

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

REPLY TO EXCEPTIONS  
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## Introduction

On February 19, 2003, the Public Service Commission (“PSC” or “Commission”) announced that it was commencing this proceeding to develop and implement a renewable portfolio standard (“RPS”) “that will ensure, within 10 years, [that] at least 25% of the electricity purchased in New York is generated from renewable resources” (from the current level of approximately 17%).<sup>1</sup> The PSC envisioned a collaborative proceeding drawing upon all interested parties’ expertise and addressing their various concerns.

Over the subsequent seventeen months, numerous parties representing a wide range of stakeholders have participated in an in-depth examination of myriad aspects of RPS design criteria. On multiple occasions, the interested parties have presented and questioned experts, submitted detailed proposals, and commented on draft design issues.<sup>2</sup>

On June 3, 2004, Administrative Law Judge Eleanor Stein issued her 108-page Recommended Decision (“RD”) which thoroughly and carefully reviewed the voluminous record

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<sup>1</sup> PSC February 19, 2003 Release, *PSC Moves Forward With Renewable Energy Initiative: Achieving Goal of 25% Renewable Energy by 2013 Will Be a Priority*, <http://www.dps.state.ny.us/fileroom/doc12878.pdf>; see also, Case 03-E-0188 - *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Instituting Proceeding*, issued and effective February 19, 2003 (“*Instituting Order*”).

<sup>2</sup> Following submission of comments on March 28, 2003 addressing fourteen “threshold issues” concerning scope, objectives and design identified by the PSC in its Instituting Order, the parties engaged in a series of collaborative meetings which examined multiple views about and aspects of the RPS. Thereafter, several work groups were formed so as to develop consensus proposals through intensive discussion and negotiation. Subsequently, the parties have had multiple opportunities to present their evidence and positions to the Commission through the filing of comments. These included initial and reply comments on September 26, 2003 and October 31, 2003 respectively; a conference on system reliability issues on October 10, 2003; a January 2004 briefing on NYSEDA’s draft preliminary analysis on the system operations impacts of wind generation; a March 8, 2004 technical conference with the preparers of the February 2, 2004 Phase 1 reliability report; additional comments filed on March 19, 2004; following DPS Staff’s release of its Cost Study Volume A on February 19, 2004 and Volume B on March 9, 2004, another technical conference was held on March 17-18, 2004; comments were filed on April 8, 2004 on the Cost Study; and further comments were submitted on May 14, 2004 by interested parties on the Draft Generic Environmental Impact Study.

and recommended options for the Commission to consider in adopting an overall RPS design.<sup>3</sup>

Pursuant to the Commission's June 3, 2004 *Notice of Schedule for Filing Exceptions*, parties submitted briefs on exceptions on June 23, 2004.<sup>4</sup>

In recognition of the foregoing procedural history wherein all significant issues have been addressed on multiple occasions, the New York Office of Attorney General ("NYOAG") limits this reply to exceptions to only the key issues presented. As much as possible, we refrain from reiterating our comments previously submitted to prevent further burdening the record. Omission of any reply to exceptions raised by other parties does not imply agreement or acquiescence.

### **Interest of the Attorney General**

On March 20, 2001, the NYOAG issued an *Action Plan for a Balanced Electric Power Policy in New York State*.<sup>5</sup> After pointing out the environmental and public health impacts of many existing generation sources and the dramatic need for additional clean energy, the NYOAG recommended a number of policies and goals to address New York's electricity needs. The

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<sup>3</sup> On June 16, 2004 a correction was made to one sentence of the RD. *See Erratum Notice*.

