December 27, 2004

Honourable Jaclyn A. Brilling
Secretary
State of New York Public Service Commission
Three Empire State Plaza, 19th Floor
Albany, NY 12223-1350

Re: CASE 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

Dear Secretary Brilling:

Community Energy, Inc. hereby submits an original and five copies of its comments in response to the Commission's SAPA Notice on the RPS Implementation Plan.

Sincerely,

Eric Blank, President
CEI, Supply Development Division

c: Parties to the proceeding (e- mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission	**)**	
Regarding a Retail RPS	**)**	**Case 03-E-0188**

SUPPLEMENTAL COMMENTS OF COMMUNITY ENERGY, INC. ON NOTICE OF PROPOSED RULEMAKING, NO. 03-E-1088SA2 FOR THE PROPOSED RPS IMPLEMENTATION PLAN

Community Energy, Inc. (CEI), a licensed marketer and a developer of wind energy projects in New York, hereby submits its Comments on the Notice of Proposed Rulemaking for the Renewable Portfolio Standard ("RPS") Implementation Plan (SAPA Notice 03-E-1088SA2, "Implementation Plan"). CEI's comments on the Implementation Plan are presented in light of, and in the context of, the New York Public Service Commission (NY PSC) Fast Track Certification and Procurement Notice of Proposed Rulemaking (SAPA Notice 03-E-0188SA3), the December 16, 2004 NY PSC Order Authorizing Fast Track Certification and Procurement, and the New York State Energy Research and Development Authority Request for Proposals (RFP No. 916) (collectively, "The Procurement Plan").

CEI applauds the NY PSC for its September 24, 2004 Order in this case ("RPS Order") adopting an RPS for New York. This RPS Order, and the resources the NY PSC puts behind it, has the potential to accelerate the development and commercialization of new renewable energy technologies, place New York at the center of the renewable energy industry, bring thousands of high-paying jobs to the State, and improve environmental quality -- all at reasonable cost.

Despite the promise of the RPS Order, CEI is concerned that the Implementation and Procurement Plans may limit competition in a manner that could impose over $100 million in ADDITIONAL incremental near-term expense on ratepayers under certain plausible conditions. The remainder of these comments detail CEI's competitive concerns and briefly attempt to quantify the potential adverse impacts of the Implementation and Procurement Plans.

I. Available Wind Energy Resources in New York and the Competitive Structure of the Implementation and Procurement Plans

There is a range of wind energy resources in New York State potentially available to meet and accelerate near-term development under the NY RPS requirements, including the following resources: (1) renewable energy credits ("RECs") from existing and operating wind energy facilities in New York State; (2) wind facilities in advanced stages of development, approaching the contracting phase for 2005 that do not currently have access to wind turbine generating (WTG) equipment on a 2005 time frame; and (3) one or two wind facilities near construction-ready with access to WTG equipment on a 2005 time frame.

Although a significant supply curve of existing and developing resources currently exists in New York, the Implementation and Procurement Plans limits competition across the supply curve, with one exception. More specifically, the Proposed Implementation and Procurement Plans exclude existing facilities from bidding and impose prohibitive bonding and security provisions on developers of projects that do not have pre-existing access to WTG equipment. As such, the Implementation and Procurement Plans seem exclusively focused on a very narrow segment of the supply curve – one or two projects that have pre-existing WTG orders – in a manner that may limit competition as well as market information available to key decision makers. Each type of wind resource, and the competitive barriers to it arising from the Implementation and Procurement Plans, is discussed below.

A. Existing Resources

CEI first disagrees with the criteria being considered by the Commission severely restricting existing wind projects from participating in the RPS process as expressed in both the Implementation and Procurement Plans. The current criteria, as proposed in the Implementation Plan, require an existing generator to make a detailed showing of "financial viability" to be eligible to participate in the RPS, excluding those early-movers from now fully participating in the market and stabilizing prices. Even worse, the Procurement Plan excludes outright existing facilities from participating in the RPS process.

There are currently three existing pioneer wind energy facilities in New York State. These three wind projects have led the way for wind energy development in New York: generating the initial experience for integrating wind energy into the wholesale market and disclosure mechanisms; providing concerned citizens and adjacent land owners with an opportunity to experience the aesthetics associated with an operating wind farm; building the voluntary market for wind energy; creating initial jobs and local tax revenues; and generally educating policy makers and other key stakeholders about the costs and benefits associated with wind energy. These three wind farms – totaling less than 50 MW of nameplate capacity – should have full rights to bid into the current and future procurement processes to enhance competition, to help equilibrate the voluntary and compliance markets, and for fundamental fairness reasons.

