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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 Multiple  
Intervenors,” in the above-captioned proceeding. Pursuant to the “Ruling Revising  
Schedule,” 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

Barbara S. Brenner

BSB/sem  
Enclosures  
cc: Service List (via email w/enc.)  
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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

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**Case 03-E-0188**

**INITIAL COMMENTS  
OF  
MULTIPLE INTERVENORS**

**Dated: March 28, 2003**

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## **PRELIMINARY STATEMENT**

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, 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. Multiple Intervenors has participated actively in numerous State of New York Public Service Commission (“Commission”) dockets, including Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, and Case 92-E-0954, Proceeding on Motion of the Commission to Examine the Plans for Implementation of Renewable Resources as Part of Meeting Future Electricity Needs in New York State. In addition, members of Multiple Intervenors are members of the standing committees of the New York Independent System Operator, Inc. (“NYISO”) and participate in those committees and NYISO subcommittees and working groups.

Multiple Intervenors’ Initial Comments are organized into four sections. In Point I, Multiple Intervenors addresses the need to ensure that a renewable portfolio standard (“RPS”), if implemented, does not increase the price of electricity in New York State. In Point II, Multiple Intervenors addresses the need to ensure that a RPS, if implemented, does not impact negatively the continued development of competitive electricity markets in New York State. In Point III, Multiple Intervenors advocates that a RPS, if implemented, should be through voluntary programs. Finally, in Point IV, Multiple Intervenors sets forth its initial positions on the “threshold issues” identified by the Commission in its February 19, 2003

“Order Instituting Proceeding” (“Instituting Order”) and, where appropriate, identifies additional information and analyses that are needed before certain issues are ripe for resolution. Multiple Intervenors’ 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, Multiple Intervenors reserves all of its rights to modify its positions, as warranted, during this proceeding.

### **STATEMENT OF POSITION**

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.*) The Commission also recognized that before a RPS can be designed and implemented, numerous issues, some of which are identified in the Instituting Order as “threshold issues,” must be addressed. (*Id.* at 3-5.) It is important to ensure that the manner in which those “threshold issues” are resolved does not conflict with other well-established State goals.

Electricity prices in New York are well above the national average, and are higher than prices paid in other states that compete with New York in attracting business.<sup>1</sup> Consequently, the State has concluded as a matter of policy that “[e]nergy prices need to be brought more in-line with other states to compete more effectively for economic

opportunities.”<sup>2</sup> It is imperative that a RPS, if implemented, not increase electricity prices and further disadvantage New York’s economy.

It also is State policy to promote effective competition for the provision of electric service.<sup>3</sup> The State Energy Plan concludes that competition “has the potential to reduce energy costs over the long-term, increase customer choices and satisfaction, provide economic development advantages, enhance system reliability, promote technological changes and improvements, and improve environmental quality.”<sup>4</sup> A RPS, if implemented, must not impact negatively the continued development of New York’s competitive electricity markets. It would not be in the public interest to implement a RPS that distorts the State’s competitive electricity markets, or causes energy service companies (“ESCOs”) to withdraw from those markets.

In balancing potentially-conflicting State goals and policies, the Commission should proceed very cautiously and refrain from imposing any mandates that could raise electricity prices in New York State or distort the competitive market. Toward that end, compliance with a RPS, if implemented, should be through voluntary programs. Such programs, if successful, could satisfy RPS goals in a manner that does not increase electricity prices to the general body of consumers or harm the State’s competitive electricity markets.

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<sup>1</sup> New York State Energy Plan and Final Environmental Impact Statement (June 2002) (“State Energy Plan”) at 2-26 – 2-27.

<sup>2</sup> Id. at 2-37.

<sup>3</sup> Id. at 2-1.

<sup>4</sup> Id.

Finally, as detailed in Point IV, infra, many of the “threshold issues” identified by the Commission in its Instituting Order are not yet ripe for resolution. The consideration of many of these issues must be postponed pending further analyses.

