

# Day, Berry & Howard LLP

COUNSELLORS AT LAW

December 23, 2004

## OVERNIGHT DELIVERY

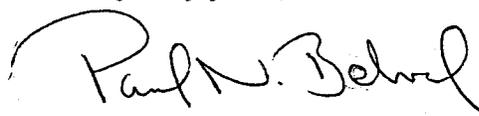
Hon. Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Case No. 03-E-0188SA2 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard; I.D. No. PSC-45-04-00013-P

Dear Secretary Brillling:

Enclosed please find an original and five (5) copies of the Comments of Constellation Companies Regarding RPS Implementation Plan in the above-referenced case. We also respectfully request to be added to the service list in this case. Please date-stamp the enclosed copy of this letter and return it to me in the postage-paid envelope.

Very truly yours,



Paul N. Belval, Esq.

cc: RPS Active Party (via Electronic Service)

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Case 03-E-0188SA2 - Proceeding on Motion of the  
Commission Regarding a Retail  
Renewable Portfolio Standard

COMMENTS OF CONSTELLATION COMPANIES  
REGARDING RPS IMPLEMENTATION PLAN

Paul N. Belval, Esq.  
Day, Berry & Howard LLP  
Attorney for Constellation NewEnergy, Inc.,  
Constellation Energy Commodities Group, Inc.,  
and Constellation Generation Group, LLC  
875 Third Avenue  
New York, NY 10022  
Tel: (212) 829-3600  
Fax: (212) 829-3601

Dated: December 23, 2004

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Case 03-E-0188SA2 - Proceeding on Motion of the  
Commission Regarding a Retail  
Renewable Portfolio Standard

COMMENTS OF CONSTELLATION COMPANIES  
REGARDING RPS IMPLEMENTATION PLAN

I. INTRODUCTION

We submit the following comments on behalf of Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc. and Constellation Generation Group, LLC (collectively, “Constellation”) in response to the Notice of Proposed Rulemaking, SAPA No. 03-E-0188SA2 (the “Notice”) and the related Express Terms (the “Express Terms”), issued by the Public Service Commission (the “Commission”) on November 10, 2004. In these comments, Constellation proposes a means of implementing the Retail Renewable Portfolio Standard (“RPS”) adopted in the Commission’s September 24, 2004 Order Regarding Retail Renewable Portfolio Standard in Case 03-E-0188 (the “RPS Order”) that could be an important initial step in the creation of a vibrant and open green power market in New York.

As stated in previous filings,<sup>1</sup> Constellation supports the adoption of the RPS and the Commission’s objective of stimulating viable, competitive renewable energy markets in New York, with the ultimate goal of increasing the percentage of renewable energy used by New York

---

<sup>1</sup> Case 03-E-0188, Initial Comments of Constellation NewEnergy, Inc. (September 26, 2003), Case 03-E-0188, Reply Comments of Constellation NewEnergy, Inc. (October 31, 2003), Case 03-E-0188, Brief on Exceptions of Constellation NewEnergy, Inc. and Constellation Power Source, Inc. (June 23, 2004), and Case 03-E-0188, Brief Opposing Exceptions by Constellation NewEnergy, Inc. and Constellation Power Source, Inc. (July 8, 2004).

consumers while preserving system reliability.<sup>2</sup> As described in more detail below, a renewable energy credit (“REC”) system for the Commission-approved central procurement model, with the associated unbundling of energy and attributes, would satisfy these goals and the other objectives of the RPS and would facilitate the eventual transition to a more market-based model. Moreover, an open market of bilateral contracts to obtain the RECs that are ultimately procured by the New York State Energy Research and Development Authority (“NYSERDA”) will increase the number of participants in the market, thereby lowering the market risks and reducing the costs of the RPS to retail customers. Furthermore, Constellation’s proposed model will create the infrastructure and relationships needed for open and competitive green power markets in New York when the transition to those markets takes place.

