

READ AND LANIADO, LLP

ATTORNEYS AT LAW

25 EAGLE STREET

ALBANY, NEW YORK 12207-1901

(518) 465-9313

KEVIN R. BROCKS
CRAIG M. INDYKE
DAVID B. JOHNSON
SAM M. LANIADO
HOWARD J. READ

ROBERTO C. BARBOSA
JEFFREY B. DUROCHER
STEVEN D. WILSON

TELEFAX NO.
(518) 465-9315

Via Hand Delivery

April 7, 2003

Hon. Janet H. Deixler
Secretary
New York State Public
Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

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

Dear Secretary Deixler:

On behalf of the Independent Power Producers of New York, Inc. (“IPPNY”) we are transmitting to the Public Service Commission and all active parties copies of *Comments of the Independent Power Producers of New York, Inc. on a Proposed Policy for a Renewable Portfolio Standard*.

An original and five (5) copies are served upon the Commission and all active parties are being served via e-mail.

Respectfully submitted,

READ AND LANIADO, LLP

By: _____
Craig M. Indyke

CMI:jas
Enclosures

cc: Active Parties
(Via Electronic Mail)

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE INDEPENDENT POWER PRODUCERS
OF NEW YORK, INC. ON A PROPOSED POLICY FOR A
RENEWABLE PORTFOLIO STANDARD



Respectfully submitted,

INDEPENDENT POWER PRODUCERS
OF NEW YORK, INC.

Gavin J. Donohue
Executive Director
19 Dove Street
Suite 302
Albany, New York 12210
518-436-3749

Dated: April 7, 2003
Albany, New York

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE INDEPENDENT POWER PRODUCERS
OF NEW YORK, INC. ON A PROPOSED POLICY FOR A
RENEWABLE PORTFOLIO STANDARD

INTRODUCTION

The Public Service Commission (“Commission”) instituted this proceeding to develop and implement a renewable portfolio standard (“RPS”) for retail electric sales. Pursuant to the Commission’s February 19, 2003 *Order Instituting Proceeding* (the “Order”) a procedural conference was held on March 4, 2003 and the submission of comments was set for March 28, 2003. Two days of collaborative meetings among interested parties are to follow on April 7th and 8th and thereafter Administrative Law Judge Eleanor Stein (the “Judge”) is scheduled to provide a preliminary report to the Commission on May 2. The Commission may then issue further directions on how it wishes to proceed.

The Independent Power Producers of New York, Inc. (“IPPNY”) thanks the Commission for the opportunity to provide comments on the proposed policy and legal issues concerning the expanded use of renewable resources in New York. IPPNY also welcomes the opportunity to offer experts on renewable resources at the upcoming collaborative sessions. IPPNY is a not-

for-profit trade association representing the independent power industry in New York State. Its members include more than 100 companies involved in the development, operation and ownership of electric generators and the marketing and sale of electric power in New York.

At the outset, IPPNY notes that its fundamental interest is in the continued development and enhancement of reliable and efficient integrated regional wholesale competitive electricity markets. With respect to the RPS proceeding, therefore, IPPNY's interest lies mainly in ensuring the RPS is developed in a manner that is consistent with, and does not undermine in any respect, the functioning of non-discriminatory, competitive energy markets in New York and its surrounding regions. Further, IPPNY's interest in robust, competitive markets leads it to conclude that the RPS policy should be developed with recognition that no single type of renewable generation should artificially be favored to the exclusion of other competitive renewable technologies. With these fundamental principles in mind, then, IPPNY submits comments on the threshold issues set forth in the *Order* and upon additional matters that are implicated in the development of a RPS. Additional matters that the Commission should examine include:

1. The structure of the RPS as it affects the continued development of a regional, seamless and integrated wholesale electric generation market, through the New York Independent System Operator ("NYISO") and its regional counterparts;
2. The ownership of tradable property rights in the renewable resource attributes of resources already under contract;

3. The development of future requests for generation proposals (“RFPs”) by regulated load serving entities (“LSEs”) on a basis that does not unduly discriminate between existing and new generation; and
4. Whether RPS requirements should be based solely on installed capacity, solely in respect of the energy generated, or on a hybrid of these two approaches.

