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November 16, 2004

VIA HAND DELIVERY

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

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

Dear Secretary Brillling:

Multiple Intervenors hereby files an original and 25 copies of this letter motion to strike the “Response to Petitions for Clarification and Reconsideration of the Commission’s Implementing Order for Case 03-E-0188 of the Renewable Energy Technology and Environment Coalition” (“RETEC Response”) insofar as the RETEC Response seeks rehearing of the exemption from the RPS surcharge for customers that are currently exempt from the system benefits charge. The RETEC Response, although entitled as a response, does not respond to the argument of the Small Hydro Group pertaining to the exemption. It is a motion for rehearing that should have been filed within 30 days of the service of the Commission’s September 24, 2004 Order. See 16 NYCRR § 3.7(a). The motion was not timely filed.

RETEC states that it “agrees” with the position of the Small Hydro Group, namely that all New Yorkers should pay for a RPS. (RETEC Response at 4.) RETEC urges the

November 16, 2004

Page 2

Commission to reconsider its September 24, 2004 “Order Regarding Retail Portfolio Standard” and “remove the exemption for industrial entities currently not paying the Systems Benefit Charge.” Thus, RETEC’s Response is not a response to the Small Hydro Group’s motion.

But, even if, arguendo, the Commission were to hold that RETEC’s Response to the Small Hydro Group’s is a response and not a time-barred motion for rehearing, the Commission should deny RETEC’s request. RETEC has not provided any grounds for the Commission to reconsider its September 24 Order insofar as the Commission held that customers that do not currently pay the system benefits charge should be exempt from the RPS surcharge. RETEC does not demonstrate an error of law, an error of fact, or new circumstances. Instead, RETEC merely restates its earlier arguments which already have been rejected by the Commission.

Moreover, RETEC incorrectly states that “economic development customers have for many years been the beneficiaries of low-cost power at subsidized rates well below the otherwise applicable utility tariff.” (RETEC Response at 4.) Economic development customers do not purchase power at subsidized rates. NYPA Replacement Power and Expansion Power customers pay almost three times NYPA’s cost of service. They are not subsidized by any other consumers.

Nor are industrial customers that have flex rate contracts subsidized by other customers. Section 66(12-b) of the New York State Public Service Law requires that flex-rate contract rates “be so designed at to recover the incremental cost of providing service to

November 16, 2004

Page 3

such customers and to contribute to the common costs which otherwise would be borne by other customers.” Thus, RETEC’s characterization of the rates paid by economic development customers as “subsidized” is incorrect.

For the reasons stated herein, the “Response to Petition for Clarification and Reconsideration of the Commission’s Implementing Order for Case 03-E-0188 of the Renewable Energy Technology and Environment Coalition” should be stricken insofar as it urges the Commission to reconsider the holding in its September 24 Order that customers that currently do not pay the system benefits charge are exempt from the RPS surcharge.

Very truly yours,

COUCH WHITE, LLP

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cc: RPS Contact List (via email)

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