<sup>4</sup> Exceptions were filed by the Renewable Energy Technology and Environment Coalition ("RETEC"), Independent Power Producers of New York, Inc. ("IPPNY"), Energy Management, Inc., Multiple Intervenors (industrial customers), Sterling Planet, Inc., Long Island Power Authority ("LIPA"), Constellation NewEnergy, Inc., Nucor Steel Auburn, Inc., Solar Energy Industries Association ("SEIA"), NRG Energy, Inc., Ridgewood Renewable Power, LLC, Plug Power, Inc., ConEd Solutions, Inc., Business Council of New York State, AES-NY, LLC, Empire State Forest Products Association, RCB Wind Advocates, New York State Reliability Council ("NYSRC"), New York Independent System Operator ("NYISO"), Joint Utilities (Consolidated Edison Company of New York, Inc., Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation and New York State Gas and Electric Corporation) and Small Hydro Group (Tannery Island Power Corporation, Hydro Power, Inc., Energy Enterprises, Inc., Mercer Asset Management Corp., Chittenden Falls Hydro Power, Inc. and Seneca Falls Power Corp.). The exceptions of Integrated Waste Services Association ("IWSA") were not served until June 28, 2004. Evolution Markets served its June 29, 2004 exceptions brief on July 6, 2004.

<sup>5</sup> [Http://www.oag.state.ny.us/press/reports/power\\_policy.pdf](http://www.oag.state.ny.us/press/reports/power_policy.pdf).

NYOAG called upon New York to expand renewable generation resources by an additional ten percent (existing renewable resources account for approximately 17% of statewide consumption) and to adopt a statewide renewable portfolio standard (“RPS”) that “would require retailers of electricity to include in their portfolio of supply an increasing percentage of renewable generation . . . [and] increase demand for renewables such as wind and solar, that would, in turn, create a competitive market for supplies of renewable generation.”<sup>6</sup>

The NYOAG is charged with enforcement of federal and state environmental, consumer and antitrust laws throughout New York State and is a party in numerous PSC regulatory proceedings advocating on behalf of residential and small business consumers and the State of New York. The NYOAG works to protect and improve New York State’s environment, to preserve public health, prevent ecological degradation, and to enhance sound economic development. Increased renewable electricity generation is an important element in assuring that adequate supplies of electricity will be available to meet businesses’ and consumers’ needs without aggravating air pollution problems or imposing unreasonable burdens on densely populated communities. At the same time, it is important to design an economically sound RPS that is compatible with recently established electricity markets and that minimizes any financial burdens on electricity consumers.

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<sup>6</sup> *Ibid.* at 38-39.

## **Argument**

### **Point 1**

#### **Renewable Energy Developed through Green Marketing Should not be Counted in the Baseline**

The Recommended Decision includes renewable energy purchased in the voluntary green market in its calculation of the baseline.<sup>7</sup> Several parties object to this out of concern that customers will be unwilling to pay a premium for renewable electricity that would otherwise be paid for by all electricity consumers in the state pursuant to the RPS.<sup>8</sup> The NYOAG agrees that green marketing claims should not be made about renewable energy that would be counted toward meeting the 25% RPS goal. As noted in the NYOAG's Initial Comments, the RPS design must ensure that any green power marketed to consumers is limited to that renewable power above the mandatory RPS quota.<sup>9</sup>

The state's policies should support the voluntary green market in order to further encourage development of renewable resources in New York. The additional demand for renewables through green marketing can add renewable capacity beyond what would be developed through the RPS and, by doing so, can help bring down the cost of renewables, and also supplement the air quality benefits of the RPS. If it were counted in the baseline, however, the green market may cease to exist and this benefit will not be realized.

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<sup>7</sup> RD at 16.

<sup>8</sup> Exception Briefs of ConEdison Solutions at 1, Community Energy at 1-4, Enel North America, Inc. at 2, and RETEC at 23.

<sup>9</sup> NYOAG Sept. 26 Comments at 58.

**Point 2**  
**The Recommended Decision Correctly Excluded Municipal Solid Waste (“MSW”) Generation in RPS Eligibility**

Integrated Waste Services Association (“IWSA”) and Constellation excepted to the exclusion of MSW generation in the Recommended Decision. ALJ Stein correctly concluded that MSW generation is “not sufficiently consistent with the proposed RPS environmental objectives” and that there is “no dispute” that MSW incineration produces emissions of mercury and NOx that exceed those of the dirtiest fossil fuel generation.<sup>10</sup> This finding is consistent with expert reports submitted by the NYOAG and RETEC in their September 26, 2003 Initial Comments.<sup>11</sup> IWSA has not submitted any new information that would contest this finding.

