

# PAUL V. NOLAN, Esq.

5515 North 17th Street  
Arlington, Virginia 22205  
Admitted D.C. Bar  
Energy Practice Limited to State  
And Federal Agencies

Work: (703) 534-5509  
Fax: (703) 538-5257  
E-mail: pvnvvn@aol.com

July 8, 2004

Hon. Jaclyn Brillling  
Secretary  
Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

Re: Case No. 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

Dear Secretary Brillling:

Pursuant to the Commission's Notice of Schedule for Filing Exceptions, issued June 3, 2004, the Small Hydro Group<sup>1</sup> submits an original and twenty-five (25) copies of the enclosed Brief Opposing Exceptions in the above-referenced proceeding.

Copies of this brief have been served all parties and ALJ Stein via electronic mail pursuant to the Notice.

Respectfully submitted this 8<sup>th</sup> day of July 2004.

\_\_\_\_\_  
/s/  
Paul V. Nolan, Esq.

cc: ALJ Eleanor Stein  
Active Party List via List Server

---

The Small Hydro Group consists of the following companies: Tannery Island Power Corporation, Hydro Power, Inc., Energy Enterprises, Inc., Mercer Asset Management Corp., Chittenden Falls Hydro Power, Inc., and Seneca Falls Power Corporation.

**State of New York  
Public Service Commission**

-----X  
**Proceeding on Motion of the Commission |**  
**Regarding a Retail Renewable Portfolio |**  
**Standard. |**  
-----X

**Case No. 03-E-0188**

**Brief Opposing Exceptions  
of Tannery Island Power Corporation, Hydro Power, Inc., Energy  
Enterprises, Inc., Mercer Asset Management Corp., Chittenden Falls Hydro  
Power, Inc., Seneca Falls Power Corporation and the Village of Potsdam**

Pursuant to the Commission's June 3, 2004 Notice of Schedule for Filing Exceptions in this proceeding, Tannery Island Power Corporation, Hydro Power, Inc., Energy Enterprises, Inc., Mercer Asset Management Corp., Chittenden Falls Hydro Power, Inc., Seneca Falls Power Corporation and the Village of Potsdam, (hereinafter, "the Small Hydro Group" or "SHG") hereby submit the following brief opposing exceptions in the Renewable Portfolio Standard ("RPS") proceeding.<sup>1</sup>

---

<sup>1</sup> Briefs on Exceptions were received from the following: AES-NY, LLC, The Business Council of New York State, Inc., Changing World Technologies, Community Energy, Inc., Consolidated Edison Solutions, Inc., Constellation NewEnergy, Inc., Empire State Forest Products Association, Enel North America, Inc., Energy Association of New York State, Energy Management, Inc., Evolution Markets LLC, Independent Power Producers of New York, Inc., Integrated Waste Services Association, the Joint Utilities, KeySpan Corporation, the Long Island Power Authority, Lyonsdale Biomass Facility, Multiple Intervenors, New York State Energy Research and Development Authority, New York Independent System Operator, Inc., NYS Reliability Council, NYS Senate Energy and Telecommunications Committee, NRG Energy, Inc., Nucor Steel Auburn, Inc., Plug Power Inc., RCB Wind Advocates, Ridgewood Renewable Power, L.L.C., Renewable Energy Technology and Environment Coalition, Solar Energy Industries Association, Sterling Planet, Inc., Strategic Energy L.L.C., Taylor Recycling Facility, LLC, and the Waste System Authority of Eastern Montgomery County. The NYS Senate Committee and Waste System briefs, while not circulated via the PSC List Server, were filed with the Commission.

## **RIDGEWOOD RENEWABLE POWER L.L.C.**

The Small Hydro Group supports and endorses the position taken in the brief on exceptions filed by Ridgewood Renewable Power L.L.C. with regard to contract issues. Ridgewood states that the

recommendation errs by arbitrarily limiting inclusion in the RPS program to those small hydroelectric facilities that have expired contracts. The small hydroelectric facilities with existing contracts at or below a market price are far more vulnerable and should be afforded the ability to participate in the RPS in order to remain viable participants in the New York renewable energy market.

Ridgewood Brief on Exceptions at 6 (emphasis in original). The Small Hydro Group agrees that there should be no distinction among small hydroelectric facilities in determining their RPS eligibility. The Small Hydro Group does, however, believe that clarification needs to be provided on what constitutes an “expired” contract. It is the position of the Small Hydro Group that if a facility owner is a QF under federal law and therefore entitled to a PURPA contract that it should remain eligible for participation in the RPS. Ridgewood would appear to agree with this position (“RPS should be open to . . . very small hydroelectric facilities with existing contracts priced at or below the market price”).

Ridgewood Brief on Exceptions at 6.

Ridgewood also asserts “these existing hydroelectric facilities should be eligible now, not just when their existing contracts expire.” Ridgewood Brief on Exceptions at 14. The Small Hydro Group agrees that all small hydroelectric

facilities should be eligible for participation in the RPS from the outset of the program. Again, however, there needs to be clarification as to what is meant by the term “expired” when used in this context.

