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Steven R. Pincus
Associate Counsel

March 28, 2003

HAND DELIVERY

Hon. Janet Hand Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case No. 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard
Comments of Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc.

Dear Secretary Deixler:

Pursuant to the Ruling Revising Schedule issued March 6, 2003, enclosed please find an original and five copies Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.' Comments in the above referenced proceeding.

Please do not hesitate to contact me if there are any questions regarding this matter.

Thank you.

Respectfully submitted,

Steven R. Pincus
Attorney for Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

Xc (Via email): Active Party Service List
Honorable Eleanor Stein

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

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COMMENTS OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
AND ORANGE AND ROCKLAND UTILITIES, INC.

On February 19, 2003, the New York State Public Service Commission (the "Commission") issued its *Order Instituting Proceeding*[1] to develop and implement a renewable portfolio standard ("RPS") for electric energy retailed in New York State ("RPS Order"). Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (together hereinafter referred to as the "Companies"), hereby submit their comments pursuant to the Procedural Ruling and the Ruling Revising Schedule.[2]

INTRODUCTION

The Companies appreciate the opportunity to participate in the development of policies relating to the development of retail renewable portfolio standards as well as to address the Commission's concerns and goals as stated in the RPS Order. The collaborative process initiated by the Commission is a good starting point to explore the issues and options with respect to a RPS. The Companies believe that additional data and information is needed to implement a RPS in New York State. Specifically, the Commission's Staff or NYSERDA should quantify the benefits of a RPS and then perform a technical and economic feasibility

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[1] Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard* (February 19, 2003)
[2] The *Procedural Ruling* allowed for the filing of Initial Comments by March 21, 2003, and Reply Comments by March 28, 2003. On March 6, 2003, Judge Stein issued a *Ruling Revising Schedule* in this proceeding allowing for

study and market analysis of the available options in parallel with and as part of this proceeding. This should be accomplished while the parties are exploring RPS options and working together to address the threshold issues in the collaborative process.[3]

The Companies believe that a RPS should be implemented on a voluntary basis. The Companies are concerned that increased costs to customers would be the result of a mandatory RPS. In the Companies' view, the stated goals and objectives of the Commission can be fully met by a voluntary RPS while not increasing the overall cost to consumers in general. A voluntary approach would allow greater flexibility to address complex issues such as the ability of utility and non-utility energy suppliers to comply with the portfolio requirement. The impacts on both types of business will be significant but different, and those impacts should be reviewed. Flexibility would also allow the role of government to be more fully developed. Our sense is that government and government-sponsored agencies should play a prominent role in implementation of a RPS standard as outlined by the Commission.

THRESHOLD ISSUES

The Procedural Ruling encouraged the parties to address the threshold issues listed by the Commission for comment. These comments address each of the threshold issues in the order they were presented by the Commission. Additional related issues are also addressed, as appropriate.

1. The types of resources that should be considered as "renewable" for the purpose of a renewable portfolio standard.

An important issue to address is whether hydroelectric generation should be included in the definition of renewable resources. Executive Order No. 111 includes in its definition of

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the parties to file Initial Comments by March 28, 2003. The *Ruling Revising Schedule* made no provision for written reply comments.

renewable resources energy generated from wind, solar thermal, photovoltaic, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.[4] While Executive Order No. 111 does not include hydroelectric generation as a renewable resource, the *2002 New York State Energy Plan and Final Environmental Impact Statement* (the "State Energy Plan") includes such generation as a renewable resource.

The Companies' view that hydroelectric should be included is supported by the size of the RPS goal or target. If hydroelectric generation is excluded from the definition of renewable resources, then a goal of 25% is probably unattainable in the given time frame and the costs to our customers of meeting even a lower target will increase dramatically. The RPS Order stated that about 17% of the electricity currently used in New York State is provided by renewable resources[5]. According to Staff's baseline information on renewable resources used in New York State,[6] of the 18.35% baseline, 17.58% comes from hydroelectric generation sources. The NYSERDA Report cited by the Commission in the RPS Order concludes that the 15–17% of generation that comes from small hydroelectric and biomass facilities should be counted toward meeting the 25% goal in 2013.[7] Other forms of generation, such as municipal solid waste, might also be considered for inclusion in the definition of renewable resources, especially if a mandatory program set at the 25% goal is adopted.

2. The appropriateness of including renewable resource energy procured from outside the State, such as hydropower from Canada or wind energy from New England.