As to Point 1, the introduction of a renewable portfolio should be done in a manner that does not undermine competitive market outcomes and that does not interfere with the continued development of the competitive wholesale electric generation markets that the NYISO administers. The development of a RPS should not cause or contribute to out-of-merit dispatch, or otherwise alter the current practice of operating the electric system on the basis of economic dispatch and reliability concerns. Unbundling the renewable resource attribute (“Attribute”) from the underlying capacity or energy associated with the resource and creating an open, competitive, tradable market in these attributes would be the best policy objective to pursue, in IPPNY’s view, especially since an adjoining region, New England, has successfully adopted such an approach.

As to Point 2, IPPNY strongly believes that the attributes associated with existing resources constitute a newly created commodity that belongs to the owner of the underlying resource, unless already accounted for in transactions entered into by the owner. Accordingly, except where a prior contract specifically has addressed these attributes, the owner of the resource should have the full and unfettered right to engage in commercial transactions for these attributes in the manner it deems appropriate.

As to Point 3, the LSEs’ procurement of electric generation through RFPs must also be harmonized with future renewable additions. IPPNY and the Natural Resources Defense Council (“NRDC”) have requested that the Commission institute a proceeding to develop rules

for the issuance of future RFPs for capacity (IPPNY/NRDC letter of March 7, 2003 to Chairman William M. Flynn). Whether future RFPs cover capacity, energy, unbundled attributes or a combination of these commodities, IPPNY believes the renewable and RFP initiatives should be coordinated so generation is acquired in a competitive manner and existing resources are ensured a level playing field in competition with new resources when RFPs are issued.

As to Point 4, IPPNY believes the Commission should hold open during this stage of the proceeding the question of how best to set the RPS requirement. Three alternatives should be considered: (i) the Commission could set the RPS target on the basis of an installed capacity (“ICAP”) obligation, without regard to how much energy actually is generated by renewable resources (i.e., the attributes would be generated in relation to the amount of renewable ICAP signed up by the LSE) (the “ICAP Approach”); (ii) the target could be set solely on the basis of energy generated (i.e., the attributes would derive from the amount of energy actually generated from renewable resources, as is done in the New England system) (the “Energy Approach”); or (iii) a hybrid approach could be established whereby the target is established on an ICAP basis, but the tradable attributes would be generated on the basis of the actual generation of the renewable resources (the “Hybrid Approach”).

For the remainder of these comments, IPPNY will focus for illustrative purposes on an RPS established based on an Energy Approach. However, many of the principles set forth below apply equally to an ICAP Approach or a Hybrid Approach to an RPS. In this regard, the Commission should be aware that many, if not all, of the issues the Commission must determine in this proceeding have been addressed in the New England control area in the development of the ISO New England Generator Information System (“NE GIS”). New York’s program should be informed by the NE GIS experience and the development of the RPS measures should consider energy, capacity or a hybrid form, with the renewable attributes designated in kilowatt-hours, as a form of tradable product.

Under the NE GIS program, as IPPNY understands it, the electric system is operated by ISO-NE on the basis of economic dispatch, consistent with reliability requirements. Whatever attributes are created are ultimately sold in one of several ways to the load serving entities who are obligated to procure the minimum requirement. To the extent that the electric system is operated in a manner that results in less than the target amount of attributes, LSEs that are short pay a penalty, which is placed in a fund used to facilitate development of renewable resources. IPPNY believes this model harmonizes well with the operation of a competitive marketplace and that the market for attributes could provide the transparent price signal necessary to attract the appropriate level of renewable resource generation.

THRESHOLD ISSUE COMMENTS

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

As noted in the *Order*, properly developed renewable resources could “lower air emissions and increase system reliability.” *Order* at 2. Other important policies--promotion of wholesale and retail sales competition; consumer choice; reduced dependence upon fossil fuel; and economic development--will be advanced if reasonable definitions of renewable technologies are included in the portfolio and careful consideration of the emerging competitive wholesale electric markets is given.

IPPNY encourages the Commission to rule that resources within the scope of the “renewable” portfolio will include wind turbines, co-firing wood with oil or coal, solar, biomass (including direct combustion, co-firing, gasification, and biofuels used to generate electricity), methane waste, hydroelectric facilities and solid waste-to-energy facilities. Each of these forms of generation derive their fuel from sustainable sources and they can be sited and developed in

ways that will contribute to increased fuel diversity, system reliability, lower air emissions and economic betterment.