### **INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.**

With respect to the Independent Power Producers of New York, Inc.’s (“IPPNY”) position that if a deliverability requirement is adopted, the Commission should permit renewable generators to sell RECs in New York so long as the associated amount of energy is delivered into New York within one calendar year of when the REC is sold, the Small Hydro Group agrees. IPPNY Brief on Exceptions at 2. The Commission must ensure that New York’s renewable generators are not competing against “phantom energy” which would be the case without a deliverability requirement of some nature. The Small Hydro Group supports the position that the REC market and the treatment of imports/exports should be designed in the way that New York’s neighboring states have done, i.e., Connecticut and Massachusetts.

The Small Hydro Group does not oppose IPPNY’s proposal “that the Commission set a 20 MW size requirement on a facility basis as the only requirement for existing renewable facilities, such as hydroelectric and biomass facilities, to be eligible to participate in the RPS program.” IPPNY Brief on Exceptions at 12.

## THE JOINT UTILITIES

The Small Hydro Group takes issue with certain statements made in the briefs on exceptions filed by the Joint Utilities. With regard to long-term contracts, the Joint Utilities make the following blanket statements:

- “the RD is further driven by another flawed premise: that mandatory long-term contracts, together with imposition of specific ‘targets’ on LSEs, are necessary to finance renewables” (at 4)
- “mandatory long-term contracts should be rejected as a matter of public policy” (at 13)
- “The Commission’s RPS Policy Statement should discourage any form of contract or RPS purchase mechanism that shields the generator from LBMP market signals.” (at 16)
- “RPS premiums should be streamed only to RPS eligible resources who truly require them and whose commercial success is important to achievement of incremental RPS targets” (at 47)
- “no RPS premiums should be provided to projects that have already demonstrated commercial success” (at 47)
- “Small hydroelectric projects should be included in the baseline and the milestone targets should be adjusted accordingly.” (at 47)

The Joint Utilities make broad reference to “commercial success” and that premiums should be streamed to resources “who truly require them” but provide no means of determining either. It is clear that the Joint Utilities do not want to be faced with the requirement of signing long-term contracts with existing small renewable facilities, especially hydroelectric facilities, and insist that these facilities compete in the market. This is interesting since Niagara Mohawk has a power purchase agreement with Erie Boulevard a/k/a Reliant Resources a/k/a

Brascan that does in fact “shield” the generator from the market price.

The Joint Utilities, however, seek their own shield from the Commission – “the Commission should explicitly authorize utilities to track and immediately recover all incremental costs incurred to comply with the RPS.” Joint Utilities Brief on Exceptions at 25. The Joint Utilities want to ensure that they are always made whole but do not feel that any other RPS participant should be accorded this opportunity.

The Small Hydro Group, while disagreeing that small hydro facilities should be placed in the baseline and therefore lose their eligibility for participation in the RPS, agree that it is “irrational to conclude that a hydroelectric resource should not be deemed to be renewable for purposes of RPS or RPS premium eligibility.” Joint Utilities Brief on Exceptions at 47. The Joint Utilities also correctly point out that “given the stringent environmental standards applicable to any hydroelectric resource, it makes little sense to carve out any such facility as ‘high impact.’” Joint Utilities Brief on Exceptions at 47. The Small Hydro Group concurs in this position and reiterates that no hydroelectric facility, regardless of size, should be held to more stringent requirements than those already imposed by the NYSDEC and the FERC. Based on this position, the Commission should reject the position of the Renewable Energy Technology and Environment Coalition that would virtually exclude hydroelectric facilities from the RPS.

## **RELIABILITY CONCERNS**

The Small Hydro Group supports and strongly urges the Commission to consider the statements made by the New York State Independent System Operator and other parties with respect to consideration of the Phase II study being undertaken currently by the NYISO and NYSERDA. The Small Hydro Group concurs that the results from the Phase II study will need to be reviewed and analyzed by the parties, Staff and the NYISO in order to determine the impacts and costs of adding intermittent renewable resources to New York's bulk power system. It is possible that the results of the Phase II study could significantly alter certain assumptions made by the Staff, ALJ and parties in this proceeding, necessitating significant changes to any RPS design adopted by the Commission. Better to put off the design of a well-intentioned program while awaiting important information than to charge ahead and put in place a program that is a non-starter from the get go.

### **Conclusion**

The Small Hydro Group reiterates its belief that the issues of contracts, parity with neighboring states' RPS programs, use of a "tiered" system that promotes one technology over another, and certification requirements for small hydropower facilities beyond those already required under FERC licenses or DEC regulations need to be carefully considered in order to avoid creating a program that is a non-starter for small hydroelectric facilities. The Small Hydro Group



**SMALL HYDRO GROUP**

Paul C. Montgomery, Esq.  
Mercer Asset Management Corp.  
Three E-Comm Square  
Albany, NY 12207

Scott Goodwin  
General Manger  
Seneca Falls Power Corporation  
1233 Alpine Rd Ste 202  
Walnut Creek, CA 94596-4403

Adrian Phillips  
Hydro Power, Inc.  
1502 N 17th Ave  
Phoenix, AZ 85007-1846

Sarah Miller  
Tannery Island Power Company  
5373 Eugene St  
Lowville, NY 13367-1204

Mr. Charles Hirschey  
Tannery Island Power Company  
33410 Lamb Road  
Carthage, N.Y. 13619

Paul Eckhoff  
Chittenden Falls Hydro Power, Inc.  
P.O. Box 158  
Stuyvesant Falls, NY 12174

Michael D. Weil  
Village Administrator  
Village of Potsdam  
Civic Center  
Park Street  
P.O. Box 5168  
Potsdam, NY 13676