



Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600
Telecopier: (518) 426-0376

Leonard H. Singer
Partner
Direct Dial: (518) 320-3406
Direct Telecopier: (518) 320-3499
email: lsinger@couchwhite.com

March 28, 2003

VIA HAND DELIVERY

Honorable Janet Hand Deixler
Secretary
New York State Board on Electric
Generation Siting and the Environment
Three Empire State Plaza - 14th Floor
Albany, New York 12223-1350

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

Dear Secretary Deixler:

Enclosed are an original and three copies of the “Initial Comments of FuelCell Energy, Inc.,” in the above-captioned proceeding. Pursuant to the “Ruling Revising Schedule N,” issued on March 6, 2003, by Administrative Law Judge Eleanor Stein, all parties to this proceeding have been served by electronic means.

Very truly yours,

COUCH WHITE, LLP

Leonard H. Singer

LHS/dp

Enclosures

cc: Service List (via email w/enc.)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission
Regarding a Retail Renewable Portfolio
Standard**

Case 03-E-0188

**INITIAL COMMENTS
OF
FUELCELL ENERGY, INC.**

Dated: March 28, 2003

**COUCH WHITE, LLP
540 BROADWAY
P.O. BOX 22222
ALBANY, NEW YORK 12201-2222
(518) 426-4600**

PRELIMINARY STATEMENT

FuelCell Energy, Inc. (“FCE”), a developer and manufacturer of fuel cells for stationary power generation, hereby submits its Initial Comments in accordance with the “Ruling Concerning Procedure and Schedule” and “Ruling Revising Schedule” issued by Administrative Law Judge Eleanor Stein on February 20 and March 6, 2003, respectively, in Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard. These comments set forth FCE’s initial positions on the “threshold issues” identified by the Commission in its February 19, 2003 “Order Instituting Proceeding” (“Instituting Order”).

FCE’s positions on the threshold issues identified by the Commission are subject to possible modification based upon the collaborative efforts of the parties, as well as the development of additional information and analyses. Accordingly, FCE reserves all of its rights to modify its positions, as warranted, during this proceeding.

The Commission has instituted this proceeding “to develop and implement a renewable portfolio standard for electric energy retailed in New York State.” (Instituting Order at 2.) In so doing, the Commission has determined that increasing New York’s reliance on renewable resources to 25 percent of the State’s electricity load “would be in the public interest.” (Id.) FCE fully supports this goal and urges the Commission to implement it as soon as possible.

Moreover, the RPS should not only include but also promote the development of fuel cells so that New York can obtain the environmental, economic and other benefits that will result from this technology. Fuel cells are an advanced technology that can and

should play a vital role in meeting New York's environmental goals. Fuel cells generate electricity and heat through an electrochemical process – that is, without “burning” a fuel. Instead of combustion, a fuel cell reacts a hydrogen-rich fuel (such as natural gas) with oxygen to yield electricity, useable heat, and pure water. In short, fuel cells generate energy for various applications in a way that is extremely clean, ultra-efficient and remarkably reliable.

Fuel cells are not new. However the technology has only recently emerged from the R&D labs into the commercial marketplace. Stationary fuel cell power plants are available today that use fossil fuels and existing fuel supply infrastructure. This technology represents today's “hydrogen economy” products and will lead the way to the hydrogen-based energy future envisioned by so many. Perhaps the most immediate goal among fuel cell manufacturers is to achieve dramatic cost reductions in the manufacturing process. Renewable portfolio standards as contemplated in this proceeding can have a major impact on accelerating market demand and, in turn, volume production that will yield manufacturing economies of scale.

In addition, fuel cells represent a substantial economic development opportunity for New York State in terms of high-technology jobs and capital investment. New York has an opportunity to become the center of an emerging global industry projected to grow to \$10 billion by the end of the decade and up to \$100 billion in the next twenty years. It only makes sense that New York seize this opportunity to lead the way with fuel cells – one of the most promising technologies for the 21st century. It is in the State of New York's interest to assume a leadership role in the energy industry as other states (MI, OH, TX, MA, NJ, CA, and CT) roll out initiatives to become the “fuel cell capital of the world”.

ARGUMENT

FCE’S INITIAL POSITIONS ON THE “THRESHOLD ISSUES” IDENTIFIED IN THE COMMISSION’S INSTITUTING ORDER

In its Instituting Order, the Commission set forth a list of 14 “threshold issues” to be addressed in this proceeding. (Instituting Order at 3-5.) It is FCE’s understanding that the list of “threshold issues” is not intended to be exhaustive. These comments set forth FCE’s preliminary positions on some, but not all, of the issues identified by the Commission.

1. The types of resources that should be considered as “renewable” for purposes of a renewable portfolio standard.

New York State has employed multiple definitions of renewable resources in various contexts. It is FCE’s position that an inclusive definition of renewable resources should be used as part of the RPS and that the definition specifically include fuel cells regardless of the fuel supply employed.

The State Energy Plan refers to the following technologies as renewable resources: hydropower, solar, wind, biomass, ocean energy, landfill gas and fuel cell technology.¹ Executive Order No. 111, issued by Governor Pataki on June 10, 2001, identifies the following technologies as renewable resources: “wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel

¹ State Energy Plan at 3-40.

cells.” More recently, in his January 8, 2003 State of the State address, Governor Pataki specifically included fuel cells as a renewable energy resource to be included in the RPS.