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

~and~

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

The arbitrary exclusion of renewable resources from outside of New York will not advance the renewables portfolio standard and would undermine the development of a seamless regional market. On the other hand, a poorly crafted RPS could create unintended and harmful economic and environmental outcomes. One such outcome could occur if one particular renewable resource were permitted to dominate the resource mix to the exclusion of others. To avoid such an outcome, and to serve the State's interests, an RPS should be designed to create reciprocal and cross-regional trading opportunities and markets. IPPNY believes the Commission should support the free flow of attributes with regions that have adopted reciprocal requirements. Thus, imports from other regions should be accepted, but only to the extent that those regions offer open, non-discriminatory markets for capacity, energy and attributes. Finally, the Commission should consider whether electric system reliability and fuel diversity objectives should place any restrictions on the amount and type of attributes that can be imported into New York State.

With regard to Threshold Issue 3, IPPNY believes that efficient regional competitive wholesale markets are characterized by the existence of many buyers and many sellers. For this reason, IPPNY has consistently supported the creation of robust retail competition. It follows that any obligations in respect of an RPS should apply to all LSEs, regardless of their size or composition.

4. The impact, if any, on the ability of energy services companies' (ESCOs) 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.

~and~

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

The competitive and economic impact upon ESCOs, if the RPS were to require the purchase of credits or generation that was not requested by their customers is quite solvable. At this time, the best method of procurement of attributes, with fair regard to the ability of all energy service companies to compete, would be to develop an Attribute trading platform that provides all ESCOs with a common and transparent marketplace to acquire renewable resources. This market should not be exclusive and alternatives such as the long-term RPS contracts, bilateral arrangements and self-help projects should be fully permitted to ensure all participants have opportunities to successfully acquire and market renewable resources and their attributes.

There should be no restrictions on the methods available for retail suppliers to obtain renewable resource attributes. The more flexibility allowed, the more likely it is that innovative renewable resources will be developed and the lower the transaction costs will be to the end use customers.

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

The Commission should indicate a willingness to consider and approve the cost recovery of long-term contracts where costs are within a range of reasonable outcomes and the contract will facilitate compliance with RPS. The Commission should also insist that contracts be solicited on a nondiscriminatory basis between new and existing facilities and that credits for Attributes not be tied to pre-existing energy and/or capacity commitments. To facilitate contracts and LSE compliance, however, flexibility to enter into energy and/or capacity arrangements along with Attribute arrangements should be considered. IPPNY notes as well that

implementation of the installed capacity demand curve could facilitate the development of renewable resources, because there will be a transparent market for their capacity, as well as the ability of LSEs to demonstrate the prudence of their contracts with renewable resources.

7. Individual retail suppliers' targets, if appropriate.

~and~

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

Threshold issues numbers 7 and 8 appear to be related in that they request comment on individual retail supply targets and the means to monitor the progress towards meeting an RPS goal. IPPNY already has described three possible approaches (ICAP, Energy or Hybrid) that can be used to set the RPS targets. Regardless of which approach is taken, IPPNY believes the targets should be required annually for all retail electric sales providers with compliance reports to follow in the first quarter of the following year. IPPNY supports the New England approach whereby penalties are imposed on deficient LSEs and the funds so generated are used to support further development of renewable resources. Long-term contracts and significant penalties for non-compliance could be developed to create investment incentives and to avoid costly administrative enforcement mechanisms. The RPS policy also should ensure that the tradable attributes can be "banked" such that attributes generated in one period but not purchased to meet the RPS target for that period may be sold in subsequent periods.

9. 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.

In order to ensure that the high standard of electric system reliability enjoyed by New Yorkers will not inadvertently be undermined by the implementation of an RPS, IPPNY urges the Commission to actively seek review of any proposed RPS policy by, and to solicit input from, the NYISO and New York State Reliability Council. These bodies are uniquely positioned

to provide insight on the impacts that an RPS policy may have on required operational flexibility and system reliability. The Commission should request that the NYISO and New York State Reliability Council prepare a comprehensive assessment of the probable impacts upon the New York Control Area of increased reliance on renewable resources in the manner contemplated in the RPS proposal. The introduction of intermittent generation in relatively significant new quantities will affect the flows and loading upon the transmission grid.