## **POINT I**

### **A RPS, IF IMPLEMENTED, MUST NOT INCREASE ELECTRICITY PRICES IN NEW YORK STATE**

Deregulation of the State’s electricity markets primarily was intended to close the gap between electricity prices in New York and the rest of the country, in large part to enable New York businesses to be more competitive. In the Commission’s May, 1996 generic electric restructuring order, in the section entitled, “Vision and Goals for the Future Regulatory Regime,” the Commission stated explicitly that its vision for the future of the electric industry includes “reduced prices resulting in improved economic development for the State as a whole.”<sup>5</sup>

Expanding on this vision, the Commission concluded that:

[C]ompetition should result in lower electric prices in New York State overall than currently. The large difference between New York’s prices and the national average electric price should begin to shrink, rather than growing as it has under regulation. As a result of these lower prices, New York’s competitive position will improve and economic development will be furthered, with the creation of additional jobs and increased opportunities for businesses and residents.<sup>6</sup>

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<sup>5</sup> Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12, “Opinion and Order Regarding Competitive Opportunities for Electric Service” (issued May 20, 1996) at 25.

<sup>6</sup> Id. at 26.

The State Energy Plan, issued in June, 2002, similarly concluded that “[p]olicies that promote a secure, competitive, and reasonably priced energy supply will help attract, retain, and expand business in New York,” and that these policies “support reducing energy costs to consumers....”<sup>7</sup> The State Energy Plan found that: “The increase in business profitability and consumer purchasing power that results from lower energy costs will further stimulate business investment, consumer spending, and employment growth within the State.”<sup>8</sup> As detailed below, the present need to reduce electricity prices and stimulate economic growth is as great as ever. The members of Multiple Intervenors require lower priced electricity if they are to be successful competitors within their own industries. A RPS should not be implemented if it would increase electricity prices in New York State.

**1. Electricity Prices in New York State Are Well Above the National Average**

The average price of electricity in New York State has been, and remains, well above the national average.<sup>9</sup> In the State Energy Plan, New York’s electricity prices in 2000 were compared to prices in 11 states “that compete with New York in attracting business.”<sup>10</sup> New York’s electricity prices were higher than the prices in all 11 states examined.<sup>11</sup> The

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<sup>7</sup> State Energy Plan at 2-15.

<sup>8</sup> Id.

<sup>9</sup> See, e.g., State Energy Plan at 2-25 – 2-26.

<sup>10</sup> Id. at 2-26.

<sup>11</sup> Id. at 2-27.

price of electricity is a matter of particular importance to businesses. The State Energy Plan reports that:

In a national survey of businesses that primarily included manufacturers, 81% of the respondents considered energy cost and availability to be either an important or very important site-selection factor. Given the relative cost of energy in New York, manufacturers in the State regard energy costs as being even more significant than is indicated by the national survey.<sup>12</sup>

According to the Edison Electric Institute, during the Summer, 2002, electricity prices paid by New York consumers not only exceeded the national average by a significant amount, they also exceeded prices paid in neighboring states.<sup>13</sup> The electricity prices paid by high demand/high load factor customers, namely industrial customers, in New York State were 74 percent above the national average.<sup>14</sup> In contrast, electricity prices paid by comparable customers in neighboring Pennsylvania only were 1 percent above the national average.<sup>15</sup>

Moreover, the “average” industrial electricity price is just that – an average. It includes the effect of many economic development programs that reduce the price of electricity for participating businesses and, thereby, reduce New York’s average electricity

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<sup>12</sup> Id. at 2-16 (footnote omitted)

<sup>13</sup> See, Typical Bills and Average Rates Report, Edison Electric Institute (Summer 2002) (“EEI Report”) at 82, 113.

<sup>14</sup> EEI Report at 82, 113.

<sup>15</sup> Id. at 84, 114. New York’s average residential and large commercial electricity prices also exceeded the national average by substantial amounts. New York’s average residential electricity bill of \$125.79 was 42 percent higher than the national average of \$88.66. Id. at 7, 36. New York’s average large commercial electricity bill of \$18,822.00 was 47 percent higher than the national average of \$12,836.00. Id. at 44, 74.

price for industrial customers. But, for businesses not eligible to participate in economic development programs, the electricity prices they pay are higher than the State's non-competitive average price. The high price of electricity in New York continues to have an adverse impact on the State's economy, especially on the manufacturing sector.<sup>16</sup> Quite simply, New York cannot afford a RPS that increases the price of electricity.

