

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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

**COMMENTS OF AES-NY, LLC ON PROPOSED  
RULEMAKING**

**INTRODUCTION**

On November 10, 2004, the New York State Public Service Commission (“Commission”) published a notice of proposed rulemaking, identified as 03-E-0188SA2, in the *State Register* seeking comments on measures intended to implement the renewable portfolio standard (“RPS”) that was adopted by the Commission in an order issued on September 24, 2004.<sup>1</sup> The proposed rulemaking (the “Proposed Rule”) was distributed to parties in Case 03-E-0188 via electronic mail on November 12, 2004. In response to the Commission’s request for comments on the Proposed Rule, AES-NY, LLC hereby submits the following comments.

- The Commission should adopt procurement mechanisms that expose participants to competitive market forces.
- The Commission should make clear its strong preference for the auction format for procurement of Renewable Energy Credits (“RECs”).
- The Commission should require NYSERDA to develop measures that ensure selected projects are timely constructed. The Commission should grant NYSERDA discretion to modify or refine the measures to be responsive to changing market conditions.
- The Commission should adopt clear and concise guidelines on how it will determine whether existing renewable resources are eligible for RPS benefits.
- The Commission should make the requirements for biomass certification less onerous and should hold a technical conference to better identify resources and infrastructure available to more quickly utilize this potential renewable resource.

---

<sup>1</sup> Case 03-E-1088, *Order Regarding Retail Renewable Portfolio Standard* (September 24, 2004)(“RPS Order”)

**I. The Commission should adopt procurement mechanisms that expose participants to competitive market forces.**

Renewable resources receiving RPS benefits must not be insulated from energy market prices by a Contract for Difference (“CFD”) arrangements. This is particularly critical because the overwhelming majority of renewable resources will be sited in the central and western areas of the State. These areas contain a substantial amount of low cost baseloaded generation. A large increase of renewable resources that are insulated from market prices through a CFD contract could have the following effects:

- severely depress pricing during hours when the renewable resources are most available;
- fail to provide market based economic signals to site renewable resources in geographical areas that most need new generation resources and that provide the maximum market benefit;
- existing merchant generators could be forced to pay load to take its power to remain at least at minimum generation load during these periods. The Commission should avoid contract designs that insulate RPS suppliers from market forces but at the same time places greater market risk on any existing merchant supplier.

**II. The Commission should make clear its strong preference for the auction format for procurement of RECs.**

AES agrees that NYSERDA may need some discretion in selection of solicitation formats in the early stages of procurement. However, in the intermediate term, it should develop an auction format that provides a fair process and transparency for all interested parties. The most competitive market outcome will occur when the market is standardized, bidders have similar information, and the award process is visible so interested parties can utilize this information for any future procurement rounds.

**III. The Commission should require NYSERDA to develop measures that ensure selected projects are timely constructed. The Commission should grant NYSERDA discretion to modify or refine the measures to be responsive to changing market conditions.**

Bid deposits, required letters of credit, and project milestones are necessary and should be required to ensure projects are developed in a timely manner. These requirements are particularly important because the expedited procurement process is driven by the ability to fully maximize the value of the PTC credit.

Further, these types of requirements will best minimize ratepayer impact, and ensure effective utilization of resources in managing what could become a large queue of potential renewable projects. Actual terms and conditions should be determined by NYSERDA to ensure all interested parties are treated in a similar, fair manner.

**IV. The Commission should adopt clear and concise guidelines on how it will determine whether existing renewable resources are eligible for RPS benefits.**

Some of the Commission's intended objectives for the RPS are to minimize cost to end-use customers, maximize the Federal Production Tax Credit, achieve the RPS objectives, and support viable projects. Currently, some existing renewable biomass resources such as the AES Greenidge facility in Dresden, New York are eligible for the PTC but must still be certified for the RPS. Potentially, this type of resource could offer very low cost renewable opportunities for the RPS program.

Unfortunately, while the eligibility criteria listed for existing facilities may accurately address some of the considerations for a straight renewable facility such as hydroelectric or 100% biomass facility, they do not adequately consider how a biomass cofiring application should be evaluated for eligibility. Specifically, in a biomass cofiring application, the facility owner will always evaluate the gross revenue margin for a megawatt produced by biomass versus the gross revenue margin realized by producing the megawatt with straight fossil fuel. Unless the facility owner can achieve greater margins burning biomass than fossil fuel, it will not provide the necessary incentive to incur the greater costs and business uncertainty caused by the need to manage additional fuel sources, install another fuel handling system, and accept the greater operations & maintenance costs that could exist with biomass. Dependence exclusively on the eligibility criteria identified in the rulemaking will most likely prevent an existing biomass cofiring application from becoming eligible for the RPS and eliminate this low cost renewable resource. Thus, the criteria used to evaluate eligibility for existing biomass cofiring facilities should focus on evaluating the gross revenue margin of burning biomass versus fossil fuel.

**V. The Commission should make the requirements for biomass certification less onerous and should hold a technical conference to better identify resources and infrastructure available to more quickly utilize this potential renewable resource.**

The Commission should hold a technical conference prior to finalizing biomass requirements such as harvest and timber management plans. It is critical that the complete biomass infrastructure including fuel providers, equipment vendors, biomass energy sources, and interested renewable retail sources be brought together to determine what impacts, if any, mandatory requirements could have on the potential further development of biomass renewable resources.

## CONCLUSION

AES respectfully requests that the Commission implement a RPS program that is consistent with these comments.

Respectfully submitted,

---

Christopher Wentlent  
AES-NY, LLC  
720 Riverside Drive  
Johnson City, New York 13790  
(607) 729-6950 (tel)  
(607) 729-0540 (fax)

Dated: December 27, 2004