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December 10, 2004

**VIA HAND DELIVERY**

Honorable Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
14<sup>th</sup> Floor  
Albany, New York 12223

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

ID No. PSC-45-04-00014-P

Dear Secretary Brillling:

Multiple Intervenors hereby files an original and 5 copies of “Comments of Multiple Intervenors in Response to ID No. PSC-45-04-00014-P Regarding Initial Facility Certification and Procurement.”

Very truly yours,

COUCH WHITE, LLP

Barbara S. Brenner

Barbara S. Brenner

BSB/sem  
Enclosures  
cc: RPS Contact List (via email)  
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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission  
Regarding a Retail Renewable Portfolio  
Standard**

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**Case 03-E-0188**

**COMMENTS OF MULTIPLE INTERVENORS IN  
RESPONSE TO ID NO. PSC-45-04-00014-P  
REGARDING INITIAL FACILITY  
CERTIFICATION AND PROCUREMENT**

**Dated: December 10, 2004**

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## STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments on ID No. PSC-45-04-00014-P. The proposed rulemaking was published in the November 10, 2004 *New York State Register* (“SAPA Notice”).<sup>1</sup> The proposed rulemaking requested comments on the design of an expedited certification and procurement process to be utilized in the implementation of a renewable portfolio standard (“RPS”). The Commission requested comments as soon as possible because the Commission may consider immediate adoption of the proposed rulemaking on an emergency basis pursuant to Section 202(6) of the State Administrative Procedures Act.

As set forth below, Multiple Intervenors urges the Commission to establish a cost-based procurement process that utilizes requests for proposals (“RFPs”) for the initial facility certification and procurement. The process should apply only to facilities eligible for the Renewable Electricity Production Credit (“PTC”) that is set to expire on January 1, 2006. The RPS payment to each generator should be based on that individual generator’s specific costs, utilizing contracts for differences (“CFDs”). This will ensure that consumers do not pay more than is necessary for the development of renewable resources. Multiple

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<sup>1</sup> On the same date, the Commission published ID No. PSC-45-04-00013-P, which pertains to the RPS implementation plan. Multiple Intervenors will file comments on the RPS implementation plan within the 45 day comment period.

Intervenors also urges the Commission to state affirmatively that the initial procurement process is not precedential.

The Commission should select the procurement approach to be implemented by NYSERDA. NYSERDA should not be permitted to select among procurement approaches. The Commission, not NYSERDA, has the legal responsibility to set just and reasonable rates. As such, it is the Commission's responsibility to establish a procurement process that will minimize the costs of a RPS to consumers. The Commission can not delegate its ratemaking authority to NYSERDA.

## **POINT I**

### **THE INITIAL PROCUREMENT APPROACH MUST BE COST-BASED, NOT MARKET-BASED, IN ORDER TO MINIMIZE THE COST OF A RPS TO CONSUMERS**

In order to minimize the adverse impact on energy costs of a RPS, it is essential that only the least cost renewable resources be selected in the initial procurement. Throughout the RPS proceeding, Multiple Intervenors has emphasized the need to minimize the cost of a RPS to consumers. In its September 24, 2004 "Order Regarding Retail Portfolio Standard" and in the November 10, 2004 SAPA Notice, the Commission indicated that minimization of the cost to end-use customers is one of the RPS procurement objectives. A cost-based initial procurement process will make it possible for facilities that are eligible for the PTC to commence commercial operation by December 31, 2005. This will result in the procurement of renewable resources at a lower cost to New York consumers.

The Commission should reject any proposal that would permit renewable resources to be paid more than their costs. A RPS is a subsidized program, not a competitive market. Thus, each subsidy should be limited to the minimum amount necessary for the project to be built. Multiple Intervenors urges the Commission to require NYSERDA to utilize a procurement approach based on each bidder's costs. This will ensure that the RPS subsidy is greater than is absolutely necessary for a project to be built. The total RPS subsidy using a cost-based approach would be less than if the market clearing price is paid for all the renewable resources or a pay-as-bid approach is used.<sup>2</sup>

NYSERDA should issue a renewables RFP that requires each developer/generator to provide specific cost information about the renewable facility. The information would include capital costs, operation and maintenance costs, as well as a proposed rate of return on equity. The developer would include the anticipated capacity factor for the facility and the revenue per kilowatt-hour that would be required to construct and operate the plant. Each project would have a different revenue requirement, depending on its cost structure. Then, the resources would be selected on a least-cost basis.