IWSA submitted data that suggest dioxin and NOx emissions rates from some biomass resources are as high or higher than the emissions rates for MSW incineration. This argument only supports the need for strict biomass feedstock and emissions standards; it does not support the inclusion of MSW incineration in the RPS (see Point XX). Biomass feedstock standards that would prevent contaminated waste wood from RPS eligibility can act to keep out chlorinated compounds which produce dioxin emissions when combusted. Furthermore, achievable nitrogen oxide emission standards were agreed to by the Biomass Eligibility Working Group that are much lower than the emissions rates submitted by IWSA. In contrast, additional standards cannot be feasibly employed to reduce mercury, dioxin and NOx emissions rates from MSW incineration, nor can IWSA claim that plastics, batteries, metals, and other non-biomass portions of the MSW stream are renewable.

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<sup>10</sup> RD at 62.

<sup>11</sup> See September 26, 2003 NYOAG Initial Comments, Attachment A, and September 26, 2003 RETEC Initial Comments, Attachment D.

**Point 3**  
**The RPS Must Include Strict Eligibility Standards for Biomass**

The Recommended Decision's description of eligible biomass is not protective of the environment and is not consistent with the RPS objective to reduce pollution from electricity generation.<sup>12</sup> While biomass is an important renewable resource that can reduce greenhouse gases, standards are required to ensure the biomass feedstock is clean and harvested in a sustainable manner, and that the combustion of the feedstock does not degrade air quality. The Recommended Decision does not include NOx emission standards for biomass that were agreed to by the Biomass Eligibility Working Group. In addition, the Recommended Decision's definition for eligible biomass feedstock is too broad, and it does not include environmentally protective standards (or a process to create such standards) for processed or treated biomass resources.

RETEC excepted to the Recommended Decision's definition of biomass, and recommended that the PSC adopt the Biomass Eligibility Working Group Agreement on biomass eligibility.<sup>13</sup> NYSERDA suggested that the PSC review the Recommended Decision's biomass eligibility criteria for consistency with the Biomass Eligibility Working Group Agreement.<sup>14</sup> The NYOAG agrees with these parties. The Biomass Eligibility Working Group reached consensus on a number of important issues, including: (i) standards and procedures that would ensure the sustainability of wood harvests, (ii) procedures to ensure that the use of processed or treated biomass resources do not have a negative environmental impact, (iii) emissions standards for

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<sup>12</sup> RD at 19.

<sup>13</sup> RETEC Exception Brief at 12-16.

<sup>14</sup> NYSERDA Exception Brief at 3.

both biomass and landfill gas facilities,<sup>15</sup> and (iv) limitations on the use of biomass from farming operations. The NYOAG urges the Commission to adopt the Biomass Eligibility Working Group eligibility criteria, and additional criteria noted in the NYOAG's September 26, 2003 Initial Comments.<sup>16</sup>

In its exception brief, KeySpan sought clarification on the eligibility criteria for landfill gas projects.<sup>17</sup> The Recommended Decision includes landfill gas as an eligible resource, and notes that all eligible generation facilities must have been developed after January 1, 2003.<sup>18</sup> KeySpan is concerned that this language would preclude the co-firing of landfill gas at pre-existing generation facilities.<sup>19</sup> NYOAG agrees that existing fossil fuel power plants should be allowed to receive RPS credit for the portion of electricity generated by the combustion of eligible landfill gas, with the further requirement that these facilities be subject to the emissions standards agreed to by the Biomass Eligibility Working Group.<sup>20</sup>

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<sup>15</sup> The Biomass Eligibility Working Group agreed to the following NOx emissions standards for new facilities. For biomass facilities through 2008: 2.63 lbs/MWh; for biomass facilities in 2009 and beyond: 2.25 lbs/mWh; for landfill gas facilities through 2008: 2.9 lbs/MWh; for landfill gas facilities in 2009 and beyond: 2.63 lbs/mWh. In addition, the Biomass Eligibility Working Group considered, but did not agree to, stricter emissions standards for all biomass facilities in severe non-attainment areas: 0.6 lb/MWh through 2008 and 0.3 lb/MWh in 2009 and beyond. The NYOAG supports these more stringent emissions standards in areas of severe non-attainment.