## **2. New York State's Economic Climate is Difficult for Manufacturers**

New York recently ranked 43<sup>rd</sup> among all states in terms of population growth, and "last among all states in migration from one state to another, both in raw numbers and as a percentage of population."<sup>17</sup> In December, 2002, New York's unemployment rate was 6.4 percent, one of the highest in the country.<sup>18</sup> In January, 2003, the New York State Department of Labor reported that the State's unemployment rate "has matched or exceeded the nation's rate every month since December, 2001."<sup>19</sup>

The economic climate is particularly difficult for New York's manufacturing sector. In upstate New York, "one in every two jobs depends directly or indirectly on

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<sup>16</sup> See, e.g., State Energy Plan at 1-22 (concluding that "[e]nergy prices need to be brought more in-line with other states to compete more effectively for economic opportunities"); *id.* at 2-16 (discussing the importance of energy prices to manufacturers).

<sup>17</sup> "New York's Population Growth Still Lags, Census Data Show," News Release, The Business Council of New York State, Inc. (January 23, 2003).

<sup>18</sup> U.S. Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics.

<sup>19</sup> "State's Private Sector Job Count Declines at Same Rate as Nation," Press Release, New York State Department of Labor (January 23, 2003).

manufacturing.”<sup>20</sup> In 2000, manufacturing jobs accounted directly for 20.5 percent of all jobs in Binghamton and Rochester; 15.5 percent in the Buffalo-Niagara region; 14.4 percent in Utica; and 14.1 percent in Syracuse.<sup>21</sup> But, by 2002, upstate New York had lost 32 percent of its manufacturing jobs, compared to only a 4 percent loss nationally.<sup>22</sup> Moreover, unemployment is higher in upstate New York than in the State or country as a whole. For instance, the national unemployment rate for January, 2002 was 5.6 percent, but it was 6.8 percent in the Buffalo and Binghamton regions and 6.3 percent in the Rochester and Syracuse regions.<sup>23</sup> And, the manufacturing sector was the hardest hit.<sup>24</sup>

High energy costs routinely are cited as one of the primary reasons for the decline in New York’s manufacturing sector.<sup>25</sup> The State Energy Plan recognizes that “energy prices tend to be important factors in business location and expansion decisions, particularly for energy-intensive businesses.”<sup>26</sup> The State Energy Plan also recognizes that “[r]educing energy costs ... can have a substantial effect on a business’ profitability.”<sup>27</sup>

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<sup>20</sup> “The Key to the Upstate Economy? Manufacturing – Still,” Public Policy Institute (September 2002) at 1.

<sup>21</sup> “The Power to Grow,” Public Policy Institute (January 2002) at 7.

<sup>22</sup> Id. at 8.

<sup>23</sup> “Region’s Jobless Rate Rises,” Times Union (Albany) (March 6, 2002) at E1.

<sup>24</sup> Id.

<sup>25</sup> See, e.g., State Energy Plan at 2-16; “The Key to the Upstate Economy? Manufacturing – Still,” Public Policy Institute (September 2002) at 8.

<sup>26</sup> State Energy Plan at 2-16.

<sup>27</sup> Id.

Policies that increase electricity prices can be very detrimental to the State's economy, and have a disproportionate impact on the upstate economy. It is imperative that a RPS, if implemented, not increase electricity prices in the State.

### **3. The Price of Renewable Resources Exceeds the Price of Other Sources of Electricity**

The price of renewable resources is higher than electricity generated by other resources. The State Energy Plan found that: "Currently, using renewable energy technologies to produce electricity is more expensive than producing electricity from fossil fuels."<sup>28</sup> In its preliminary investigation into establishing a RPS, the New York State Energy Research and Development Authority ("NYSERDA") concluded that "renewable resources initially will be more expensive than conventional energy resources" and that some mechanism "may need to be developed to recover above market costs" associated with procuring renewable resources.<sup>29</sup>

It is essential that the potential costs associated with a RPS be evaluated thoroughly before a RPS is implemented. In an article published by Public Utilities Fortnightly, Dr. Robert L. Hirsch cautioned that:

Wind and solar cells (photovoltaics or PVs) are two renewable energy technologies that many hope will eventually provide the United States with massive amounts of clean, sustainable electric power for the indefinite future. Indeed, it is often suggested or implied that the United States can look to a future where most, if not all electric power can be provided by wind and photovoltaics. But careful analysis shows that will not be

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<sup>28</sup> State Energy Plan at 3-42.

<sup>29</sup> "Preliminary Investigation into Establishing a Renewable Portfolio Standard in New York," NYSERDA (February 14, 2003) ("NYSERDA Report") at 3-4, 7.

possible unless consumers are willing to pay 5 to 10 times what they pay for electricity today.<sup>30</sup>

Although opinions may differ as to the amount of the “price premium” associated with renewable resources, there is little doubt that it exists.