Bids from existing wind farms could significantly enhance the competitive functioning of the NY RPS bid process, particularly in the early phases of the procurement when policy makers may lack market information and market participants are struggling to understand and respond to policy guidance. As such, bids from these existing NY projects can provide a competitive price check and an additional data point for both NYSERDA and the NY PSC in evaluating bids from new sources. Given that there is only 50 MW of existing wind projects, the data and bid information has the potential to add competitive pressure and help keep overall prices and accountability for all project bidders in line without an enormous resource commitment.

Bids from existing wind projects can also help stabilize the voluntary and compliance markets. In its September 24, 2004 Order the Commission determined that the voluntary market is an essential component of meeting the long-term RPS targets, expected to meet just under 20% of the total incremental renewable resources that are expected to be added throughout the RPS period (i.e., the voluntary market is intended to account for up to 1% of the 5.7% increase in renewables needed to take New York from 19.3% to 25%). Given that all three existing wind projects have economically depended on REC sales into the voluntary market, allowing bids from existing projects can help equilibrate prices in and between these two markets.

For reasons of fundamental fairness, these three existing wind projects were financed and supported by industry pioneers, including owners and off takers, who should not now be penalized for their risk-taking efforts to invest in wind energy in NY ahead of an RPS, particularly when most early movers expected to be automatically eligible for any future RPS.

Finally, the proposed requirements on the project owner of having to show "financial viability" fail to recognize that there is a broader universe involved in the wind energy supply chain and in many cases the RECs are under long term contract with other purchasers. In these cases, auditing financial data of wind farm owners is not pertinent as other parties are paying premiums for some of the RECs over the long term. If a blanket approval is not possible and a "financial viability" criterion is determined to be necessary, the level of market support from these REC contracts (or the fact that one project transferred in bankruptcy) further dictate as a matter of policy a non-prohibitive, fundamental fairness approach allowing New York leading projects to bid into the RPS process.

B. Advanced Stage Development Projects

The Proposed Implementation and Procurement Plans have onerous bonding and security requirements for advanced development-stage projects. More specifically, NYSERDA requires Security payments and bonding equal to the product of $3/MWh multiplied by the amount of annual energy bid into the RPS process. For CEI's 70 MW wind energy facility in New York State, this Security requirement would involve the posting of almost a $600,000 bond in three weeks that would be either partially or fully lost if the project was delayed.

CEI believes that this bonding and security requirement will act to reduce competition from advanced stage development projects and may allow for inferior development projects to win high-priced bids from NYSERDA in this round of procurement. As described above, there are two types of advanced development-stage wind projects in New York State, those relatively few that have vendor contracts and frame agreements for WTG acquisition in 2005 with liquidated damages and those entering that phase of final contract development. For advanced projects that have access to WTG frame agreements, the existing rules in regard to Security may work fine. These projects will be well positioned to win bids under the RPS Procurement Plan.

However, for projects in advanced stages of development, which do not currently have frame agreements with turbine vendors, the Security requirement provisions present significant risk. For example, if CEI were to bid in its 70 MW wind project to NYSERDA (and for projects at like stages), if we are ultimately unable to obtain turbines in 2005 and the PTC extension is delayed, then CEI and contending projects at like stages would lose part or all of their security deposit. Moreover, given the time frames associated with submitting bids to NYSERDA, these projects may not have sufficient time to partner with an entity that has a WTG frame agreement.

The end result of this Security requirement may be reduced competition as superior projects (i.e., those having higher capacity factors, lower interconnection costs, higher wholesale energy value, etc.) are unable to obtain firm turbine bids in the required time frame. At the same time, inferior projects that are partnered with entities that have access to turbines may bid into the process at very high price with the premiums going as a windfall to turbine manufacturers and others that have access to the WTGs or to support an inferior project.

In sum, the Security requirements imposed by NYSERDA may limit competition and present NYSERDA with a set of bids that are based on a bidder’s ability to manage risk through pre-existing contractual and other arrangements and not the underlying economics of the individual wind project.

C. Bid Flexibility

The Proposed Implementation and Procurement Plans provide little flexibility about REC procurement, with all bids having to come from an individual generation source.