[3] *RPS Order* pages 3-5.
[4] *Executive Order No. 111*, 9 N.Y.C.R.R. § 5.11 (October 15, 2002)
[5] *RPS Order* at page 2.
[6] In the *Ruling Revising Schedule* dated March 6, 2003, Judge Stein asked Staff and NYSERDA to develop a baseline inventory to determine the percentage of energy derived from renewable resources that is currently bought in New York State. Staff filed this information on March 17, 2003.
[7] *Preliminary Investigation into Establishing a Renewable Portfolio Standard in New York*, by NYSERDA, February 14, 2003, page 5 of 7.

Inclusion of out-of-state resources is appropriate for a number of reasons. Certainly, any assumption that all out-of-state energy is environmentally adverse (or, for that matter, environmentally benign), which would seem to be an assumption implicit in disregarding out-of-state energy in this proceeding, would paint an inaccurate picture of the state's energy sources. Excluding out-of-state resources would also be counter to the trend to regional energy development. Viewing generation from a regional basis rather than a statewide basis is consistent with the development of regional electric markets. Regional market development is appropriate and a regional focus will be facilitated by including out-of-state renewable resource purchases toward the RPS goal. Both out-of-state renewable energy purchases and renewable energy credits[8] ("RECs") purchases should count toward the State's goal. RECs could support the State's RPS efforts by making it more compatible with surrounding states' RPS requirements.[9]

3. The retail suppliers that should be required to sell energy from renewable resources.

The Commission should not impose a mandatory RPS goal on retail suppliers in New York State. Under a voluntary RPS program, all retail suppliers would offer to their customers RPS or "green marketing" products at cost in an effort to meet the statewide RPS goal. While statewide goals should be established and monitored for progress, the failure to meet the goals should not result in penalties against any retail supplier. If the RPS goals are not being achieved, then the Commission could revaluate the RPS program and determine the reasons for the shortfall. This analysis could then be used to develop and implement approaches to increase participation. In addition, the Companies believe that the New York Power Authority ("NYPA") and the Long Island Power Authority ("LIPA") ownership or procurement of renewable energy

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[8] *See* discussion regarding trading and banking RECs in issue 10 below

sources should count toward meeting a statewide RPS goal.[10] It would be especially important to count NYPA and LIPA energy purchases toward the RPS goal if the RPS adopted by the Commission were mandatory.

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.

Under a voluntary RPS goal, ESCOs' ability to compete will not be impacted by the RPS. Even if the Commission adopts a mandatory RPS, the Companies believe that there would be no impact on the ESCOs ability to compete with utilities. In fact, the adoption of a high percentage renewable usage goal by State government and agencies could create significant business opportunities for ESCOs to deliver renewable commodity and potentially perform turnkey installations of solar and other site specific renewables.

5. The best methods for retail suppliers to procure renewable resources (<u>e.g.</u>, construction and ownership versus purchases).

The Commission should not dictate the method of procurement for renewable resources under a RPS. The NYISO could create a renewable resource power market to enable suppliers of all sizes to purchase renewable resources to satisfy their supply demands.

6. Methodologies for the recovery of costs by regulated utilities.

Under a voluntary program, regulated utilities should be able to charge customers who opt to purchase renewable energy the full costs of those products. This is particularly true if the cost of renewable energy is higher than that of other sources of power, since in that case, ESCOs will be unable to compete if the utilities' customers are paying less than its full cost.

7. Individual retail suppliers' targets, if appropriate.

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[9] *Id*.
[10] This position is supported by the NYSERDA Report at page 6 of 7.

The Commission should use a statewide target for the RPS to monitor progress toward meeting the RPS goal and re-evaluate the RPS program if statewide goals are not met.

8. The potential impact on reliability and system operations due to the addition of renewable resources, especially those resources that operate only intermittently (e.g., windmills and photovoltaics), and what, if anything, must be done to ensure that reliability is maintained.

NYISO rules concerning the treatment of renewable resource generation as Installed Capacity and Unforced Capacity should be considered in addressing any reliability concerns. System operations issues also include the application of interconnection requirements to renewable resource generation. When interconnecting renewable resource generators to utility transmission or distribution systems, reliability and system protection should not be compromised for the sake of encouraging the development of renewable resource technologies.

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

Unless there is sufficient renewable resource generation available, utilities and other retail suppliers will necessarily fall short of any RPS goals or targets. Since the target for renewable energy established in Executive Order No. 111 is higher than currently available, any incentives should be directed to encouraging the development and construction of new renewable resource technologies and increasing the availability of renewable energy supply. New York State utilities generally cannot build new generation; accordingly, incentives should be directed to those other parties who are in a position to develop new renewable resources.