## II. COMMENTS

### A. **A REC System Based on Bilateral Contracts Will Encourage the Development of Competitive Markets.**

#### 1. The Proposed REC System

In the Express Terms, the Commission states that it is considering “launching [the] discussion” of “a regionally compatible certificate accounting and verification system under the RPS program, which would also support voluntary green markets” early next year, as opposed to the 2009 date contemplated by the RPS Order.<sup>3</sup> Constellation applauds this initiative by the Commission and submits that such a system, as described in more detail in these Comments, is the most efficient and flexible means of achieving the Commission’s objectives for the RPS.

---

<sup>2</sup> RPS Order at 3-4; Express Terms at 1.

<sup>3</sup> Express Terms at 26, n. 5.

By way of background, each unit of electricity generated, regardless of its source, is characterized by certain non-power (environmental and economic) attributes. The fundamental focus of the RPS and every other renewable portfolio standard is the differentiation of those attributes created by beneficial “renewable” energy sources from those that are created by less benign, usually fossil-fuel, energy sources. RECs are the currency now used in many parts of the country to unbundle these non-power attributes of generation from the power-related aspects, such as energy, reserves and capacity, of that generation. As such, RECs permit the trading of attributes, typically after the generation has occurred and without encumbering the more significant power markets. RECs are also useful in overcoming the barriers associated with buying and selling renewable energy attributes bundled with electricity, including resource intermittency, mismatches between the timing of generation and demand, and lack of market liquidity.

REC systems are currently either used or proposed in many parts of the country<sup>4</sup> to track fuel source and emission attributes, account for the creation, trading and use of RECs and track compliance with renewable portfolio standards,<sup>5</sup> resulting in reduced compliance costs and

---

<sup>4</sup> REC systems have been established in the New England Power Pool (“NEPOOL”), the Electric Reliability Council of Texas (“ERCOT”) and Wisconsin. PJM Interconnection, L.L.C. (“PJM”) is currently considering a Generator Attributes Tracking System (“GATS”) that is also based on freely traded RECs. See PJM, Generator Attributes Tracking System Working Group, at <http://www.pjm.com/committees/working-groups/gats/download/20040304-draft-concept-paper.pdf>. The Western Governors’ Association and the California Energy Commission are also working collectively to develop a Western Renewable Energy Generation Information System (“WREGIS”) following this general model. See WREGIS at <http://www.westgov.org/wieb/wregis>.

<sup>5</sup> For example, the NEPOOL Generation Information System (“GIS”) supports compliance with renewable portfolio standards in Massachusetts, Connecticut and Maine and the renewable portfolio standard that is about to become effective in Rhode Island (see Conn. Gen. Stat. §§ 16-6c, 16-245a, 16-245p, 22a-174j (2004); Me. Rev. Stat. Ann. 35-A, § 3210 (2004); Mass Gen. L. ch. 25A, §§ 11D, 11F, ch. 111, § 142N (2004); R.I. Gen. Laws §§ 39-26-1 to 39-26-10 (2004)). The ERCOT REC Program supports the renewable portfolio standard in Texas ERCOT. See Renewable Energy Credit Program at <http://www.texasrenewables.com/>

increased green market liquidity. Those systems are based on public websites<sup>6</sup> providing open and transparent processes for monitoring the creation and tracking of renewable attributes. Data on specific generation, including location, fuel type, emissions or labor characteristics, can be tracked and made public, as can data concerning the units and entities involved in the REC system and the types and amounts of emissions produced by those units.<sup>7</sup> The system can also provide a greater level of detail for state regulators, if needed or desired. In addition, a REC system can work in conjunction with other emission trading programs and can support environmental disclosure and labeling, as it currently does in other jurisdictions.<sup>8</sup> Finally, a REC system can be used with any of the three central procurement models<sup>9</sup> proposed by the Commission – auction, requests for proposals, or standard offer contracts.<sup>10</sup>