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

As previously stated, an attributes tracking and trading system will be necessary in order to successfully implement a broad-based, uniform RPS. Without it, every retail supplier required to comply with the RPS would have to acquire renewable generation and/or enter into long-term contracts for such generation. The complexity associated with such physical rather than financial contracts will be magnified by, among other things, the intermittent nature of some renewable generators, any variation in the load served by retail suppliers, and the amount of power purchased from the spot market by retail suppliers. Finally, such a physical as opposed to a financial market obligation could have severe and adverse reliability implications on the manner in which the electric system is operated.

A central attributes tracking and trading platform would provide flexibility and administrative cost reduction by streamlining access to renewable attributes. Retail suppliers could purchase those attributes that are needed to comply with the RPS for the load that they have served, and generators could sell their attributes as they are generated.

Such a tracking and trading system could follow the general model implemented by ISO New England’s NE GIS. The basis of this system is the “unbundling” of attributes from capacity and energy, and the subsequent trading of these attributes in a separate market. To avoid creating new seams New York should explore following a similar approach. Each megawatt-

hour of electricity or equivalent megawatt-hour derived from a capacity standard would be assigned a unique Attribute “certificate” in a central database; ownership of that certificate would be initially assigned to the generator. The certificates would then be traded as the market determines, through either a bilateral contract or through one-time purchase of certificates by retail suppliers.

Several issues still need to be resolved. In New York, one of the first issues to be resolved would be identification of the entity that would manage this system. Other issues and components include:

1. Contents of the “certificate”; renewable attributes only, or other environmental characteristics? NE GIS not only assures compliance with RPS requirements, but it provides the data necessary for environmental disclosure.
2. Provisions for a generator’s sale of renewable attributes only, and the resulting characterization of the “null power” that would presumably be sold in the spot market.
3. Accurate tracking of “certificates” from generator to the end-use customer.
4. Banking unsold “certificates.”

The development of a robust tracking and trading system for Attributes would also address Threshold Issues #9 and #2. The trading system would match-up a retail supplier’s load with the renewable attributes that it purchased, providing a reliable means of measuring their compliance with the RPS and the progress toward the development of renewable generation. Seamless integration with surrounding ISO systems would also allow import of renewable Attributes.

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 creation of a renewables attributes trading system will require adjustment to the Commission’s Environmental Disclosure Label Program and current renewable power monitoring initiatives. The trading system will need to assure that there is no double counting of renewable attributes. As proposed by IPPNY, the RPS “certificate” also would serve as the label upon which environment disclosure would be based.

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, that 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 broad based installation of new renewable facilities in high load and population centers of the State is likely to be limited because of a number of competing factors. These include: space and land use and limited natural resource availability. Some renewable modes of electricity may be able to fit within high load, urban environments more readily than others. For example, municipal solid waste-to-energy could be sited nearer to load centers because they are not dependent on specific locations for resources, i.e. wind or hydro supplies.

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 markets during the process of developing rules to implement the standard.

On May 28, 2002, the Commission issued its *Order Adopting Terms of Renewables Joint Proposal* for Niagara Mohawk Power Corporation in Case 01-M-0075 wherein the Commission approved a joint proposal to create a renewable energy marketing and billing program. Under the program, energy service companies are permitted to market renewable resources to customers of Niagara Mohawk at a price which contains a premium for the resource. There are

environmental disclosure, conversion transaction and billing procedures that are intended to enable sellers to stream the renewable resource purchase to buyers, who desire to purchase electricity from renewable forms of energy.

This program has been in effect for less than one year and the Commission should indicate that buyers of “green” or renewable attributes under the Niagara Mohawk *Renewable Order* will be allowed to credit their purchases toward any contemporaneous requirements established in the RPS.

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.

Currently, NYSERDA has funded programs for the development of unbundled renewable resource attributes through 2005. These programs are just beginning to facilitate renewable resource attribute trading and should be allowed to continue as planned.

Respectfully submitted,

INDEPENDENT POWER PRODUCERS
OF NEW YORK, INC.
19 Dove Street
Suite 302
Albany, New York 12210
(518) 436-3749

By: /s/ Gavin J. Donohue

Gavin J. Donohue
Executive Director

Dated: April 7, 2003
Albany, New York.

cc: All Active Parties
(Via Electronic Mail)