The virtue of a cost-based premium is that it does not permit the renewable resource provider to earn anything more than a fair profit based on its cost structure. Any subsidy payment that would be greater than a developer's cost of service would provide excessive profits to renewable resource providers and result in consumers incurring

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<sup>2</sup> Any proposal to pay developers a so-called "market clearing price" must be rejected. For instance, if one developer needs a total payment of 5 cents per kWh to construct a project, and another developer needs 6 cents per kWh, the first developer should be paid no more than 5 cents per kWh. Any higher payment only would increase the price to consumers without providing any additional benefits. In this instance, it would not be appropriate to provide market-clearing revenues to the recipients of a regulatory subsidy program.

excessive costs. A cost-based subsidy also would ensure that new renewable resources that do not require any subsidies do not receive a subsidy.

## **POINT II**

### **THE PROCUREMENT APPROACH FOR THE INITIAL PROCUREMENT SHOULD EMPLOY CONTRACTS FOR DIFFERENCES**

Renewable resources that are selected to participate in the RPS should receive a customized subsidy based on a contract for differences. The use of a fixed price or standard offer procurement approach should not be adopted by the Commission. Each contract for differences should be customized based on the cost of development for each renewable resource project. Any revenues received by the project in excess of the amount needed to cover the developer's cost of service and a reasonable rate of return on equity must be returned to consumers. This procurement approach would ensure that projects that do not need subsidies in any given year will not receive them.

The subsidy would be the difference between the payments received by the facility from the NYISO (or other buyers) for energy, capacity and ancillary services and the facility's cost of service. Those revenues plus the subsidy would be the ceiling price for that unit. Thus, if the payments from the NYISO exceed the subsidized price on an annual basis, then the consumers that are funding the RPS would receive a credit. To give the developer a subsidy that is larger than the amount that is needed to construct and operate the project would provide the developer with a windfall and unnecessarily increase the cost of RPS to consumers.

Moreover, a contract for differences procurement approach would reduce the amount paid to the developers. Because the risk of low market (“LBMP”) prices would be shifted to consumers, the developer’s cost of debt and cost of equity for each project should be less than if another approach is used.

Any proponent of a fixed premium should consider “the lessons learned” from New York State’s Six-Cent Law. Prior to its repeal, the Six-Cent Law required the State’s electric utilities to purchase electricity from qualifying non-utility generators at \$0.06 kWh or the utility’s avoided costs, whichever was greater. This resulted in the purchase of electricity at a cost well in excess of avoided costs, at a cost to consumers in the billions of dollars. A fixed premium, determined today, based on forecasts of LBMP could have the same result. Experience has taught us that one thing is a certainty - - whatever the forecasted price is, it will be wrong. In order to avoid saddling consumers with excess costs for years to come, contracts for differences should be utilized in the initial procurement process.

### **POINT III**

#### **ONLY FACILITIES ELIGIBLE TO RECEIVE THE PTC SHOULD PARTICIPATE IN THE INITIAL PROCUREMENT PROCESS**

It is important that the Commission facilitate construction of PTC-eligible projects. However, other new main tier facilities that are not eligible for the PTC should not be permitted to participate in the initial solicitation. The only reason that the Commission is considering implementing an initial procurement process on an expedited basis is because certain facilities will be eligible to receive a PTC. There is a willingness to use an expedited

process in order to reduce the cost to consumers of PTC-eligible resources. Acquiring other resources on an expedited basis will not reduce the cost of those resources. To the contrary, it will increase the cost of the RPS. As the record before the Commission demonstrates, the cost of renewable resources is expected to decline significantly over the next decade.

Inasmuch as the only reason to utilize an expedited process is to enable generators to take advantage of the extension of the PTC, in order to minimize the cost of renewable resources to New York consumers, there is no justification for utilizing an expedited process for other resources that are not eligible for the PTC. Only facilities that are eligible to receive the PTC should be permitted to participate in the initial solicitation.

#### **POINT IV**

##### **THE INITIAL PROCUREMENT PROCESS SHOULD NOT ESTABLISH A PRECEDENT**

The Commission should state specifically that the initial procurement procedures are not necessarily the template for future RPS procurements. Because the procurement process will be approved on an expedited basis, it may not be the most suitable design for the procurement for all resources in the future. The Commission should not make a determination about future procurement processes until the Commission receives and considers the comments filed by stakeholders in response to the notice in the *New York State Register*, ID No. PSC-45-00013-P, pertaining to the RPS implementation plan.

## CONCLUSION

For the reasons state herein, Multiple Intervenors urges the Commission to approve an initial procurement process that minimizes the costs to consumers of a RPS. The payments to PTC-eligible generators should be customized subsidies based on each generator's costs, including a reasonable rate of return on equity.

Dated: December 10, 2004  
Albany, New York

Respectfully submitted,

Barbara S. Brenner

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments on ID No. PSC-45-04-00014-P of Multiple Intervenors has been served via electronic transmission upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated:           December 10, 2004  
                  Albany, New York

Sharon Matthews

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Sharon Matthews

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