---

recprogram.htm. The PJM GATS will support compliance with renewable portfolio standards in New Jersey, Maryland and Pennsylvania. See PJM, Generator Attributes Tracking System Working Group, at <http://www.pjm.com/committees/working-groups/gats/download/20040304-draft-concept-paper.pdf>. Since the release of the GATS concept paper in March 2004, both Maryland and Pennsylvania have passed renewable portfolio standards. See Md. Code Ann., Public Utility Companies §§ 7-701 to 7-713 (2004) and S.B. 1030, 2003-2004 Leg., Reg. Sess. (Pa. 2004) at <http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>.

<sup>6</sup> See NEPOOL GIS at <http://www.nepoolgis.com> and ERCOT at <http://www.texasrenewables.com>.

<sup>7</sup> See ERCOT, Public Reports at <http://www.texasrenewables.com/reports.htm> and NEPOOL GIS, Public Reports at <https://www.nepoolgis.com/mymodule/mypage.asp>.

<sup>8</sup> See NEPOOL, Public Reports at <https://www.nepoolgis.com/mymodule/mypage.asp> and PJM, Generator Attributes Tracking System Working Group at <http://www.pjm.com/committees/working-groups/gats/download/20040304-draft-concept-paper.pdf>.

<sup>9</sup> In an approach that is somewhat similar to the central procurement model adopted in the RPS Order, the Massachusetts Technology Collaborative is acquiring RECs in the New England GIS using state renewable energy trust funds. See Massachusetts Technology Collaborative, Renewable Energy Trust at <http://www.mtpc.org/RenewableEnergy/index.htm>. In Massachusetts, this system supplements the competitive REC market.

<sup>10</sup> Express Terms at 13.

## 2. Bilateral Contracts

Because of the early stage of the design of the RPS implementation plan, it is not yet clear from the RPS Order and the Express Terms who will be permitted to supply renewable attributes to NYSERDA for the RPS. Constellation submits that, for many of the same reasons that a REC-based system makes sense, a system in which a variety of parties, including generators, energy service companies, intermediaries and even load serving entities (“LSEs”), can obtain those attributes in both physical and financial bilateral contracts and ultimately sell them to NYSERDA, represents a preferred approach. First, permitting the maximum number of entities to buy and sell RECs will add competition and liquidity to the market, thereby sending better price signals to generators as to the desirability of the various types and locations of their units and ultimately driving down the cost of renewable generation. Second, as the central procurement system gives way to a more open green market, existing competitive suppliers and bilateral arrangements will ensure that the parties and relationships needed for vigorous REC trading are already in place. Also, permitting third parties to buy RECs from generators (or other third parties) and sell them to NYSERDA transfers the risk that a project will either not achieve commercial operation or will suffer a lengthy unscheduled outage and not produce the expected number of RECs from NYSERDA to those third parties. As a result, a model that includes bilateral REC contracts adds liquidity and flexibility to the RPS implementation process and reduces the State’s risk in that process.

In addition, Constellation continues to oppose any prohibition on physical bilateral contracts. A combination of physical and financial bilateral contracts that include more than just electricity scheduled into the New York Independent System Operator (“NYISO”) spot markets is necessary to move towards a fully functioning green market. Any RPS participant should have

the option of how the energy associated with the renewable attributes is flowed through the NYISO control area. Constellation therefore requests that the delivery definition be clarified to include more than just energy scheduled in the NYISO spot market.

**B. A REC System Based on Bilateral Contracts Will Satisfy the Specific Objectives Identified by the Commission in the Express Terms.**

In addition to the general benefits outlined in Part A above, the REC system based on underlying bilateral arrangements that is proposed by Constellation (the “Proposed System”) is an effective means for the Commission to achieve the other objectives for the RPS Implementation Plan, as discussed below. Constellation submits that it would be difficult, if not impossible, to develop another model for implementing the RPS that can realize so many of the Commission’s goals as efficiently and economically as the Proposed System.

