STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

BRIEF OPPOSING EXCEPTIONS OF THE VILLAGE OF BERGEN, VILLAGE OF FREEPORT, VILLAGE OF GREENPORT CITY OF JAMESTOWN BOARD OF PUBLIC UTILITIES, TOWN OF MASSENA, VILLAGE OF ROCKVILLE CENTRE, SALAMANCA BOARD OF PUBLIC UTILITIES, VILLAGE OF SHERBURNE, CITY OF SHERRILL POWER & LIGHT AND THE VILLAGE OF SOLVAY

Pursuant to the Notice of Schedule for Filing Exceptions issued on June 3, 2004 in the above-listed docket, the Village of Bergen, Village of Freeport, Village of Greenport, City of Jamestown Board of Public Utilities, Town of Massena, Village of Rockville Centre, Salamanca Board of Public Utilities, Village of Sherburne, City of Sherrill Power & Light and the Village of Solvay (collectively the NY Municipals) file this Brief Opposing Exceptions.

Administrative Law Judge Stein's Recommended Decision (RD) correctly concluded that the Renewable Portfolio Standard (RPS) should not impose additional renewable requirements on municipal utilities because of, *inter alia*, the municipals' significant existing contribution to renewable purchases. The RD states in relevant part:

> [The municipals'] arguments that their portfolio already consists of approximately 87 percent hydropower, that they practice aggressive energy efficiency and conservation; and that their incremental load is so slight as to have no material impact on either the statewide resource mix or the cost burdens to be borne by the balance of the ratepayers are persuasive. Accordingly, the recommendation is to exempt municipal public power entities.

RD at 71.

The RD correctly recommended exempting municipal utilities because those utilities already comply with not only the proposed RPS but, with 87% of their energy purchases coming from hydro electric and other renewable sources, they comply with three times the proposed RPS. New York municipalities have funded the largest renewables project in New York, namely the Niagara Project. Pursuant to the Niagara Redevelopment Act, 16 U.S.C. § 836 *et seq*., New York municipalities pay for an allotment of hydropower from the New York Power Authority's (NYPA) Niagara Hydropower Project. The NY Municipals, as well as all other municipal utilities and rural electric cooperatives in New York, receive 752 MW of firm power and associated energy (so-called "preference power"). The Project is currently being upgraded with new generating equipment and other improvements intended to increase efficiency and output of the Project while minimizing negative environmental impacts.

In addition to funding the development of existing hydropower that provides a substantial part of New York's existing renewable portfolio, NY Municipals have also invested in other renewables, energy efficiency measures and demand-side management. For example, despite its existing purchases of hydropower and the price disadvantages of wind, at least one New York municipal is presently negotiating with a wind developer. Municipals have also aggressively pursued a variety of energy efficiency initiatives. The City of Jamestown has, for instance, developed and expanded its district heating facility. The Village of Freeport has established a unique partnership with the Ford Foundation to target weatherization services to promote affordable housing. These investments reflect a significantly higher rate of investment in renewable resources, hydro as well as non-hydro renewables, by municipal utilities as opposed to investor-owned utilities nationwide.[1]

The RD's recommendation to exclude municipalities from additional requirements under the RPS is consistent with the actions of virtually all states that have RPS policies. According to the Renewable Portfolio Standards Background and Analysis document in this docket (Grace *et al.*, 2002), consumer-owned utilities are "almost always exempt from RPS requirements. . . ." *Id.* at 12-13. Among the states expressly exempting municipally-owned utilities serving in their franchise territories are Massachusetts, Nevada, New Jersey, Texas, Maine, Connecticut and Arizona. The Background Document only identifies Wisconsin as requiring municipal participation in an RPS and in that case, the municipals are nowhere near the over 80% renewables purchases that the municipals in New York achieve. *Id.*

The exclusion of municipals from the RPS in New York is even more appropriate because of the unique contribution of New York municipals to renewables purchases in New York. The imposition of additional requirements on New York Municipals is unnecessary to effective implementation of the RPS. The NY Municipals already comply with three times the RPS threshold. The preference power allocation in the Niagara Redevelopment Act ensures that this level of renewable purchases will continue. Thus, municipal participation in the RPS is not in any way necessary to meet the goals of the RPS. New York, like the other states that have adopted an RPS, should not impose additional requirements on municipalities under the RPS.

Of the 36 Briefs on Exceptions posted on the Commission's web site, two objected to the RD's exclusion of municipals. The Joint Utilities and RETEC argued that the Commission should ignore the existing contribution of municipals to renewables generation in New York.

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[1] *Shades of Green: Public Power's Environmental Profile*, American Public Power Association, 15-17 (2001).

Joint Utilities Brief on Exceptions at 45; RETEC Brief on Exceptions at 25.[2] This approach, however, would ignore the heart of the problem of the low renewables purchases in New York, namely the low renewables purchases of non-publicly (*i.e.*, privately) owned utilities in New York. The RD instead correctly focused on imposing additional renewable requirements on the privately owned utilities that have exponentially lower rates of renewable purchases than municipalities. In contrast to municipally-owned utilities, whose energy purchases are over 80% renewable, the Environmental Disclosure Labels of many other Load Serving Entities (LSEs) indicate renewables purchases in the 5-8% range. The RD correctly recognizes the significant differences in renewable distribution between privately owned utilities and those that are publicly or consumer owned (municipal and rural electric cooperatives). Imposing additional requirements on municipal utilities would only exacerbate the existing disparity in renewables purchases between municipal and other LSEs rather than targeting the source of the problem, namely privately-owned LSEs. Instead, the RD correctly concluded that additional renewable requirements should be focused where they are most needed, namely increasing private development and private use of renewable generation. Such development will not only address some of the current inequities between public and private contributions to the RPS but will result in important related benefits, including diversifying ownership of renewable generation and increasing opportunities for capital investment and employment in New York.[3]

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2 Constellation Energy argued that NYPA customers should be exempt from the RPS. Constellation Brief on Exceptions at 15-16.

3 Further, while the Joint Utilities imply that additional renewables requirements should be imposed on municipals because municipals purchase low-cost power, they ignore that the municipals have already paid for a renewable resource in New York State, namely the Niagara Project, which has historically not been a low-cost resource. Further, the municipals have expanded substantial sums in rates over decades to fund this resource, which along with NYPA's other hydro projects is the backbone of the existing renewables

For the reasons discussed herein, and in the Recommended Decision and in the Initial and Reply Comments of the New York Municipals, the New York Municipals respectfully request that the Commission adopt the Recommended Decision's conclusion that no additional renewable purchase requirements be imposed on municipal utilities. The New York Municipals are pleased to have this opportunity to participate in the Commission's RPS proceeding and look forward to further cooperating with the Commission, the New York State Energy Research and Development Authority, and NYPA to develop and implement innovative, voluntary renewable energy and energy efficiency programs.

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generation in New York. The high municipal participation in renewables is particularly significant because, unlike investor-owned utilities, municipal utilities do not have the benefit of the federal production tax credit or other tax benefits that lower the price of renewable generation. Despite this handicap, municipal utilities have continued to make significant renewables purchases.