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November 9, 2004

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

RE: Case 03-E-0188 – Retail Renewable Portfolio Standard

Dear Secretary Brillling:

Pursuant to 16 NYCRR 3.7(c), the New York Power Authority (NYPA) hereby responds to certain arguments set forth in the petition for rehearing/clarification of the Small Hydro Group (SHG), dated October 25, 2004.<sup>1</sup> Specifically, SHG contends that the Commission, in its Order Regarding Retail Renewable Portfolio Standard, issued September 24, 2004 (RPS Order), erred in exempting from payment of Renewable Portfolio Standard (RPS) premiums those customers that are exempt from payment of the System Benefits Charge (SBC). Those customers include NYPA's economic development customers such as businesses and industries (including high load factor industries) that receive allocations from NYPA of Replacement Power, Expansion Power, power under the Power for Jobs program, Economic Development Power, as well as other low cost power. See Public Authorities Law, § 1005.

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<sup>1</sup> SHG's members are the owners of a number of existing small hydro facilities.

The apparent basis for SHG's argument is that its members will have to pay RPS premiums in connection with retail electric "station service" their small hydro facilities receive from investor-owned utilities and that this is unfair because large industrial customers that do not pay SBC charges are exempted from payment of RPS premiums. SHG Petition, p. 2. SHG's Petition should be denied for two principal reasons. First, the electric "station service" small hydro facilities require for their operations generally is quite small and, therefore, the RPS premium costs that SHG's members actually would pay would be de minimis.<sup>2</sup>

Second, and most important, SHG simply has failed to show that the Commission's decision exempting, among other customers, NYPA's business and industrial customers from payment of RPS premiums is erroneous or unfair in any way. Specifically, in her Recommended Decision in this case, Administrative Law Judge Eleanor Stein determined that NYPA's customers should be excluded from payment of RPS premiums because, among other things, it would be counter-productive to add cost burdens to NYPA's economic development customers; excluding NYPA's customers would have an insignificant impact on remaining ratepayers; and NYPA's customers have financed the hydroelectric generation resources of NYPA which account for over 50% of all renewable energy consumed in New York State. See Recommended Decision, issued June 3, 2004, pp. 69-71. Indeed, NYPA and its customers have expended and will expend hundreds of millions of dollars to ensure that NYPA's hydroelectric resources continue to be available, thereby making achievement of the Statewide 25% RPS goal possible.

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<sup>2</sup> Further, the Commission ruled that existing small hydro facilities that can demonstrate they require RPS benefits to remain financially viable will be eligible to receive RPS premiums for their electric output. See RPS Order, pp. 29-30.

In its RPS Order, the Commission endorsed the Recommended Decision’s analysis and specifically determined that customers such as NYPA’s economic development customers are “provided electricity at reduced prices to achieve economic development objectives such as sustaining or creating jobs” and that “requiring such customers to pay for the objectives of the RPS would be counterproductive to economic development goals.” Id., pp. 52-53, 55. Accordingly, since the Commission’s findings and determination on this issue clearly are accurate and reasonable (and SHG does not make any showing to the contrary), SHG’s Petition relating to this issue must be denied. See 16 NYCRR 3.7(b) (“Rehearing may be sought only on the grounds that the [C]ommission committed an error of law or fact or that new circumstances warrant a different determination”).

Respectfully Submitted,

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cc: Active Party List  
(by email)