

PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK

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: Proceeding on Motion of the :  
Commission Regarding a Retail : Case 03-E-0188  
Renewable Portfolio Standard. :  
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COMMENTS ON BEHALF OF  
CENTRAL HUDSON GAS & ELECTRIC CORPORATION  
ON IDENTIFIED THRESHOLD ISSUES,  
AND ADDITIONAL OBSERVATIONS

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ON IDENTIFIED THRESHOLD ISSUES,  
AND ADDITIONAL OBSERVATIONS

In accordance with the Ruling Concerning Procedure and Schedule (Issued February 20, 2003), as supplemented by the Ruling Revising Schedule (Issued March 6, 2003), Central Hudson Gas & Electric Corporation ("Central Hudson") submits the following responses to certain of the "threshold issues" identified in the Commission's Order Instituting Proceeding (Issued and Effective February 19, 2003).<sup>1</sup>

In addition, in response to the discussions at the March 4, 2003 Procedural Conference, Central Hudson also submits observations about the proceeding.

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<sup>1</sup> A number of the threshold issues do not appear to relate directly to Central Hudson's core interests. While not commenting on them at this time, Central Hudson reserves the right to participate concerning them throughout the proceeding.

INITIAL RESPONSES TO  
IDENTIFIED THRESHOLD ISSUES

- A. Commission Issue 1: "The types of resources that should be considered as "renewable" for the purposes of a renewable portfolio standard."

Response:

Determining the "type" of resource (i.e., technology) is necessary, but insufficient, to describe the "type" of resource that should be considered "renewable" for purposes of this proceeding. Central Hudson is prepared to accept any kind of technology generally agreed to by other parties as "renewable" for purposes of this case provided that an economic criterion is also included in defining those resources. For example, a resource requiring a selling price for its output significantly above the zonal real time market clearing price to recover its costs would not be considered "renewable," but a resource requiring a selling price slightly above-market might be.

In addition, no private entity (i.e., utility or ESCO) should be required to purchase power from a resource owned by a publicly-owned entity. Furthermore, new publicly-owned resources should count towards any statewide renewables goal, but not qualify for any financial "incentives" that privately-owned entities might be required to fund.

- B. Commission Issue 3: "The retail suppliers that should be required to sell energy from renewable resources."

Response:

The phraseology of the question as written contains two implicit presumptions: That there should be some form of "requirement" to sell energy from renewable sources as an outcome of this proceeding;<sup>2</sup> and that the "requirement" be limited to retail sellers of energy. These presumptions are premature at this time and may turn out to be unwarranted. For example, as discussed below, Central Hudson believes that any state incentives determined to be necessary and appropriate to encourage increased use of renewables should be implemented at the wholesale, rather than retail level. In that way, all kWhs will be treated equivalently and the costs spread as broadly as possible.

It is well settled that utilities must make purchases on behalf of their customers at lowest reasonable costs. The 2002 State Energy Plan (at 3-42) acknowledges that the costs of renewable resources are higher than the costs of "conventional" resources.<sup>3</sup> Any "requirement" that regulated

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<sup>2</sup> Given the significant existing levels of renewables already within New York, it is questionable whether "requirements" (as may have been imposed elsewhere) are either necessary or desirable here.

<sup>3</sup> The Energy Plan presents a limited amount of quantitative information, but does refer to the higher costs of renewables as a barrier to development of renewable resources. Some costs per kW are presented at 3-58 of the 2002 Energy Plan, but estimates of cost per kWh,

utilities purchase power from renewable sources at above-market prices would conflict with those long-standing obligations.<sup>4</sup>

Exclusion of any segments of the market from equivalent responsibility for new renewables will cause economic distortions or other inappropriate burdens. For example, public authorities (NYPA and LIPA) supply about 25% of total NYS energy sales. Any state-wide obligation concerning renewables that excludes consideration of the energy from public authorities would thus have the consequence of requiring that incremental growth in renewables be realized from only 75% of the NYS total; which is equivalent to requiring that non-public entities be responsible for 133% of the increase that would be required with the public authorities also responsible. Additionally, it appears that at least one of the Commission's "threshold issues" contemplates potential exemption of ESCOs from responsibility for new renewables. Exemptions or exclusions will heighten the disproportionate impacts and cause greater schisms with prudence obligations.

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recognizing the intermittent production expected from virtually all forms of renewable resources, were not included.

<sup>4</sup> The EIS analysis must fully describe and consider the economic and other social consequences of any mandate to utilities requiring divergence from their general obligations to make prudent, least-cost purchases. NOTICE OF DETERMINATION OF SIGNIFICANCE (Issued March 18, 2003).

- C. Commission Issue 4: "The impact, if any, on the ability of energy services companies' (ESCOs) abilities to compete with utilities if they are required to procure renewable resources beyond what their customers request, given the relative sizes of the loads supplied by utilities and ESCOs currently, and how such impacts might be overcome."