It is important to know the impact of on the price of electricity in New York State adding renewable resources. Jersey Central Power & Light (“JCP&L”) recently received authorization from the New Jersey Board of Public Utilities to purchase 200 MW of “green” power. The winning price for the 200 MW, which will be supplied over 10 months, was 5.444 cents per kWh.<sup>31</sup> That is a wholesale price for the commodity only. The price paid by JCP&L exceeds the average New Jersey retail price for generation, which is 4.73 cents per kWh.<sup>32</sup> Moreover, the winning price exceeds the total unbundled (i.e., commodity and delivery) average industrial rate for Central Hudson Gas and Electric Corporation and Niagara Mohawk Power Corporation (“Niagara Mohawk”).<sup>33</sup> Indeed, the winning green power price exceeds not only the United States average industrial generation rate (4.17 cents per kWh), but also the total bundled average industrial rate for the country (4.96 cents per kWh).<sup>34</sup>

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<sup>30</sup> “Large Scale Green Power: An Impossible Dream?,” Public Utilities Fortnightly, Dr. Robert L. Hirsch (January 1, 2003) at 25.

<sup>31</sup> “JCPLL Holds Bid for Green Power; FirstEnergy Unit to Supply 200 MW,” Electric Utility Week (February 24, 2003) at 40.

<sup>32</sup> EEI Report at 162.

<sup>33</sup> Id. at 263.

<sup>34</sup> Id. at 289.

If a RPS is implemented, it must not be allowed to increase the price of electricity in New York. If all consumers are forced to pay for additional renewable resources, New York's electricity prices will rise, and could further damage the State's economy, particularly for energy-intensive sectors such as New York's shrinking manufacturing base. Before a RPS is implemented, thorough analyses must be conducted as to its likely impact on electricity prices and the economy.

## **POINT II**

### **A RPS, IF IMPLEMENTED, MUST NOT IMPACT NEGATIVELY THE CONTINUED DEVELOPMENT OF COMPETITIVE ELECTRICITY MARKETS IN NEW YORK STATE**

New York State and the Commission have gone to great lengths to foster the development of competitive wholesale and retail electricity markets. The State's wholesale electricity markets, administered by the NYISO, are based on economic bids submitted by buyers and sellers. The State's retail electricity markets, governed by the Commission, are dependent upon willing ESCOs competing with incumbent utilities to supply electricity to consumers. In both markets, competition was introduced and has been fostered with the goal of benefiting consumers (e.g., reducing electricity prices, increasing customer choice).<sup>35</sup> Thus, it is imperative that a RPS, if implemented, not impact negatively the continued development of competitive electricity markets in New York State.

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<sup>35</sup> See, e.g., Case 94-E-0952, supra, Opinion No. 95-7, "Opinion and Order Adopting Principles to Guide the Transition to Competition," (issued June 7, 1995), Appendix C at 1 (providing that "[t]he basic objective of moving to a more competitive structure is to satisfy consumers' interests at minimum resource cost" and "[a]ny new electric industry structure should provide ... increased consumer choice of service and pricing options").

The State Energy Plan provides that NYSERDA will examine and report on the feasibility of establishing a statewide RPS for electricity generation.<sup>36</sup> Importantly, that examination is required to “assess the economic impacts of a RPS, and determine whether and how a RPS might be harmonized with a restructured and competitive electricity market....”<sup>37</sup> The NYSERDA Report distributed in this proceeding concludes that a RPS can be implemented in a competitive market,<sup>38</sup> but does not explain the basis for that conclusion or demonstrate why or how a RPS could be implemented without negatively impacting competitive electricity markets. This assessment is crucial. As the NYSERDA Report points out, “additional research is necessary into the design and operation of [a] RPS....”<sup>39</sup>

Proposals to implement a RPS in New York raise numerous issues concerning possible negative impacts on the State’s competitive electricity markets. For instance, is a RPS to be implemented in a manner that provides subsidies or other financial benefits to generators of renewable resources? Multiple Intervenors would oppose such subsidies for numerous reasons, including those set forth in Point I, supra, regarding the need to ensure that a RPS, if implemented, does not increase electricity prices in New York State. Additionally, providing subsidies to some participants in the wholesale electricity markets, but not others, could distort those markets, and create a disincentive for non-renewable

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<sup>36</sup> State Energy Plan at 1-39.

