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**Via Hand Delivery**

July 29, 2004

Hon. Jaclyn A. Brillling  
Acting Secretary  
State of New York Department  
of Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

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

Dear Secretary Brillling:

Enclosed is an original and twenty-five (25) copies of the Municipal Electric Utilities Association of New York State's Reply Brief on Exceptions in the above-referenced matter.

Respectfully submitted,

READ AND LANIADO, LLP  
Attorneys for the Municipal Electric  
Utilities Association of New York State

By: \_\_\_\_\_  
Kevin R. Brocks

Enclosure

cc: Hon. Eleanor Stein  
Active Parties (*Via Electronic Service*)

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

**REPLY BRIEF ON EXCEPTIONS ON BEHALF OF**  
**THE MUNICIPAL ELECTRIC UTILITIES ASSOCIATION**  
**OF NEW YORK STATE**

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Dated: Albany, New York  
July 8, 2004

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

**INITIAL COMMENTS ON BEHALF OF**  
**THE MUNICIPAL ELECTRIC UTILITIES ASSOCIATION**  
**OF NEW YORK STATE**

**INTRODUCTION**

The New York State Public Service Commission (“Commission”) instituted this proceeding to develop and implement a retail renewable portfolio standard (“RPS”) for electric energy in New York State (Case 03-E-0188, Order Instituting Proceeding (“Order”), issued February 13, 2003). In its Order, the Commission established a working target that by the year 2013, at least 25% of the electric energy retailed in New York State would be generated from renewable resources. After an extensive collaborative process, Administrative Law Judge Eleanor Stein issued her Recommended Decision (“RD”) on June 3, 2004.

These comments are submitted on behalf of the Municipal Electric Utility Association of New York State (“MEUA”). The MEUA, consisting of 46 members, was created in 1930 to foster the efficient operation of New York’s publicly-owned and operated electric systems.<sup>1</sup>

The Judge concluded that the municipal electric utilities should not be included in a mandatory incremental RPS. The Judge, in what is emphatically not an “advisory opinion” (contra, RETEC at 25) explained that it does not make sense to include publicly owned

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<sup>1</sup> MEUA consists of all but one of the 47 municipal public power entities in New York State. There are also four rural electric cooperatives.

municipal systems in the new RPS system. RETEC took exception, although it could not cite any reason beyond a generalized “everyone in the pool” notion, as to why the municipal electric utility systems should be included.<sup>2</sup>

The Judge is correct and RETEC’s exception should be rejected.

## **DISCUSSION**

The MEUA membership obtains approximately 87% of their energy from the New York Power Authority’s (NYPA) Niagara hydroelectric project. They have, by far, the largest percentage of renewable generation of any suppliers in New York State. The MEUA members are community-owned and governed public power systems. Since 1961, the MEUA membership has financially carried the Niagara hydroelectric project, one of the great environmental boons in the history of power generation.

NYPA will expend approximately \$1 billion on life extension, modernization and relicensing of the Niagara and St. Lawrence hydro projects. NYPA’s MEUA customers will bear the cost of that colossal investment. All other renewables pale in comparison to NYPA hydro. The MEUA membership, through their Niagara agreements, are already committed to a huge investment in the enhancement and efficient operation of New York State hydropower. It, however, is not simply a question of what MEUA has done in the past. MEUA members are now, and in the future, investing in expanded hydroelectric operations as well as energy efficiency.<sup>3</sup>

MEUA’s membership uses a relatively small amount of energy beyond their Niagara power purchases. For example, in 2002, MEUA’s municipal membership used approximately 3,634,000 MWh of renewable Niagara hydroelectric energy and only 536,000 MWh of “incremental” energy, that is, energy above and beyond their Niagara purchases. An RPS

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<sup>2</sup> The Joint Utilities raised similar arguments.

<sup>3</sup> NYPA customers are responsible for huge ongoing investments in hydropower. The capital necessary to maintain and enhance hydroelectric production is every bit as crucial and well spent as investment in new greenfields projects.

requirement on that relatively small amount of incremental energy would be immaterial on the state-wide stage.<sup>4</sup> Furthermore, imposing upon them a mandatory requirement to make some portion of that very small piece of their portfolio renewable will impose a significant complication upon their incremental portfolio purchasing practices. Given the amounts at stake, a mandatory RPS will do very little for the state target and makes very little sense for MEUA's members.

Since MEUA members now have an 87% renewable portfolio, applying an across-the-board mandatory incremental RPS on MEUA produces some curious results. It all depends, of course, on how the program works in detail. But assume in year one that all LSEs are obligated to obtain an incremental 1% from renewables. MEUA members as a group would go from 87% to 88% renewable. Another LSE may go from 17% to 18%, or from zero to one percent. It does not make sense, from a state policy perspective, to impose that sort of obligation on the local public power entities given what they do now, and how little a new mandate would accomplish.

The municipal systems, through the MEUA, in partnership with NYPA, have a long history of promoting energy efficiency and economic development. For example, in the 1990's, NYPA and MEUA joined in the award winning "Watt Busters" program which was targeted to residential customers. The program has cut consumption and peak demand for electricity in participating municipal systems. Thereafter, the MEUA's "Energy Efficiency Program" ("EEP") provided energy efficient technologies for both commercial and industrial customers and municipalities themselves. The MEUA and NYPA have also joined in the "Tree Power" program pursuant to which over 30,000 trees have been planted. That program too is ongoing.

In short, as befits their public power partnership, the MEUA and NYPA have had, and continue to have, aggressive energy conservation programs.

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<sup>4</sup> State-wide load for the year was 158,724,000 MWh. A 1% increase in renewables for MEUA's "incremental" energy would result in 5,360 additional MWh, which represents 0.0034% relative to the state-wide total.

Finally, a mandatory RPS will interfere with the public power partnership between the MEUA membership and NYPA. Not only do MEUA and NYPA have the long and effective partnership we discussed above, but they are pledged to, and are now working on, further energy conservation programs. As NYPA President Zeltmann has said, a recent agreement between NYPA and the MEUA provides the foundation for expanded cooperative efforts to create new jobs, promote the use of clean electric and hybrid-electric vehicles and implement energy-efficiency measures in the municipal systems' territories. MEUA's programs, in partnership with NYPA, are better than most and second to none. In the NYPA/MEUA partnership, public power is meeting its public obligations.

### **CONCLUSION**

The MEUA members are public power systems that obtain over 87% of their power from one of the world's great renewable wonders. They are also local governments. In their important public power partnership with the New York Power Authority, they more than meet their public power obligations in far reaching environmental and energy conservation programs. Nothing is "broken" with the MEUA's environmental and energy programs, and no RPS "fix" is warranted. The Judge's recommendation should be adopted.

Respectfully submitted,

READ AND LANIADO, LLP  
Attorneys for The Municipal Electric  
Utilities Association of New York State

By: \_\_\_\_\_  
Kevin R. Brocks

Dated: July 8, 2004  
Albany, New York