<sup>16</sup> See September 26, 2003 NYOAG's Initial Comments at 36-39.

<sup>17</sup> Keyspan Exception Brief at 3.

<sup>18</sup> RD at 17.

<sup>19</sup> Keyspan Exception Brief at 4.

<sup>20</sup> See footnote 15.

**Point 4**  
**A Hydropower Maintenance Tier is Acceptable,  
but Should be Used Only to Support Projects Whose Contracts Expire**

The Recommended Decision includes a recommendation that there be a “maintenance adjustment to the baseline and incremental targets to protect very small hydropower projects.”<sup>21</sup> This adjustment is intended to offset the attrition of very small hydropower that would otherwise be retired due to expiring above-market priced contracts. Some parties have suggested that this “maintenance tier” should be extended to existing hydropower projects with contracts at or below market price.<sup>22</sup> This is unacceptable, since projects that are already under contract will continue operating and generating power under those contracts. The RPS should not be used to make existing projects more profitable.

**Point 5**  
**Qualified Renewable Resources in Service Since 2001 Should Be Eligible to Participate**

The Recommended Decision requires that, with the exception of certain legacy small hydroelectric projects, only those generators that commenced operation after the beginning of 2003 (when this proceeding commenced) be eligible.<sup>23</sup> The NYOAG continues to urge that the RPS include projects that began production since January 1, 2001.<sup>24</sup> The NYOAG agrees with RETEC that the existing wind farms in New York State were developed at great risk and could be in jeopardy without the support of the RPS.<sup>25</sup>

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<sup>21</sup> RD at 20-21.

<sup>22</sup> Ridgewood Exceptions Brief at 6.

<sup>23</sup> RD at 23 as revised by June 16, 2004 *Erratum Notice*.

<sup>24</sup> *See* September 26, 2003 NYOAG Initial Comments at 22, fn. 49.

<sup>25</sup> RETEC Exception Brief at 17.

**Point 6**  
**An SBC-Like Tier Will Ensure a Diverse Mix of Renewable Resources**

The NYOAG supports the Recommended Decision’s inclusion of a systems benefits charge (“SBC”)-like tier for emerging technologies, such as small wind, solar PV, and fuel cells.<sup>26</sup> A number of parties objected to the inclusion of such a tier because these technologies are more expensive to develop than other large-scale renewable resources, and thus increase the overall cost of the RPS.<sup>27</sup> These emerging technologies, however, offer many environmental and reliability benefits by producing smaller-scale electricity where it is used, reducing transmission and distribution requirements and avoiding adverse impacts from siting major generators. These resources have the potential to generate a significant percentage of the State’s electricity in the future. Because of these benefits and the difficulty of tracking the generation from these smaller units in an RPS market, such a tier is warranted.

Other parties suggested that the costs of the SBC-like tier are overstated.<sup>28</sup> They argue that the gross cost of the 2% SBC-like tier, which is presented in the Recommended Decision, does not take into account the fact that the main tier would increase by 2% in the absence of the SBC-like tier. They argue that the true cost of the SBC-like tier should be calculated by subtracting the cost of procuring the 2% in the main tier from the gross cost of the SBC-like tier. The NYOAG concurs that the SBC-like tier offsets the cost of procuring 2% of other renewable generation in the main tier. As such, the cost of the decision to have an SBC-like tier within the RPS is overstated in the Recommended Decision.

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<sup>26</sup> RD at 20.

<sup>27</sup> See Exceptions of Multiple Intervenors at 22-27, and Joint Utilities at 48-49.

<sup>28</sup> See Exceptions of RETEC at 18, Plug Power at 1-2, and Solar Energy Industries Association at 3.