The technologies previously identified by the State as renewable should be included in the definition of renewable resources utilized in any proposed RPS. Fuel cells provide environmental and other benefits that are equal to or greater than any other technology that may be considered “renewable”. Indeed, even if fueled from fossil fuels, fuel cells should be included in the RPS. The environmental characteristics of this technology are as good or better than any other “renewable” technology. For example, wind and solar generation requires coupling with conventional generation in order to supply firm power. Fuel cells, however, are capable of supplying non-polluting clean, and firm, power without being coupled with conventional generation resources.

Fuel cells offer a unique capability to achieve goals to increase renewable energy supplies in the state and have a profound impact on air emissions. Fuel cells, even fueled with fossil fuels such as natural gas, are virtually non-polluting due to the fact that no combustion takes place. With respect to conservation, fuel cells use up to 50% less fuel per unit of electricity generated than conventional power plants. Combined with demand side conservation, supply side conservation offered by fuel cells can greatly impact energy use in the state.

Furthermore, as a natural bridge to the pure hydrogen-based economy, fuel cells operating on fossil fuels can have a positive long-term effect on the diversity of New York’s energy mix. Today’s commercially available fuel cells running off existing fossil fuels will be adapted to use hydrogen and other renewable fuels as available.

There also should not be a limitation on the size of a facility that can qualify to meet the RPS requirements. It is important to deploy large megawatt class fuel cells in order to have a meaningful impact and to ensure cost-effective implementation of the RPS.

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

Renewable resources serving New York, but located physically out-of-state, should not be included in calculating compliance with any RPS that may be implemented. The only resources that should be included are those that have a direct environmental impact on New York.

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

All suppliers – utilities and ESCOs alike – should be required to sell energy from renewable resources. To do otherwise would be equivalent to not having an RPS at all. Applying the RPS to all electricity suppliers, including the distribution utilities when serving as default suppliers, would level the playing field and yield a meaningful market-based incentive for deployment of renewable generation

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.**

FCE understands that allowing regulated utilities to recover their costs of implementing the RPS from ratepayers, as set forth in response to Issue #6 below, could result in competitive issues for ESCOs. The collaborative process should develop mechanisms to address this issue such as allowing non-utility suppliers to access SBC funds to offset any competitive disadvantage caused by allowing regulated utilities to recover costs from ratepayers.

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

Utilities and ESCOs should be required to procure at least 50 percent of the RPS portfolio requirement through long term contracts with suppliers. This requirement is necessary in order to provide the stimulus and economic justification for renewable technologies including fuel cells.

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

The costs associated with purchasing energy from renewable resources should be treated the same as other costs associated with purchasing energy and recovered from the utilities' ratepayers through rates.

7. Individual retail suppliers' targets, if appropriate.

FCE has no position on this issue at this time.

8. The potential impact of 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.

Because of their operating characteristics, fuel cells will not result in degradation of system reliability or operations. To the contrary, fuel cells will enhance system reliability because they provide grid support as a decentralized power generation technology not dependent on transmission or distribution facilities.

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

There should be penalties for non-compliance with the requirement to procure energy from renewable resources. Transparent monetary penalties will enhance the

effectiveness of the program and level the playing field. Non-compliance payments should be remitted to a Renewable Energy Investment Fund and earmarked for development of renewable energy sources.

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

The trading of renewable energy credits within the state should be allowed. This will facilitate ease of compliance – particularly for smaller suppliers. Mechanisms already exist to accomplish such a system. As part of any such system, it is important to provide that renewable energy sources situated on end-user premises and generating power for on-site consumption are eligible sources of renewable energy credits that can be traded for the purpose of meeting the RPS. This would recognize the fact that fuel cells are ideally suited for on-site generation and provide a means for end users to monetize their environmental value. In addition, the trading system should allow renewable power generators to monetize emission reductions in criteria pollutants that result from avoided generation from large fossil- fuel fired generating units.

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.

FCE has no position on this issue at this time.

- 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 relatively small footprint and power density of fuel cells compared to other renewable generation equipment provides the opportunity to satisfy power requirements at these load centers. Fuel cells will enhance system reliability because they provide grid support as a decentralized power generation technology not dependent on transmission or distribution facilities.

- 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.**

FCE has no position on this issue at this time.

- 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 SBC-funded renewable energy program should be amended to explicitly include fuel cells. In addition, the SBC should be reviewed and amended at the conclusion of the collaborative process in this case as necessary to implement the RPS program.

CONCLUSION

For all the foregoing reasons, FuelCell Energy, Inc. urges that the “threshold issues” identified in the Instituting Order should be addressed and resolved in the manner articulated in these Initial Comments.

Dated: March 28, 2003
 Albany, New York

Respectfully submitted,

Leonard H. Singer, Esq.
COUCH WHITE, LLP
Attorneys for FuelCell Energy, Inc.
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
Telephone: (518) 426-4600
Telecopier: (518) 320-3499
E-Mail: lsinger@couchwhite.com