1. The Proposed System Will Minimize the Costs to End Use Customers.

One of the most significant benefits of the Proposed System is the cost savings and certainty it would produce for retail customers in New York. Because the Proposed System would be similar to the systems currently in use in New England and Texas and proposed for PJM,<sup>11</sup> the Commission could avoid some of the time and effort required to create, test and

---

<sup>11</sup> There is a significant difference in the universe of attributes tracked by these systems. The NEPOOL GIS accounts for the attributes of all of the energy generated in, and imported into, the NEPOOL control area, and the PJM GATS is expected to take a similar approach. See New England Power Pool Generation Information System, Operating Rules at [http://www.nepoolgis.com/GeneralDoc/41439831\\_6%28HARTFORD%29.pdf](http://www.nepoolgis.com/GeneralDoc/41439831_6%28HARTFORD%29.pdf) and PJM, Generator Attributes Tracking System Working Group at <http://www.pjm.com/committees/working-groups/gats/download/20040304-draft-concept-paper.pdf>. The ERCOT REC Program only accounts for the attributes of renewable generation that opts into the Program. See ERCOT, ERCOT Protocols at <http://www.ercot.com/AboutERCOT/PublicDisclosure/ProtocolRev.htm>. Constellation believes that a model that is more compatible with the NEPOOL GIS and the PJM GATS (and therefore accounts for the attributes of all generation) would be preferable in light of the proximity of those control areas.

debug a completely new system, potentially saving thousands of dollars for ratepayers. In addition, many of the load serving entities (“LSEs”) and other market participants in New York are subsidiaries of multi-state entities that are already familiar with the NEPOOL GIS or the Texas REC Program, or will become involved in the PJM GATS. Creating a REC system similar to those programs will save those parties the time and money that would otherwise be expended in learning a new model. Similarly, many of the potential green market participants in New York are already using bilateral REC arrangements in other parts of the country and could bring the efficiencies and economies learned in those other areas to the New York market. Finally, the Proposed System could be developed largely on a fixed price basis, bringing a degree of predictability and control to the costs that New York’s ratepayers would have to bear.<sup>12</sup> As a result, the Proposed System would permit New York to avoid the “learning curve” costs of dealing with a new system and benefit from the lessons learned in other control areas.

## 2. The Proposed System Will Support Financing of Renewable Projects

Renewable projects cannot be built if they cannot be financed. The key to obtaining project financing for any generating project, whether it is a renewable facility or a fossil fuel unit, is a predictable cash flow from a creditworthy party. For projects being financed with term loans, this cash flow must last for the term of the debt. Historically, the focus of these financings has been the long-term power purchase agreements, and for projects in jurisdictions with RECs, the revenue stream from the RECs is a nice addition but generally will not make an otherwise unfinanceable project financeable. By unbundling the green attributes from the power for these

---

<sup>12</sup> For example, the NEPOOL GIS was designed and developed for an initial fee of \$200,000 and declining annual per MWh charges (subject to a floor and a cap) over the five-year term of the GIS agreement, with a termination fee for early termination. See New England Power Pool Eightieth Agreement Amending New England Power Pool Agreement, FERC Docket No. ER02-183-000, Attachment 8, Exhibit E and Exhibit T (October 26, 2001).

projects, the Proposed System would permit the projects to continue to enter into power purchase agreements on the best terms available without encumbering those transactions with the separate concerns related to the RECs.<sup>13</sup> In addition, the Proposed System would permit the generators to enter into contracts for the RECs with creditworthy third parties (in addition to NYSERDA), creating another financeable cash flow for these projects. Bilateral contracts for RECs could also provide a crucial balance between long-term project financing and more flexible contract terms needed to encourage green market opportunities. Finally, investors are becoming increasingly familiar with REC-based, bilateral contract systems in other parts of the country, and the Proposed System would create one less wrinkle for a renewable generator to explain to a potential financing source. Thus, the Proposed System would provide a level of support for project financing of renewable generation that likely could not be replicated in another implementation model.