The Long Island Power Authority and Solar Energy Industries Association suggested that projects funded through the SBC-like tier should also be eligible to participate in the main tier RPS market.<sup>29</sup> The NYOAG disagrees. Projects receiving support through the SBC-like tier should not also be eligible for support in the RPS market. Since the SBC-like tier will provide up-front funding to develop emerging technologies, there is no need for additional subsidy through the main tier. Adding this supply to the main tier would reduce demand for main tier renewables and could result in less renewable energy developed in New York State.

**Point 7**  
**An Alternative Compliance Mechanism Is Essential to an Effective RPS**

The Recommended Decision supports an alternative compliance mechanism (“ACM”) for load serving entities that fail to meet renewable targets.<sup>30</sup> The NYOAG supports the concept of an ACM as well as enforcement to ensure that the RPS is effective, and that non-complying entities are held accountable.<sup>31</sup> Enforcement is key to compliance in all areas of law.

In its brief on exceptions, Joint Utilities objects to an ACM, arguing that the record fails to justify the need.<sup>32</sup> However, the ninth of the Commission’s fourteen “threshold issues” invited comment proposals for “the appropriate means to monitor progress toward meeting the goal and ensure results, including possible rewards and disincentives.”<sup>33</sup> The NYOAG in its comments recommended a system for verification and enforcement of the RPS goals, including significant

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<sup>29</sup> See Exceptions of Long Island Power Authority at 1-2 and Solar Energy Industries Association at 1-2.

<sup>30</sup> RD at 23.

<sup>31</sup> NYOAG Comments of March 28, 2003 at 16 and September 26, 2003 Initial Comments at 54.

<sup>32</sup> Joint Utilities Exceptions Brief at 17.

<sup>33</sup> *Implementing Order* at 4.

penalties for noncompliance.<sup>34</sup> In subsequent comments the NYOAG suggested more specific mechanisms to address non-compliance.<sup>35</sup> The need for an ACM stems from the possibility that entities will not comply with the RPS. The ACM also enables the RPS to accommodate unavoidable real-world obstacles to a LSE's ability to meet its entire procurement target in any given year.

### **Point 8**

#### **The NYOAG Supports the Recommended Decision Requirement for Delivery of Energy to the New York Power Grid for RPS Credit**

The Recommended Decision requires that an otherwise eligible renewable generator deliver energy to the New York Control Area on a monthly basis to receive an RPS credit.<sup>36</sup> The NYOAG supports this requirement.<sup>37</sup> An RPS delivery requirement ensures that New York ratepayers are not subsidizing out-of-state energy producers that provide no benefit to New York. In addition, a delivery requirement will better ensure that pollution from existing generation is displaced and may act to reduce wholesale electricity prices in the State.<sup>38</sup>

Opponents to the delivery requirement raise concerns about cost. The Joint Utilities brief speculates that even if the delivery requirement results in lower wholesale prices, it is not clear if it would offset the “probable” increase in price of renewable energy credits, and “may” increase

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<sup>34</sup> See NYOAG March 28, 2003 comments at 16-17.

<sup>35</sup> See September 26, 2003 Initial Comments comments at 54-55.

<sup>36</sup> RD at 24, 84-85.

<sup>37</sup> Some parties in their briefs on exceptions opposed a deliverability requirement: Joint Utilities at 43, Constellation NewEnergy Inc. *et al.* at 2, and RETEC at 28. IPPNY requests adoption of an alternative approach whereby delivery would be imposed on a regional basis. See brief at 13. RCB Wind Advocates asks for clarification that the deliverability requirement apply only to imported renewable energy. See brief at 3. RETEC argues that the state should work with surrounding states to establish reciprocal trading arrangements.

