

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**CASE 03-E-0188 - Proceeding on Motion of the Commission Regarding
A Retail Renewable Portfolio Standard**

BRIEF OF NRG ENERGY, INC., OPPOSING EXCEPTIONS

In its brief on exceptions, NRG Energy, Inc. (“NRG”), requested clarification that the statement in the RD that “only new resources developed after January 1, 2003, will be eligible for the RPS” should be clarified explicitly to provide eligibility for resources that first commenced *commercial operations* after that date. Alternatively, NRG requested that, in the least, R & D projects involving new renewable technologies such as the Dunkirk co-firing facility that commenced commercial operations after January 1, 2003 should be eligible for the RPS. NRG’s specific concern is with a prototype biomass co-firing facility under development at NRG’s Dunkirk Steam Station.

Insofar as the other briefs on exception specifically addressed this timing issue, they were in accord with NRG’s position. Hence, Keyspan Energy requests clarification that “developed” means “commenced commercial operations.” (Br. at 3-4.) Similarly, RETEC stated, “RETEC supports the intent of the RD to include project that have commenced operations post 2003.” (Br. at 17; emphasis added.) Finally, the Joint Utilities requested clarification that facilities “that enjoyed commercial success” (emphasis added) prior to that date be barred from RPS eligibility, implicitly acknowledging that those facilities that had not become commercially operational as of that date should be eligible for RPS.

Several parties have sought a relaxation of the January 1, 2003 threshold to reward developers of existing renewable resources for their early risks: *e.g.*, Community Energy and Enel North America want existing (and, presumably, commercially operational) wind farms to be eligible; Ridgewood Renewable Power wants additional existing small hydro plants to be eligible.¹ Without agreeing or disagreeing with these assertions, we should note that the economic risks of developing the proto-type Dunkirk co-firing facility were certainly no less than those associated with wind farm or hydro facilities. We should also note that biomass co-firing facilities have clear reliability advantages over wind and hydro.

Clearly, the Commission's final order should clarify that renewable facilities that had not commenced commercial operations as of January 1, 2003, are eligible for RPS. Alternatively, the Commission should make clear that this rule applies to R & D projects such as the Dunkirk co-firing facility.

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Respectfully Submitted,

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¹ Additionally, IPPNY wants eligibility for all existing renewable facilities with capacities below 20 MW to be eligible for RPS; AES, NY, LLC wants RPS eligibility for the output of renewable facilities that exceeds a historic baseline.

