for meeting RPS targets.

The Commission should not implement an RPS that relies solely on a centralized procurement agency to meet RPS requirements because it will discourage the creation of a robust competitive market for the procurement of renewable energy.

3. Energy Management, Inc. (“EMI”) excepts to the recommendation that New York RPS benefits be paid to out-of-State renewable generators that deliver an associated amount of energy into the State in the same month rather than require the energy to be imported into the State within the same hour it is generated.

EMI’s exception aptly demonstrates the meaninglessness of a “delivery” requirement, because whether renewable energy is imported into New York on an hourly, daily or monthly basis, there is no way of ensuring that any of the renewable energy will physically enter the State.

¹ The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

I. THE COMMISSION SHOULD NOT REQUIRE COMPLIANCE WITH RPS TARGETS FOR CALENDAR YEAR 2005.

In its brief on exceptions, RETEC argues that the Phase I reliability study (“Phase I”) provides sufficient certainty to proceed with implementation of the RPS in 2005 rather than 2006.² RETEC states that the RPS will be implemented slowly over the next seven to eight years and that there will be an opportunity for a mid-course review.

As IPPNY and several other parties discussed in their briefs on exceptions,³ the initial, high-level analysis in Phase I cannot serve as the basis for adoption of major policy issues that could adversely impact reliability of the State’s electric system and the functioning of competitive electricity markets. In its letter brief on exceptions, the NYISO urged the Commission “to affirmatively commit to address, in the implementation phase, operational, reliability and market implications that have yet to be identified, but which are the subjects of various pending studies.”⁴ The NYISO indicated that Phase II will not be finalized before early next year and that the NYISO’s own, independent evaluation of the impacts of significant, subsidized resources on wholesale market efficiency and competition will not be ready for several months.

The NYISO’s study of market impacts is especially important because it will assess the competitive impacts of the hybrid contract for differences approach (“CFD”), which the RD recommends. The CFD approach could harm the electricity markets because renewable resources that are paid a subsidy that varies with the market price of

² RETEC Brief on Exceptions at 31.

³ NYSRC letter brief at 2, NYISO letter brief at 1-6, Joint Utilities Brief on Exceptions at 20-21.

⁴ NYISO letter brief at 2.

energy would have no economic incentive to following market price signals. Negative price signals are a necessary feature of the competitive market because they are the most efficient method to ensure that generators do not harm the reliability of the electric system by overloading it with their output. Renewable resources paid a variable subsidy would have no incentive to cease operating when the market value is negative because they would still receive their full bid offer from the procurer. For example, if the market price were negative \$100/MWh and the generator had been awarded a bid for \$80/MWh, the procurer would be required to pay the renewable generator \$180/MWh for its output.⁵ The result would be that customers would be required to pay generators for output that was not only unnecessary but could cause great harm to the electric system.

IPPNY strongly supports the NYISO's request that the Commission refrain from endorsing the details of any particular procurement or contracting methodologies, including the CFD approach, until the results of the NYISO's analysis on market impacts are available. As the NYISO states, decisions on these procurement and contracting issues will be crucial to maintaining an efficient and competitive market and they should be reached in a manner that incorporates the NYISO's recommendations.

In addition, the Commission would be wise to allow the NYISO to complete whatever steps it deems necessary to ensure RPS compliance does not adversely harm reliability or competitive markets. For example, the NYISO's exemption from regulation penalties for 500 MW of intermittent resources may be subject to modification as a result of the NYISO's analysis.⁶ The mere threat of expansion or elimination of the exemption

⁵ In this example, the generator would have to pay the NYISO \$100/MWh for its output.

⁶ New York Independent System Operator Market Administration and Control Area Services Tariff, Fourth Revised Sheet No. 101, November 26, 2003.

could significantly effect the bidding behavior of renewable resources in response to any auction or request for proposals (“RFP”) conducted by load serving entities or a central procurement agency. Even if the exemption is not modified, the NYISO, working through its market participant committee process, will need to clarify how the exemption operates. The NYISO’s tariff does not make clear which intermittent resources are eligible for the exemption if more than 500 MW of intermittent resources are operating in the NYISO’s markets. Since the RD’s recommended target for the first year of the RPS would require the addition of approximately 600 MW of wind, the NYISO will need to begin addressing this issue well before the first auction for renewable energy is conducted.

IPPNY requests that the Commission address the results of Phase 2, order to Staff to conduct a revised cost study reflecting the results from Phase 2, address parties’ comments on Phase 2 and the revised cost study and the NYISO’s independent analysis of reliability and market impacts, before it sets and orders compliance with any RPS targets. With Phase II not scheduled for completion until at least January 2005, implementation of the RPS in 2005 is not possible if the Commission is to adequately address Phase 2 in its implementation of RPS policy. The Commission should be flexible in choosing a commencement date for compliance with RPS targets to allow sufficient time to complete the necessary reliability, cost and competitive impact reviews.

II. THE COMMISSION SHOULD NOT IMPLEMENT AN RPS THAT IMPOSES THE OBLIGATION TO MEET RSP REQUIREMENTS ON A CENTRAL PROCUREMENT AGENCY.