Response:

If a state mandate to purchase renewables is warranted at all, the premise of any such requirement must be that it is in the interest of the public. The public includes all consumers, regardless of the type of supplier of electricity (utility, ESCO, cooperative, municipality or public authority). Any mandate should apply equally to all market participants.

There is a certain inconsistency in the premise of the question. The potential that members of the public would be encouraged to "opt out" of a policy purportedly adopted in their interest is a statement about the inappropriateness of the policy itself.

- D. Commission Issue 5: "The best methods for retail suppliers to procure renewable resources (e.g., construction and ownership versus purchases.)"

Response:

As noted above, purchase of output from renewable resources at above-market prices inevitably conflicts with utilities' prudence obligations. It is, moreover, very difficult to believe that a broad requirement to buy power

at above-market prices can be reconciled with the Commission's stated objective of workably competitive markets that reduce costs to consumers.

With respect to ownership, existing Commission policy calls generally for separation of generation from electric delivery entities. Specifically, Central Hudson's Restructuring Settlement Agreement (¶ VII.G.) precludes ownership by Central Hudson of such resources<sup>5</sup> within its service territory.

E. Commission Issue 6 "Methodologies for the recovery of costs by regulated utilities."

Response:

Generally, utilities may not prudently make purchases from above-market resources. If utilities are required nonetheless to make above-market purchases from renewables, utilities should be permitted to flow through, as incurred, all of the costs of meeting those mandates.<sup>6</sup>

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<sup>5</sup> Retention of certain small hydro and CT resources for local area transmission support was permitted. Those sources total about 100 MW; about 60 MW are renewable hydro resources.

<sup>6</sup> Central Hudson's existing rate plan includes mechanisms that can easily treat those costs in the same fashion as other supply costs.

F. Commission Issue 7: "Individual retail suppliers' targets, if appropriate."

Response:

Utilities should have no obligation to make purchases of above-market resources. If some form of state requirement is shown to be warranted, all market participants should have the same kind, degree and type of "targets." Supplier by supplier "targets" are neither necessary nor desirable.

G. Commission Issue 9: "The appropriate means to monitor progress toward meeting the goal and to ensure results, including possible rewards and disincentives."

Response:

Any consideration of these subjects is premature pending determination of the kind and level of the "goal," the actual need to "ensure results," and resolution of the inherent conflict between the premise of the question and utilities' prudence obligations. The subjects raised by the question should be deferred until such time as resolution of the above matters has been attained.

#### OBSERVATIONS

A. Ends and Means

Central Hudson is not opposed in principle to state-mandated economic assistance to renewable resources, but is concerned about the approaches that appear to have been

contemplated thus far. Moreover, as discussed below, the policy debate should include the questions (i) whether state assistance is appropriate, (ii) whether to impose a renewables portfolio standard, (iii) whether to impose some other means of attaining a 25% "penetration" of renewables, (iv) whether to select some other objective (e.g., a 19% or a 10% renewables penetration level), and (v) what mechanisms best implement the goals eventually selected.<sup>7</sup>

If state assistance in commercializing new renewable sources of generation is determined to be appropriate, that goal would be better accomplished, in Central Hudson's view, through establishing a market for predetermined quantities of renewables at the ISO and including the above-market costs of the renewables as an "uplift" charge on ISO transmission (exclusive of wheel-throughs or wheel-outs).

Under this concept, a phased-in renewables "set aside" would be established as an annual goal. To illustrate: The Commission's Order suggests that the amount of energy involved is 8% (25%-17%) of NYS energy. The Governor

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<sup>7</sup> Choice of implementing mechanism is not trivial. Recent experience with the now discredited 6 cent law, and the Commission's decisions implementing that statute, have demonstrated that state-imposed purchase requirements can produce severe, if unintended, adverse consequences. This history cautions against repetition of Commission-imposed purchase mandates on regulated utilities.

defined a 10 year horizon; this is roughly equivalent to  $\frac{3}{4}$  of 1% growth in renewables production statewide, per year from present levels. However, as noted elsewhere herein, Central Hudson believes that the question whether any additional renewables sources should receive state assistance is an important, and must be an integral, part of the present proceeding.

Mechanistically, the set aside goal would be implemented as follows:

- (i) PSC establishes criteria for new renewable sources ("NRS").
- (ii) PSC determines ceiling prices for each type of technology. Ceiling prices would be based, in some appropriate fashion, on actual costs. (These first two steps could be completed as part of the present case.)
- (iii) Individual renewables sources would subsequently seek a Commission determination that the source is in compliance with the Commission's criteria. Such a source would then become a "qualified new renewable source" or "QNRS." The Commission could establish a form of competitive solicitation to assure that the most economic proposed projects become "qualified." The Commission would use the qualification procedure to limit the above-market benefits to the extent needed to meet the renewables growth criterion.
- (iv) The qualification as a QNRS would permit the QNRS to participate in the program at the ISO.
- (v) QNRS would bid into the ISO in a pre-defined fashion that assures dispatch (details to be developed) in the ISO's zonal real time market.