### 3. The Proposed System Will Minimize Interference With the Competitive Power Markets

While the RPS and the green markets are important, they pale in comparison to the need for a continued supply of affordable and reliable power. Any RPS implementation model simply cannot interfere with the existing competitive markets that provide that power, and the existing REC systems on which the Proposed System would be based were specifically designed to allow the power markets to function separately from the REC markets. Because RECs are not bundled with any other aspect of power generation, they trade separately, and while power is typically

---

<sup>13</sup> The Express Terms state that NYSERDA would only pay for attributes “based on energy sold into the wholesale market.” Express Terms at 6. Constellation understands this statement to be a requirement that the energy associated with the attributes must be sold into the New York Independent System Operator markets, as opposed to pursuant to a long-term bilateral contract. Such a requirement would subject a project to a level of “merchant risk” that investors have become increasingly unwilling to bear in their financings.

traded in day-ahead and real-time markets, RECs trade as much as six months after the subject power has been generated. Indeed, in New England, ISO New England Inc. operates the power markets and the related market settlement system while a different entity, Automated Power Exchange, Inc., developed and administers the NEPOOL GIS, with only a computer interface between the two markets. As such, the REC market and the power markets can operate independently, and the REC market will not have any impact on the existing power markets.

4. The Proposed System Will Create an Open and Competitive Process and Provide a Base of Information and Experience

As with the power markets, green markets are only effective if their participants, and the public at large, are convinced that the markets are transparent and competitive and that they have access to the information needed to understand the process. REC systems like the Proposed System are designed with this thought in mind. REC systems are generally operated through a website, a portion of which includes publicly available data, another portion of which includes data that is accessible to regulators, and a third portion of which contains information that is account-specific and can only be seen by the market participant holding that account.<sup>14</sup> In this way, the general public, including environmental groups and those interested in overall activity in the REC market, have access to a wealth of information on the system, including contact data for each participant, the fuel source, total generation and renewable portfolio standard eligibility of each generator, and the aggregate composition of generation resources across the REC market.<sup>15</sup> Regulators are then given the more transaction-specific information needed for them

---

<sup>14</sup> See NEPOOL, Public Reports at <https://www.nepoolgis.com/mymodule/mypage.asp> and ERCOT at <http://www.texasrenewables.com>.

<sup>15</sup> See New England Power Pool Generation Information System, Operating Rules, Rule 5.4 at [http://www.nepoolgis.com/GeneralDoc/41439831\\_6%28HARTFORD%29.pdf](http://www.nepoolgis.com/GeneralDoc/41439831_6%28HARTFORD%29.pdf) and

to perform their specific functions in this area.<sup>16</sup> Market participants have data needed to track and trade the RECs in their own accounts.

In addition, REC websites retain historical information, and because the systems are internet-based, they provide a significant level of public access and searchability. Moreover, once PJM has developed and implemented the GATS, much of the Northeast will have REC-based tracking systems for renewable energy, thereby permitting the Commission to make an “apples-to-apples” comparison of New York’s progress with the RPS to the progress being made with renewable portfolio standards in its neighboring states. Accordingly, the Commission, NYSEERDA and the general public will be able to access both current and historic information on the REC markets in New York and elsewhere and understand how those markets are meeting the broad objectives of the RPS.

5. The Proposed System Will Support Emission Initiatives and Customer Bill Disclosures

In the Express Terms, the Commission appropriately focuses on the interaction between the RPS on the one hand and the Regional Greenhouse Gas Initiative (“RGGI”) and the customer bill disclosures associated with the Environmental Disclosure Program (“EDP”) on the other hand.<sup>17</sup> The Proposed System would follow the models in the NEPOOL GIS and the PJM

---

ERCOT, ERCOT Protocols, 14-13 at <http://www.ercot.com/AboutERCOT/PublicDisclosure/ProtocolRev.htm>.