<sup>37</sup> Id.

<sup>38</sup> NYSERDA Report at 7.

<sup>39</sup> Id.

resource generators to construct facilities in New York and/or compete in the State's markets. This issue needs to be addressed before any RPS is implemented.

In addition, a RPS must not have an adverse effect on reliability. Importantly, in terms of maintaining reliability of the system, the NYISO focuses on New York's capacity situation. The NYISO its electricity forecast for the Summer, 2003, examined New York's installed capacity requirement and the amount of capacity projected to be available from in-state and out-of-state resources.<sup>40</sup>

Similarly, the New York State Reliability Council, L.L.C. ("NYSRC"), which establishes reliability rules for use by the NYISO to maintain the integrity and reliability of New York State's electric system, determines the appropriate installed capacity requirements. The reliability of New York's electric system is measured in terms of a minimum capacity requirement and not on the basis of energy. If a RPS is implemented, it must be consistent with the further development of competitive markets and focus on capacity, not energy.

The impact of a RPS on the siting of new generation also must be considered. Additional generation capacity is needed in New York State, particularly downstate. William J. Museler, President and Chief Executive Officer of the NYISO, stated recently that: "Unless significant generating capacity is added to the system – and soon – demand is going to overwhelm supply and reliability will be at risk."<sup>41</sup> To the extent a RPS is

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<sup>40</sup> "New York Independent System Operator Announces Summer Electricity Forecast," Press Release, NYISO (February 25, 2003).

<sup>41</sup> "New York Independent System Operator Announces Summer Electricity Forecast," Press Release, NYISO (February 25, 2003).

implemented in a manner that distorts the competitive wholesale market by providing financial incentives to a select class of generators, namely renewable resources, it may have a negative impact on the siting of needed base load generation relying on other technologies. The possible impact of a RPS on the siting of generation projects must be evaluated before a RPS is implemented.

Depending upon its design, implementation of a RPS also may have negative impacts on New York's retail electricity markets. Several of the "threshold issues" identified in the Commission's Instituting Order pertain to the possible imposition of RPS-related requirements, and the impacts of such requirements, on retail suppliers and ESCOs. (Instituting Order at 3-4.) Notwithstanding the fact that numerous ESCOs have been authorized by the Commission to conduct business in New York, it is Multiple Intervenors' experience that there are a limited number of ESCOs that compete actively to serve retail load in the State.<sup>42</sup> The possible imposition of burdensome requirements on ESCOs, which generally have much smaller customer bases than incumbent utilities, could result in even fewer ESCOs electing to compete actively in New York's retail electricity markets. Additionally, depending upon what RPS-related requirements, if any, are imposed on ESCOs, the resulting impacts may be felt disproportionately by certain ESCOs, thereby skewing what should be a level playing field.

For the foregoing reasons, it is essential that a RPS, if implemented, not impact negatively New York's developing competitive electricity markets. The Commission

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<sup>42</sup> See State Energy Plan at 3-82 (finding that several ESCOs tend to dominate in some service areas; only one ESCO serves customers in two utility service territories; and some ESCOs limit their services to particular customer classes).

previously has declared that it “expect[s] to see market-based solutions to public policy issues rather than regulatory mandates.”<sup>43</sup>

### **POINT III**

#### **A RPS, IF IMPLEMENTED, INITIALLY SHOULD BE THROUGH VOLUNTARY PROGRAMS**

Compliance with a RPS, if implemented, should be through voluntary programs. A voluntary approach is consistent with the principle of promoting customer choice – it allows the marketplace to determine the appropriate amount of renewable resources in New York’s energy mix. Additionally, a voluntary approach is preferable to the imposition of costly or burdensome requirements because, if successful, it should not increase electricity prices for the general body of New York consumers or cause negative impacts on the State’s competitive electricity markets. (See Points I and II, supra.) Moreover, based upon the latest available information, the RPS envisioned in the Instituting Order, if implemented, may be satisfied exclusively through voluntary programs.