- (vi) The difference between the market price paid by the ISO and the PSC ceiling price would be identified by the ISO and recovered as "uplift" across all transmitted power consumed within NYS.

As described above, output from QNRS can be sold into the ISO without distorting the ISO's existing wholesale markets.

The above-market incremental costs of new renewables should be spread over the broadest base. Fairness among market participants is addressed by establishing aliquot participation on identical terms (i.e., costs carried by every kWh) by all users of the NY transmission system (exclusive of wheel-throughs and wheel-outs).

Commission qualification of individual sources and establishment of ceiling prices, together with access to the ISO markets as described above, should provide an appropriate basis for financing new renewables sources on reasonable terms. The above approach will also tend to maximize the benefits to new renewables sources by eliminating the marketing by every individual source to find specific buyers for its output that otherwise would be required.

Any institutional or jurisdictional issues should be susceptible to being resolved.

Nothing in the above approach is intended to preclude any LSE from entering into voluntary bi-lateral agreements for renewables energy, capacity or ancillary services. However, those transactions are not included in the above mechanism; any premium price to market in the case of a bilateral agreement would be borne by the purchasing party and not included in the state-wide uplift. Likewise, any benefits would go to the purchasing party and not be shared with other entities.

B. Scope of Proceeding

The Commission's Order Instituting Proceeding<sup>8</sup> stated that 17% of the electricity recently used in New York was provided by renewable resources. After stating that 25% of energy was provided by renewable resources four decades ago, the Commission concluded that a "return to the 25% figure would be in the public interest."<sup>9</sup>

No basis for the Commission's "public interest" conclusion has been stated. Whether correct or not, that conclusion was unsupported by analysis and is premature. That conclusion has, however, committed the Commission to requiring a renewables portfolio standard that bridges the

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<sup>8</sup> ORDER INSTITUTING PROCEEDING (Issued and Effective February 19, 2003).

<sup>9</sup> Id. at 2: "Only about 17% of the electricity currently used in New York State is provided by renewable resources. This figure reflects a disturbing decline from 25% of four decades ago. A return to the 25% figure would be in the public interest."

gap to a 25% statewide renewables penetration. It is therefore an agency "action,"<sup>10</sup> and the Commission should have prepared an EIS before taking that action. Matter of WEOK Broadcasting Corp. v. Planning Board of the Town of Lloyd, 79 N.Y.2d 373, 383 (1992); Chinese Staff and Workers v. City of New York, 68 N.Y.2d 359, 363 (1986); Jackson v. New York Urban Devel. Corp., 67 N.Y.2d 400, 415-17 (1986). The Commission's conclusion that it must prepare an EIS for possible future actions pursuant to the Order Instituting Proceeding<sup>11</sup> is an implicit acknowledgement that an EIS should have been prepared prior to reaching the public interest conclusion in the Order Instituting Proceeding.<sup>12</sup>

#### CONCLUSION

While Central Hudson is not opposed in principle to any form of state assistance to new renewables sources, it has substantial reservations about the approach envisioned by the Commission. Mandated purchase obligations on regulated utilities have already proven to have severe, if unintended, adverse consequences. The Commission's

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<sup>10</sup> The term "action" is defined in the DEC regulations to include "...planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions" [6 NYCRR § 617.2(b)(2)].

<sup>11</sup> See, note 4, supra.

<sup>12</sup> SEQRA places substantive (as well as procedural) obligations on agencies, including the obligation to "...choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental

presumptive reliance on that means of implementation is misplaced and unwise in Central Hudson's view.

Utilities should not be asked, contrary to long-standing prudence obligations to make lowest reasonable cost decisions in power supply for their supply customers, to buy power at above-market prices.

More basically, proposals that would produce increases in energy costs through requiring escalating utilization of above-market sources of power are not consistent with the Commission's existing policy endorsing workably competitive markets for the purpose of reducing costs to consumers.

A Commission requirement to expand the use of renewables may, or may not, be in the public interest. Since the case for either proposition has not yet been made in the fashion required for administrative agency decision-making, there can be no presumption in favor of either outcome at this time.

If appropriate analyses are performed, and they show that a state agency mandate to increase utilization of renewables is, in fact, in the public interest, that mandate should be implemented at the wholesale level, without distorting the ISO's markets, by recovering the

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effects...." ECL §8-0109(1). This obligation applies whether or not an EIS is prepared by an agency.

above-market portion of renewables costs as uplift, across  
all kWh transmitted within New York.

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Respectfully submitted,

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