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November 15, 2004

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

Re: Case No. 03-E-0188 – Retail Renewable Portfolio Standard

Dear Secretary Brilling:

Pursuant to the Commission's rules, 16 NYCRR §3.7, the Small Hydro Group¹ ("SHG") submits an original and twenty-five (25) copies of this letter responding to the replies to the SHG's request for clarification and/or reconsideration of portions of the Commission's Order Regarding Retail Renewable Portfolio Standard, issued September 24, 2004 (September 24 Order). The Commission's rules provide that a response to replies to rehearing requests may be considered under extraordinary circumstances. SHG believes that such circumstances exist for the Commission to consider this response.

Several parties replied to SHG's request for clarification, to wit, Multiple Intervenors, the New York Power Authority, Nucor Steel Auburn, Inc., and the Business Council of New York State. Each of these parties takes issue with SHG's request that the Commission reconsider its position on the exemption from the "non-bypassable wires charge" for those customers exempt from SBC charges. SHG's request raises the issue of creation of an unlevel playing field and the specter of the imposition of rates that are not just and reasonable.

The Commission clearly did not intend for the September 24 Order to be the last word in consideration of the RPS. This is made especially clear by the publication in the November 10, 2004 New York State Register of two SAPA notices of proposed rulemakings regarding implementation of the RPS. Clearly, the Commission is aware that much work remains to be done in this proceeding and that the matters identified in the September 24 Order will be the subject of continued refinements and modifications. The publication of these two SAPA notices, which pertain to prospective matters,

1. The Small Hydro Group consists of the following companies: Tannery Island Power Corporation, Hydro Power, Inc., Energy Enterprises, Inc., Chittenden Falls Hydro Power, Inc., Seneca Falls Power Corporation, and the Village of Potsdam.

indicates that the proceeding is not only ongoing, but clearly only in its initial stages. For the parties replying to SHG's petition to infer that SHG is barred from raising the points it made is specious at best given the Commission's own position that work in this proceeding is ongoing.

SHG believes that publication of these SAPA notices and Mr. Saul Rigberg's e-mail correspondence with the parties in Case No. 03-E-0188 on Friday, November 12, 2004, constitute the requisite circumstances that warrant the Commission's consideration of this response.

The parties replying to SHG appear to protest too much to the points raised in SHG's pleading. The Commission, while acknowledging the need to reduce the burden of New York's high electric rates on large industrial customers, must also acknowledge the need to balance that desire with the charge of providing for just and reasonable rates for the remaining ratepayers. If the Commission merely burdens the small commercial and residential ratepayer with the exempt customers share of the costs, the Commission is abdicating one responsibility in order to hopefully encourage economic development.

Moreover, to the extent that the non-bypassable wires charge would be collected from the renewable generators, the Commission's policy is working at cross purposes as the costs imposed are to be offset in part by the credits to be paid to those same generators.

Furthermore, the Commission takes the position that any RPS surcharge would be minor in nature and therefore SHG wonders why dispersing this *de minimus* charge among a greater number of ratepayers would be so burdensome. The argument that large industrial customers need an exemption in order to maintain low electric rates leads one to believe that perhaps the RPS surcharge will not be as insignificant as parties have been told.

The Commission cannot continue to overburden one sector of the ratepaying population and hope to achieve its stated goal of increasing competition. The Commission's goals of increasing economic development through negotiated rates, exemptions from costs and public policy programs are laudable but must be reviewed in a more reasoned fashion. That would appear to be the Commission's position already given the SAPA notice of a rulemaking being commenced to consider implementation of the RPS adopted in the September 24 Order.

If the Commission is only now beginning to review implementation issues then it clearly has not set in stone its position on what the charges are that are to be passed through to ratepayers. If that is the case then it is reasonable to believe that part of the implementation phase will be a further discussion of the details of the RPS, including the non-bypassable wires charges. All the SHG is asking is that the Commission consider a formula for exemption that does not unduly burden the remaining ratepayers.

Last, no collaborative process, whether final or ongoing such as the RPS proceeding, can justify the imposition of rates that are unjust and unreasonable and discriminatory. Further, to charge such rates to small generators that will be paid, or at least will seek due to financial distress, RPS payments requires reconsideration.

Copies of this letter have been served all parties via electronic mail.

Respectfully submitted this 15th day of November 2004.

 /s/
Paul V. Nolan, Esq.

cc: Active Party List via List Server