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October 25, 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 submits an original and twenty-five (25) copies of this letter seeking clarification and/or reconsideration of portions of the Commission's Order Regarding Retail Renewable Portfolio Standard, issued September 24, 2004 (September 24 Order).

The Small Hydro Group's understanding is that the purpose of instituting a Renewable Portfolio Standard (RPS) is to promote, encourage and facilitate the development of renewable power within the State of New York such that by the year 2013 New York will have or will receive 25% of its retailed electric power from renewable resources. Therefore, those members of the Small Hydro Group having existing power generation seek clarification of the order insofar as the order, as issued, presents several barriers to the continuing existence of small hydroelectric power projects in New York State. At a minimum these barriers will force existing hydroelectric power producers to seek to sell their renewable power out of the State.

It should also be noted that some of these barriers will delay or frustrate expansion plans for existing hydroelectric plants as well as new plants due to the uncertainty and timing issues presented by the September 24 Order.

Undue Discrimination. The RPS policy adopted by the Commission in the September 24 Order unduly discriminates against existing hydroelectric power facilities, especially with regard to existing hydroelectric power plants that are albeit "vintage" and have been operated and maintained in good condition. This discrimination occurs in several ways.

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.

First and specifically, “vintage” hydroelectric power facility owners/operators are amazed that they will receive no recognition of their “green attributes.” Property interests that the Commission or its Staff appear to be asserting have been alienated via the Environmental Disclosure Proceeding. Case No. 94-E-0952, Opinion No. 98-19, Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism, issued December 15, 1998. Yet, at the same time that these plants will not be compensated for their green power benefits, they will be forced by the Commission to pay wires charges for a renewable program. A program that will not be funded by large industrial customers whose electrical demands represent a significant contribution to the deficit of renewable power to be made up by the RPS program. In short, existing hydroelectric facilities are funding the responsibility of large industrials and other exempt entities while at the same time receiving no commensurate monetary benefits from the program, even assuming that some may qualify for some financial distress payments.

Second, and even more amazing, is that poorly designed or maintained renewable projects, whether existing or new, will be funded in part by the existing hydroelectric plants, which again will not be receiving a commensurate benefit. This is social engineering at its worst. That there are some ill-defined benefits of an undetermined amount and for an unspecified period only exacerbates the problems with the September 24 Order, which rewards poor design or management at the expense of good operators.

That being said, the Small Hydro Group has concerns with the Commission’s order in the following areas:

1. The imposition of a non-bypassable wires charge to be collected from existing small hydroelectric power operators. It is patently unfair and does not make sense for producers of renewable power to pay a wires charge to support a retail renewable portfolio standard. The imposition of this charge imposes additional costs on the hydroelectric facility, which would act as a disincentive to the continued production of green power. The large industrial customers are getting it all with the RPS as designed – they’re eating our lunch. It makes no sense that large industrial customers are exempted from this charge, which would have the producers of green power funding the development of green power in order to provide that power at favorable rates to large industrial customers.

A statewide goal should be supported by all consumers.

2. The RPS as adopted in the Commission’s order tacitly gives utilities a foothold on the argument that they own the green attributes. The Small Hydro Group reemphasizes that the RPS as designed will have the green power producers not paid for attributes but will have them pay NYSERDA to fund the addition of green power.
3. The Small Hydro Group is concerned that the Commission in its order deferred too much for subsequent proceedings thereby hindering the possibility of RPS assistance for existing facilities until the development of criteria for proving one’s financial need. By deferring this, the

Commission is essentially putting development and refurbishment on hold while demanding a higher percentage of renewable power be retained in New York. The Commission should be giving more guidance in the form of at least 10-year payments with a minimum rate set so that everyone knows from where they are starting.

4. The Commission should reconsider its order and entertain adoption of an externality credit. Adoption of an externality credit could have eliminated a certain amount of ambiguity in the RPS as designed.
5. The RPS order does not provide any guidance at all to renewable power producers of how long they will be paid under the program. What happens when New York achieves the goal of 25%? Will the producers of the renewable power cease to receive funding or incentives? Without the use of contracts the power producers cannot know what happens at the “end”.
6. The RPS program as designed is essentially another subsidy for large industrial customers. Residential ratepayers are again being asked to pay a wires charge so that the largest customers, and therefore the buyers of the green power, will be able to achieve the State’s directive to utilize green power. In other words, the State is asking that residential consumers foot the bill for the government’s directive, in essence a hidden tax. Once this particular bell has been rung it cannot, unfortunately, be unring – government mandated programs don’t seem to ever go away.
7. The costs to be incurred by existing hydroelectric facilities and the protracted and speculative nature of the yet to be finalized resulting program to be administered by NYSERDA, gives an incentive for developers and owners of existing facilities to look to selling their power and/or green attributes out of state. As a result, the RPS program and associated costs to New York ratepayers will have to be expanded to make up for renewable power migrating out of New York.

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

Respectfully submitted this 25th day of October 2004.

 /s/
Paul V. Nolan, Esq.

cc: Active Party List via List Server