CEI recommends that the Commission and NYSERDA structure RPS procurement processes in a way where the sellers of RECs are allowed the flexibility of fulfilling the obligation from multiple eligible plants as long as the set price is met. Since eligible RECs are inherently a fungible product, CEI believes letting the market operate in this way is smart policy because it will almost certainly create lower pricing for NYSERDA and rate payers based on suppliers' ability to hedge themselves against REC production and price risk with a portfolio of REC supply.

This additional flexibility would also allow bidders to meet more onerous Security requirements. CEI is prepared to guarantee REC delivery to NYSERDA based on a portfolio of existing and advanced development-stage projects. However, it is far more difficult and expensive to guarantee delivery out of a single project. This lack of flexibility again limits competition and will likely raise the cost of REC acquisition.

II. Ratepayer Costs Associated with Limiting Competition in the Implementation and Procurement Plans

In its Notice of Proposed Rulemaking ("NOPR") on Facility Certification and Procurement (SAPA No. 03-E-0188SA3, page 2), the NY PSC calculates that the Implementation and Procurement Plans could produce $97 million in present value benefit if half of the 2006 RPS target was met while the current PTC was in place. This calculation of ratepayer benefit seems to form one of the critical bases of the NY PSC December 16, 2004 Order (see page 4).

However, the factual accuracy of this calculation depends on the following three assumptions being true: (1) the PTC is not extended in a timely fashion to bring online new wind energy resources in a 2006 time frame; (2) adverse availability and economic conditions in WTG markets do not significantly raise WTG prices; and (3) the limited project competition associated with the Implementation and Procurement Plans does not result in higher priced projects coming online. Each assumption is discussed in turn.

A. <u>Examining the Key Assumptions</u>

The PTC: The federal tax credit for wind energy has expired three times in the past five years. In each of these three instances, Congress has extended the tax credit for an additional two years within ten months of the expiration. Although Congress may not extend the tax credit again, recent experience suggests that Congress is probably more likely than not to extend it again for some time period.

WTG Market Conditions: Because of the expiration of the federal PTC on December 31, 2005, the availability and pricing of WTGs has become a major issue in the wind energy industry, particularly for projects seeking to come online in 2005. Currently, two of the leading WTG turbine vendors have informed CEI that their WTG most suited to the NY market is currently unavailable on a 2005 delivery time frame (i.e., with liquidated PTC damages). A third leading WTG vendor has informed CEI that because of current WTG market conditions (limited North American availability of WTGs for 2005 and adverse exchange rates and steel prices), WTG costs are approximately $500,000 higher on a per turbine basis as compared to the summer of 2003. In large part this premium arises from the need and costs associated with diverting turbines from the European market to the U.S. This higher turbine cost, as compared to the summer of 2003, is of sufficient size to roughly offset the entire economic value of the PTC.

Competitive Structure: As discussed above, CEI is concerned that the Implementation and Procurement Plans will have an adverse impact on the available competition that could lead to higher bid prices.

B. Ratepayer Impact Under Alternative Plausible Assumptions

To analyze the potential adverse downside impact associated with the Implementation and Procurement Plans, CEI examines two alternative assumptions: (1) the PTC is extended through 2006, and (2) WTG markets return to the end of 2003 market conditions. Under these two assumptions, which are not inherently implausible, then the adverse ADDITIONAL costs associated with unduly narrow Implementation and Procurements Plans (as compared to including a broader range of projects that extend into late 2005 or early 2006) would be over $100 million. In essence, the future extension of the PTC, the lack of competition, the narrow focus on a few early 2005 projects and the need to pay higher prices to obtain WTGs in 2005 could result in NYSERDA paying an enormous premium to acquire RECs in 2005 to comply with end of 2006 obligations.

III. Recommendations and Conclusions

CEI makes the following recommendations:

1. CEI recommends that existing wind energy facilities in New York State be allowed to participate as fully eligible in the RPS process.
2. CEI recommends that the onerous Security requirements be greatly reduced, and staged over time with reasonable milestones.
3. CEI recommends that bidders be allowed to source RECs from multiple sources to meet the Eligibility and Security requirements.

In sum, CEI urges that the NY PSC and NYSERDA move in manner that is consistent with market principles and long-term economic viability and to fully evaluate its implementation and procurement plans against real economic conditions in the market place.

CEI looks forward to working with staff and stakeholders to explore reasonable solutions to the issues outlined above.

DATED: December 27, 2004

RESPECTFULLY SUBMITTED,

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