<sup>38</sup> See NYOAG September 26, 2003 Initial Comments at 60. See also RD at 85.

the overall cost of the RPS.<sup>39</sup> However, the RD notes that “the delivery requirement will result in lower wholesale prices both on-and off -peak” since the delivery requirement will, in effect, increase the supply of electricity in the state.<sup>40</sup> Given the far greater quantity of electricity purchased in the wholesale market compared to the power eligible for RPS premiums, even a small Locational Based Marginal Price (“LBMP”) reduction in NYISO wholesale markets would offset a large portion of the RPS costs. Furthermore, the Joint Utilities exception fails to recognize the additional public health and environmental benefits from shifting from fossil-fuel generation to clean renewable resources. In any event, since New York customers will pay for the costs of the RPS, they should be assured that the state uses this premium cost power they pay for. New York customers would not benefit from subsidizing renewable power generated in Texas, Northern Maine or Western Canada, for example. Without a delivery requirement, the New York RPS may not improve the fuel diversity of generation supplying New York load, leaving electricity prices more vulnerable to commodity price fluctuation.

The Joint Utilities also object to the RD’s use of the examples of the Massachusetts and the Independent System Operator-New England (“ISO-NE”) control area for justification for imposing deliverability in New York. The Joint Utilities note that the Massachusetts RPS permits generators in other New England states to sell Renewable Energy Credits (“RECs”) to Massachusetts so long as the power is used within the ISO-NE region.<sup>41</sup> This argument is fallacious. As ISO-NE operates the grid and wholesale electricity market for all of the New

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<sup>39</sup> Joint Utilities Exception Brief at 44.

<sup>40</sup> RD at 85.

<sup>41</sup> RD at 83-83, *see also* Joint Utilities Exception Brief at 44.

England states as a single entity (much as NYISO does for New York's single-state grid and wholesale markets), it is misleading to compare imports within ISO-NE to a New York RPS requirement applicable to imports from outside the NYISO regional grid and markets.

Furthermore, the Joint Utilities neglect to note that the RD goes on to state that by statute other RPS rules require strict delivery into California, Nevada and Texas.<sup>42</sup>

Where a renewable generator is authorized to participate in the New York RPS, all sales of renewable electricity which receive financial support from the RPS must serve New York load. To permit sale of New York RPS RECs while the renewable energy itself is used outside the state<sup>43</sup> would undermine the foundation of the RPS. Although the Small Hydro Group exception cautions that this may result in renewable generation migrating out of New York to REC and wholesale markets where more attractive prices prevail, this is no justification for removing the delivery requirement. It is the inherent nature of free market systems that producers will seek to contract with buyers who offer the most favorable terms. As both the PSC and Federal Energy Regulatory Commission have encouraged the formation of competitive wholesale electricity markets, the RPS should not interfere with the free flow of this commodity. In addition, there is no way to predict at this time whether New York's RPS prices will be more or less attractive than those of other markets, or if such price disparities will vary as markets for renewable electricity mature.

Consumers who are ultimately paying the cost of the RPS are entitled to be confident that

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<sup>42</sup> RD at 86.

<sup>43</sup> See exceptions of Small Hydro Group at 7-8. These parties submitted that if the market price of electricity and RECs in other states exceeds that for New York, renewable generators may export their production instead of selling to NYISO to meet new York load requirements and the New York RPS.

the associated renewable electricity is indeed being used to meet New York load. The delivery requirement will also maximize the public health, environmental and fuel diversity benefits to be enjoyed by New Yorkers as a result of the RPS. The Recommended Decision notes that the Commission began this process “to develop and implement a renewable portfolio standard *for electric energy retailed in New York State.*”<sup>44</sup> The deliverability requirement is essential to meet this goal of the Instituting Order.

The NYOAG agrees with the recommendation that the RPS seek to avoid creating unnecessary “seams” which would impede the interstate wholesale electricity market or markets for renewable resource electricity and associated attributes.<sup>45</sup> Seamless transfers between the NYISO and neighboring power pools should be encouraged wherever feasible so as to allow competition to be most effective at delivering price and innovation benefits to consumers. For this reason, the NYOAG also supports the recommendation that New York generators that may not be eligible for renewable credits under our RPS be permitted to market their power to other states if they meet the RPS eligibility criteria of those entities.<sup>46</sup> The New York RPS delivery requirement should not apply to exports from New York. Although this may result in some baseline renewable generators exporting their generation instead of supplying New York load, the RPS should not unreasonably interfere with interstate wholesale power markets by imposing such restrictions on exports.