As to monitoring progress toward meeting RPS goals, the Commission could monitor such progress if RECs are adopted for the RPS.[11] Under a system using RECs, the Commission or the NYISO would have already verified, at the time RECs are issued, that RECs represent the

[11] *See* discussion regarding trading and banking RECs in issue 10 below

actual production of qualifying renewable energy. Therefore, every unit of energy generated by a renewable resource would have a REC associated with it. The Commission would only need to track the number of RECs as they are turned in for purposes of monitoring progress toward meeting the statewide RPS goal.

10. The appropriateness of a 'renewable attributes trading' system, and the components of any such system that might be developed.

In addition to purchasing electricity from renewable resources, the Commission should include tradable RECs as part of any RPS. Under such system, retail suppliers acquire tradable RECs that represent the production of electricity from renewable resource generation facilities. As noted above, such a system would allow the Commission or the NYISO to monitor progress in meeting RPS goals. Such a system would also give retail suppliers the opportunity to trade or bank RECs for use in subsequent year true-ups.[12] A RECs trading system would be market-based in nature and it would promote a competitive renewables market. RECs trading may also facilitate forward markets and, thus, price hedging. Consideration should be given to determine if RECs will reduce the overall cost of a RPS. If so, this would be another advantage supporting the adoption of a REC system. In addition, the REC market will provide price signals that encourage the investment and development of further renewable resources.

11. The impact, if any, on the Commission's Environmental Disclosure Label Program, and any modifications that might be needed and appropriate for that program.

The Environmental Disclosure Label Program[13] could also provide an opportunity for the Commission to track progress in meeting the State's RPS goal. There is a potential, however,

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[12] When RECs are banked a retail supplier can use RECs generated during one year to count toward RPS goals in the following year or years.

[13] Case No 94-E-0954, *In the Matter of Competitive Opportunities Regarding Electric Service*, filed in C 93-M-0229, *Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism*, Opinion No. 98-19, (December 15, 1998).

that the use of RECs for banking, as discussed above, may cause a mismatch between total generation and total sales each year. For instance, if a retail supplier banks RECs a from prior year to count toward the RPS goal in a subsequent year, there will appear to be a renewable resource deficit in the subsequent year and a surplus in the prior year unless the disclosure label takes into account the banked RECs.

12. The practicality of installing new renewable facilities in the high load areas of the State. If the targeted renewables are built upstate, the impact, if any, such construction might have on the addition of new resources in the load centers where they are most needed, and the appropriate means to ensure that additional generation and transmission resources will be built where they are most needed.

The issue of transmission congestion and siting generation at or remote from load centers is one that is not unique to renewable resource generation and it need not be addressed in this context. In a voluntary statewide RPS program, using RECs, there will not be any need to locate renewable resource in load centers.

13. The impact, if any, the renewable portfolio standard would have on existing green marketing programs in the State, and what the State might do to support developers and green power marketers during the process of developing rules to implement the standard.

The Companies do not believe that existing green marketing programs in the State will be impacted by a voluntary RPS under which regulated customers pay full cost. Green marketing programs could be integrated into a voluntary RPS program.

14. Changes needed, if any, by the Public Service Commission and NYSERDA in the SBC-funded renewable energy program to coordinate with the new target.

The Commission's July 2, 1998 Order in the competitive opportunities proceeding approving system benefits charges,[14] provided for the funding of public benefits programs

[14] Case No. 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service, Order Approving System Benefits Charge Plan with Modifications and Denying Petitions for Rehearing*, (July 2, 1998)

through a system benefits charge ("SBC"), including research and development programs related to renewable energy initiatives.[15] On June 12, 2002, NYSERDA filed with the Commission a SBC Operating Plan (2001-2006) in compliance with the Commission's January 26, 2001 *Order Continuing and Expanding the System Benefits Charge for Public Benefits Programs*[16], as amended by a July 3, 2001 Order.[17] NYSERDA's SBC Operating Plan includes approximately $200 million in additional funding for purposes such as energy and environmental research and development, including renewable energy research. This proceeding should consider the extent to which such SBC funds intended for NYSERDA's renewable energy program could and should be reallocated and used to pay for administering the RPS program.

Respectfully submitted,

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[15] *Id.* at page 7.
[16] Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service, Order Continuing and Expanding the System Benefits Charge for Public Benefits Programs*, (January 26, 2001)
[17] Case 94-E-0952, In t*he Matter of Competitive Opportunities Regarding Electric Service, Order Addressing Petitions for Clarification and/or Rehearing and Adjusting SBC Budgets*, (July 3, 2001)