<sup>16</sup> See New England Power Pool Generation Information System, Operating Rules, Rule 5.3 at [http://www.nepoolgis.com/GeneralDoc/41439831\\_6%28HARTFORD%29.pdf](http://www.nepoolgis.com/GeneralDoc/41439831_6%28HARTFORD%29.pdf) and ERCOT, ERCOT Protocols, 14-14 at <http://www.ercot.com/AboutERCOT/PublicDisclosure/ProtocolRev.htm>.

<sup>17</sup> Express Terms at 25-27.

GATS<sup>18</sup> and serve triple duty by also tracking emissions and providing the basis for those bill disclosures. Because RECs are a computer-based means of tracking generation-related information, the sorts of information they can track is virtually limitless and can include the various pollutants emitted by certain generating units. In addition, by matching RECs acquired by each LSE with its load and providing information on the average characteristics of RECs that are not acquired by any LSE, the Proposed System could be used by LSEs to make their bill disclosures. This approach would simplify the data collection and reporting obligations of all involved, thereby reducing the costs and burdens of implementing the RPS, the RGGI and the EDP.

6. The Proposed System Will Encourage Viable and Competitive Green Power Markets and Create a Platform for Process Evolution

As described in Part B above, the Proposed System would provide both the infrastructure and the business relationships needed for a vibrant green market in New York. Through the use of both financial and physical bilateral contracts, the Proposed System would increase the number of parties in the green market, improving liquidity of that market and driving down the price of renewable attributes accordingly.<sup>19</sup> In addition, bilateral contracts permit buyers and sellers to determine how and when to bundle or unbundle the attributes from energy, offering greater flexibility and more opportunity to expand their businesses into other control areas and

---

<sup>18</sup> See NEPOOL, Public Reports at <https://www.nepoolgis.com/mymodule/mypage.asp> and PJM, Generator Attributes Tracking System Working Group at <http://www.pjm.com/committees/working-groups/gats/download/20040304-draft-concept-paper.pdf>.

<sup>19</sup> The Commission in the RPS Order stated “[a]llowing physical bilateral contracts to be eligible for RPS incentives is incompatible with the way we currently verify transactions for environmental disclosure purposes.” RPS Order at 63. For the reasons discussed herein, Constellation would encourage eligibility for both financial and physical bilateral contracts.

voluntary markets.<sup>20</sup> Ultimately, the growth of viable, competitive green markets – even before the planned transition in 2009 – will encourage the development of more efficient and cost-effective projects and technologies.<sup>21</sup> Lastly, if the Proposed System is developed with appropriately open architecture, it will provide a platform for the further development of a vibrant renewable market in New York for years to come.

Furthermore, the Proposed System would solve one of the more serious issues raised in the Express Terms. As it currently stands, the Commission seems to envision periodic solicitations of renewable projects to participate in the RPS, and Constellation believes that this approach could cause further instability in renewable project development.<sup>22</sup> To the extent that developing projects need to rely on a cash flow from NYSERDA, only those projects that are successful in the solicitation process stand a chance of being financed and built, killing a number

---

<sup>20</sup> A central procurement system without the possibility of physical and financial bilateral contracts underlying the ultimate purchase of RECs by NYSERDA would represent a return to the days of central planning of generation projects, without regard to the competitive advantages of each project. This is contrary to the economic premise of electric restructuring in New York and elsewhere.