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<sup>44</sup> *Instituting Order* at 2 (emphasis supplied)."

<sup>45</sup> NYISO Exception Brief at 5.

<sup>46</sup> Constellation Energy Exception Brief at 3.

**Point 9**  
**The RPS Should Not Be Delayed**

The NYOAG opposes those exceptions that seek to delay the Commission's RPS design order until the second phase reliability study by NYISO/NYSERDA is issued, or for any other reason.<sup>47</sup> While the recommendations of the awaited reliability analysis of the potential modifications needed to accommodate substantial wind and other intermittent resources are relevant and important for the RPS implementation process to come, they are not essential at this stage of the Commission's deliberations. There will be ample opportunity for the parties to present their views on the reliability study's implications before the PSC decides the final details in the implementation order to follow. Delay in deciding the generic design issues would only postpone the commencement of the RPS, without any public benefit.

The NYOAG also opposes the suggestion to delay the commencement of the entire RPS from 2006 until 2009.<sup>48</sup> No persuasive reasons are offered to halt the progress made thus far in this proceeding. Multiple Intervenors' assertion that such a delay would dramatically reduce the cost of the RPS is speculative in that it depends largely on forecasts of increasing fuel costs for fossil-fueled generators that would increase wholesale market clearing prices for non-renewable power. Such a delay in getting the entire RPS off the ground would make it more difficult to accomplish the 25% renewables target by the 2013 goal year, and would deprive New Yorkers of the environmental and public health benefits for three additional years.

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<sup>47</sup> See e.g., exceptions filed by Keyspan Energy at 6-9 and IPPNY at 3-7.

<sup>48</sup> See exceptions of Multiple Intervenors, at 27-30. See also exception of ConEdison Solutions for a two-year delay to accommodate ESCOs that have contracted forward-price commitments to end users. At most, the Commission should consider whether limited relief is justified by the price commitments of ESCOs to their customers.

**Point 10**

**It Is Premature to Modify the Recommended Decision Based Upon Pending Studies**

A number of exceptions urge that the RPS be tailored so as to satisfy all forthcoming recommendations of the currently ongoing reliability and market impact analyses being conducted by NYSERDA and NYISO.<sup>49</sup> The findings of these analyses will not be known until the fall of this year at the earliest. Therefore, it is premature at this time to make any judgments about the yet-unknown report conclusions and recommendations. It would be inappropriate for the Commission to subject the RPS at this juncture to what would in effect be veto power by the writers of these future reports.

**Point 11**

**Any Uncertainties as to Staff's Cost Estimation Do Not Justify Abandonment of the RPS**

Those exceptions that claim the Recommended Decision is not adequately supported by DPS Staff's Cost Analyses are unpersuasive, and should be rejected by the Commission.<sup>50</sup> The core criticism of the Recommended Decision's weighing of RPS costs is that DPS Staff's forecasts of future events is subject to error. This, however, is inherent in any prediction of future events, and similar critiques can be made of opponents' alternative forecasts. The mere lack of certainty in itself is not a sound reason for the Commission to turn away from the RPS. No long-range planning effort would ever be undertaken by the PSC or other governmental or private entity if absolute certainty about future events was a precondition. NYOAG submits that it appears the DPS Staff's cost studies are a good faith analysis that conservatively estimates the prospective costs of the RPS. As such, the findings and recommendations of the Recommended

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<sup>49</sup> See exceptions of NYISO at 2-4, NYSRC at 2, AES-NY at 2-3, Joint Utilities and Business Council at 3-4.

<sup>50</sup> See exceptions of Joint Utilities at 27-39 and Multiple Intervenors at 8-34.

Decision are supported by ample evidence upon which the Commission may, and should, rely in issuing a decision to adopt an RPS design.