The Joint Utilities except to the recommendation to require individual LSEs to meet annual RPS target obligations rather than establish a centralized procurement model which would impose the procurement obligation on the central procurement agency. The Joint Utilities seek to place the burden of acquiring renewable energy or renewable energy certificates (“RECs”) on either the State or the NYISO to “level the playing field” among LSEs for meeting RPS mandates. Under the Joint Utilities’ proposal, LSEs retain only the responsibility to fund their share of the central procurer’s purchases by flowing through to the central procurer the revenues collected from customers as approved by the Commission. Under this model, the Joint Utilities state: “[n]o LSE is advantaged; no LSE is disadvantaged. All LSEs are treated equally.”⁷

The Joint Utilities’ proposed model should be rejected because it will discourage the creation of a robust competitive market for the procurement of renewable energy. When the Commission set forth its policy in Opinion No. 96-12 to introduce competition to the electric industry in New York, it declared its intent to “encourage competition wherever feasible.”⁸ The Commission expressed its vision that, to achieve effective competition in the generation and energy services sectors, there must be many buyers and sellers and no single provider of service that could dominate the market as a whole or any

⁷ Joint Utilities Brief on Exceptions at 11.

⁸ Case 94-E-0952 *et al.*, *Re Competitive Opportunities Regarding Electric Service* (May 20, 1996).

part of it or that could limit customer options. The Commission correctly recognized that as customer choice increases, competitive pressures will drive down costs by stimulating innovation and the introduction of new products that could provide customers with tailor-made options.

A model that imposes no procurement obligation on individual LSEs turns the Commission's competition policy on its head because one body will control the market for procuring renewable energy. If all LSEs are treated equally, none being advantaged or disadvantaged, the development of renewable resources will be unable to benefit from innovative solutions that can only be stimulated by competitive pressures. The individual compliance model is consistent with the Commission's goals to create markets with many buyers and sellers so that no single provider of service dominates the market or limits customer options. The RD's recommended hybrid procurement model correctly places the obligation to procure renewable supply on each individual LSE. While the Commission should refrain from ruling on the details of how procurement will be conducted until after the NYISO's market impact analysis is completed, its policy statement should make clear that individual LSEs, not a central procurement agency, must comply with RPS targets.

IPPNY opposes a central procurement model that would have the NYISO procure energy from renewable resources and recover costs from market participants through an uplift charge. Not only would such a proposal allow the NYISO to dominate the procurement of renewable energy, it would be inconsistent with the NYISO's role and would violate the NYISO's tariffs. The NYISO's role is to maintain reliability of the New York State bulk power system and to provide an efficient and competitive market

for buyers and sellers to trade energy, capacity and ancillary services. The NYISO does not and cannot have any role in contracting with third parties for energy or renewable attributes. If the Commission approves a central procurement model, NYSERDA is the most logical choice to be appointed a central procurement agency. NYSERDA has experience administering the SBC program and it volunteered for the role. The Commission should make clear, however, that NYSERDA, or any other procurement agency appointed by the Commission, would merely facilitate LSEs in procuring RECs. LSEs must still be obligated to meet RPS targets, whether by obtaining RECs through NYSERDA-facilitated auctions, by conducting their own auctions or buying RECs in a competitive REC market.

III. A DELIVERABILITY REQUIREMENT IS MEANINGLESS BECAUSE WHETHER RENEWABLE ENERGY IS “DELIVERED” INTO NEW YORK ON AN HOURLY, DAILY OR MONTHLY BASIS, IT IS IMPOSSIBLE TO ENSURE THAT ANY OF THE RENEWABLE ENERGY WILL PHYSICALLY ENTER THE STATE.

EMI excepts to the recommendation that New York RPS benefits be paid to out-of-State renewable generators that deliver an associated amount of energy into the State in the same month rather than require the energy to be imported into the State within the same hour it is generated. EMI claims that “by not requiring actual delivery of any renewable energy,” the RPS would be based on a “regulatory fiction that would undermine public confidence.”⁹ EMI argues that only renewable suppliers that deliver energy into the State in the hour it is generated pursuant to the North American Energy

⁹ Brief on Exceptions of EMI at 2.

Reliability Council (“NERC”) electronic tagging system should be eligible to sell RECs in New York’s RPS market.

EMI’s exception aptly demonstrates the meaninglessness of a “delivery” requirement, because whether renewable energy is schedule to be delivered into New York on an hourly, daily or monthly basis, there is no way of ensuring that any of the renewable energy will actually enter the State. EMI’s fears of a regulatory fiction undermining public confidence apply equally to energy sold pursuant to the NERC tagging system. It is impossible to track electrons once they are generated. The NERC system is designed to ensure that transmission corridors between neighboring regions are not overloaded. It is not and cannot be a system to ensure energy generated at a particular plant is delivered to a particular location.

As IPPNY discussed in its brief on exceptions, the Commission should not treat New York as an island by stranding it from a regional competitive markets for RECs. If New York does not allow out-of-State generators to sell RECs into New York’s REC market, then other states will likely prohibit New York generators from selling RECs into their REC markets.

If the Commission imposes a deliverability requirement, IPPNY requests that the Commission adopt the RD’s alternative approach to the State-specific deliverability requirement, whereby the delivery requirement would be imposed on a regional basis. IPPNY urges the Commission to order DPS staff and parties to work with neighboring states to develop a regional REC trading system that would allow RECs to be sold throughout the region without requiring a State-specific deliverability requirement. If the Commission decides to adopt the State-specific deliverability requirement until at least

the 2008 Review, the Commission should permit renewable generators to sell RECs in New York so long as they deliver the associated amount of energy into New York within one calendar year the RECs are sold, rather than one month as proposed in the RD. A calendar year will help reduce the costs and burdens on LSEs to comply with RPS targets by allowing renewable resources more flexibility in scheduling energy transactions into New York.

CONCLUSION

As discussed above, the Commission should: 1. require compliance with RPS targets no earlier than 2006, 2. implement an RPS that imposes the obligation to meet RSP requirements on individual LSEs, and 3. permit out-of-State renewable energy resources to trade RECs in New York without having to demonstrate delivery of the associated energy into New York.

Respectfully submitted,

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