<sup>21</sup> This is supported by the historical data available for both the New England and Texas REC system. In New England, for instance, the number of renewable RECs rose from 9,476,741 in 2002 to 13,118,919 in 2003. The number of total RECs rose from 131,445,193 in 2002 to 134,910,678 in 2003. See NEPOOL GIS, Public Reports at <http://www.nepoolgis.com>. In Texas, the number of RECs rose from 2,793,076 in 2002 to 2,949,087 in 2003. See ERCOT, Public Reports, at <http://www.texasrenewables.com/publicReports/rpt8.asp>. According to ERCOT's 2002 Annual Report, at the end of 2001 thirteen competitive retailers had accounts in the REC program. See ERCOT, Annual Report at [http://www.texasrenewables.com/publicReports/2002\\_Report.doc](http://www.texasrenewables.com/publicReports/2002_Report.doc). By Fourth Quarter 2002, there were fifty-four, with an increase to sixty-seven by July 15, 2004. See 2003 Annual Report at [http://www.texasrenewables.com/publicReports/2003\\_Report.doc](http://www.texasrenewables.com/publicReports/2003_Report.doc).

<sup>22</sup> The periodic solicitation format is creating timing pressures on the Commission and NYSERDA as they attempt to solicit bids from projects that might qualify for the Federal Renewable Electricity Production Credit. See Initial Facility Certification and Procurement, Express Terms, SAPA No. 03-E-0188SA3 (Nov. 10. 2004). Permitting other parties to purchase RECs in bilateral contracts and sell them to NYSERDA over time would shift this pressure from NYSERDA and the Commission to other market participants.

of projects before development efforts can begin in earnest. Furthermore, not all of the projects that are successful in the solicitation process will be permitted, financed and eventually built, leaving NYSERDA in a situation where it will be forced to buy more attributes than it will need to meet its targets in order to compensate for this risk that the projects it selects do not achieve commercial operation. This in turn will increase the cost of the RPS for NYSERDA, a cost that will ultimately be borne by retail consumers. Conversely, the Proposed System would let the market select the projects that should be built, based on economics and technology, and shifts the risk that any specific project will achieve commercial operation to the third parties entering into the bilateral contracts with those projects.<sup>23</sup> The Proposed System's compatibility with the NEPOOL GIS and the PJM GATS will also create additional sources of supply for RECs and markets for renewable attributes, further adding to the liquidity of the green market.<sup>24</sup> That greater liquidity will translate into a more opportunities for renewable projects in New York, which in turn will translate into lower costs for consumers and an improved environment.

### III. CONCLUSION

Constellation urges the Commission to develop and implement the Proposed System as a means of promoting viable green markets and protecting consumers from unduly high prices associated with the RPS. The development of a REC system, compatible with others in the

---

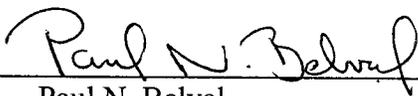
<sup>23</sup> Several parties have suggested that NYSERDA use a "contract for differences" approach to acquire renewable attributes. This approach would guarantee the sellers of those attributes a specific level of revenue for the combined power and attributes sold by them and would require NYSERDA to assume all of the risk associated with power prices in the spot market. The Proposed System would have that risk borne by the parties to the bilateral contracts and not by NYSERDA.

<sup>24</sup> Another advantage of the Proposed System's compatibility to the NEPOOL GIS and the PJM GATS is that it permits the Commission and NYSERDA to track renewable transactions across the three control areas, minimizing the risk that renewable attributes will be used for the same purpose in more than one jurisdiction.

country, that permits the unbundled trading of attributes and the formation of physical and financial bilateral contracts will do much to further the objectives of the Commission and will lay a solid foundation for the later development of broader competitive and open markets.

Respectfully submitted,

Constellation NewEnergy, Inc., Constellation  
Energy Commodities Group, Inc. and  
Constellation Generation Group, LLC

By:   
Paul N. Belval  
Day, Berry & Howard LLP  
875 Third Avenue  
New York, NY 10022  
Tel: (212) 829-3600  
Fax: (212) 829-3601  
E-mail: [pnbelval@dbh.com](mailto:pnbelval@dbh.com)

Their Attorney

Dated: December 23, 2004