Moreover, the opponents to the RPS fail to credit the counter-balancing benefits that are not so readily measurable in dollar figures. In establishing the RPS, New York will begin a transition away from fossil-fuel electricity generation that has taken a tremendous toll on the environment and public health.<sup>51</sup> Coal and oil-fired power plants are leading sources of carbon dioxide emissions that are responsible for global warming. They are also leading sources of sulfur dioxide emissions that cause acid rain and respiratory problems, nitrogen oxide emissions that lead to urban smog, and mercury emissions that poison the food chain. The direct impact that conventional electricity generation has upon air quality was dramatically demonstrated in the brief period following last August's regional blackout, when visibility improved greatly and pollution levels were radically reduced.<sup>52</sup>

The energy diversity and security benefits of the RPS may be difficult to quantify, but it is indisputable that increasing the amount of renewable generation will make the State less reliant on fossil fuels, and therefore less vulnerable to the price volatility of any one fuel. It should also be kept in mind that fossil fuel supplies are finite. Investing now in renewable energy will encourage the innovation and experience that future generations will use to meet their energy challenges.

In addition, the economic development benefits of the RPS must not be overlooked. A

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<sup>51</sup> See, Case 03-E-0188 - *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Instituting Proceeding*, issued and effective February 19, 2003.

<sup>52</sup> See Marufu, et al, "The 2003 North American Blackout: An Accidental Experiment in Atmospheric Chemistry," *Geophysical Research Letters*, July, 2004.

portion of the costs includes salaries of those who will develop, build and operate the new renewable resources. These new jobs will, in turn, spawn additional jobs in retail and service sectors, further strengthening New York's economy and tax base. The RPS may also create sufficient demand for renewable energy companies to site new manufacturing facilities in New York State.<sup>53</sup>

In sum, whatever the PSC concludes the RPS is expected to cost, the NYOAG submits that the Commission should find the benefits that will accrue are well worth the added expense.

**Point 12**  
**The 2008 Review Must Not Undermine Confidence In The First Years of the RPS**

The NYOAG agrees with those parties who cautioned that the Commission should not permit the 2008 program review and evaluation process to undermine the RPS by introducing unwanted uncertainty.<sup>54</sup> Renewable project developers will be hampered in obtaining necessary financing if the 2008 review would potentially revise the rights and obligations of RPS participants during the initial 2006-2008 period. To assure all involved that such retroactive impacts will not occur, the Commission should direct that changes brought about as a result of the 2008 RPS program review will be prospective only, and not impact any long-term contracts entered into beforehand. In addition, the Commission should set forth as soon as possible more specific parameters describing the process, scope, and degree of participation by stakeholders

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<sup>53</sup> Indeed, as a fuel cell manufacturer employing 300 New York residents, purchasing \$50 million from New York suppliers and paying \$7 million in New York income taxes since 1999, Plug Power is an excellent example of the economic value to be derived from state policies encouraging development of renewable resources. *See e.g.*, exceptions of Plug Power, Inc. at 3.

<sup>54</sup> *See e.g.*, exceptions of NYSERDA at 3, Wind Advocates at 3, IPPNY at 7-9, Constellation Energy at 13-14, Business Council at 4, and Multiple Intervenors at 45-46.

that will apply to this review.<sup>55</sup>

### **Conclusion**

Over the past year-and-a-half, the Commission has engaged in a thorough inquiry into the best means to implement an RPS for New York. All affected stakeholders have had an ample opportunity to participate in developing the record through collaborative meetings, work group consensus proposals, multiple comment filings and exceptions. This open process has been most beneficial in airing the viewpoints of all parties, as well as enabling the Commission to consider how the RPS should best be designed so as to provide the maximum benefit to New York and serve the overall public interest while remaining cognizant of the potential impact on numerous participants. It is now time to decide the major design, eligibility and structural questions presented by the RPS. With the adjustments stated herein, the NYOAG strongly recommends that the Commission should adopt the Recommended Decision.

Dated: New York, New York  
July 8, 2004

Respectfully submitted,

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By:

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<sup>55</sup> The suggestion that this mid-course review be replaced with an annual review procedure is counterproductive, and could undermine the entire RPS by removing all predictability from the program. *See* exceptions of Nucor Steel at 6-7.

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