#### **1. A Voluntary Approach Is Preferable**

If consumers want more renewable resources, they will demonstrate this desire by purchasing electricity from renewable resource generators and suppliers, even at a premium price. Voluntary green pricing programs promote this behavior and increase customer choices. In the State of Washington, one voluntary program provides consumers with the option of purchasing renewable power and paying a premium for it. Under that

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<sup>43</sup> Case 94-E-0952, supra, Opinion No. 96-12, Opinion and Order Regarding

program, interested consumers purchase a 200 kWh block of green power for \$4 per month, and can purchase additional 10 kWh blocks for \$2 each.<sup>44</sup> Another program will provide renewable resources at prices that will exceed normal tariff rates by “approximately 15%.”<sup>45</sup>

Xenergy, a consulting company, has concluded that the penetration rate for renewable resources will be at least 10 percent within five years.<sup>46</sup> Xenergy and the Center for Resource Solutions have launched programs to help companies market renewables. Successful renewable resource programs, cited by Xenergy, include a California program where renewables are sold through the interfaith community and a Canadian program where various businesses give discounts to consumers with a card that confirms that they buy renewable power.<sup>47</sup> Moreover, according to a new study, investors are increasingly attracted to renewable energy technologies.<sup>48</sup>

Some large energy consumers are choosing to purchase renewable power. For instance, utilities in California, Oregon and Washington, and a renewable energy service provider in Pennsylvania, have signed contracts to sell renewable power to 66 Kinko’s

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Competitive Opportunities for Electric Service at 30.

<sup>44</sup> “Puget says its ‘Green’ Power Program is Attracting 13 New Customers Each Day,” Platts Retail Energy (February 22, 2002), at 9.

<sup>45</sup> “Washington PUD in Three-Year Deal With BPA for New Green Program,” Utility Environment Report (December 28, 2001) at 9.

<sup>46</sup> “Xenergy Sees Much Larger Potential for ‘Green Power’ Than Ever,” Platts Retail Energy (March 1, 2002), at 10.

<sup>47</sup> Id.

<sup>48</sup> “Venture ‘Green’ Projects up 300% since 1999, New Study Shows,” Electric Utility Week (February 24, 2003), at 21.

businesses located in those states.<sup>49</sup> Green sales to Kinkos now total more than 11.2 million kWh annually at more than 150 locations. In Oregon, Portland General Electrical Supply will supply windpower to five Kinko's locations, providing them with up to 20 percent of their electricity needs.<sup>50</sup> In addition, in the Philadelphia area, Green Mountain Energy will be selling renewable power to 14 Kinko's locations, providing them with 100% green power.<sup>51</sup> Similarly, the Dyess Air Force Base near Abilene, Texas contracted recently with TXU Energy to purchase 78,000 MWh per year of electricity from renewable sources through December, 2004.<sup>52</sup>

In New York, numerous initiatives already have been implemented to promote the voluntary purchase of electricity generated by renewable resources. The State Energy Plan reports that:

New York has developed a number of initiatives designed to increase the use of renewable energy. As a result of the restructuring of the electricity market, electricity customers can choose to use an energy supplier that provides renewable power. Furthermore, the decision to switch suppliers can now be made based on information provided by environmental disclosure labels. In addition, the State has allocated System Benefits Charge funding, administered by NYSERDA, to promote awareness and development of renewable energy. Executive Order 111 furthers the market development process by

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<sup>49</sup> "Kinko's 'Greenpower' Purchases Up By 37% with New Utility Contracts," Electric Utility Week (February 24, 2003), at 21.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> "TXU Energy to Provide Air Base With 78,000 MWH/YR of Wind Power," Electric Utility Week (February 17, 2003), at 18-19.

encouraging the use of long-term contracts that will be used to procure power for State agencies.<sup>53</sup>

Multiple Intervenors recommends that the Commission let the markets work and, if a RPS is implemented, maintain customer choice by seeking initially to satisfy the goals established through voluntary programs. As the Commission stated in its May, 1996 generic electric restructuring order: “Increased customer choice among types of services and prices to be paid should mean allowing customers throughout the State the opportunity to chose among a number of suppliers (such as generators and energy service companies (ESCOs)) of electricity and other services.”<sup>54</sup>

Given New York’s already-high price of electricity and challenging economy, above-market costs associated with renewable resources should not be imposed on all consumers. Instead, renewable resources should be purchased by those consumers willing and able to pay such costs. If implemented properly, a RPS pursued through the use of voluntary programs should not increase electricity prices to New York’s general population. Nor should it distort or otherwise impact negatively the State’s competitive electricity markets. Moreover, as detailed below, compliance with the RPS envisioned by Governor Pataki and the Commission is achievable through voluntary programs.

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<sup>53</sup> State Energy Plan at 3-48 – 3-49.

<sup>54</sup> Case 94-E-0952, supra, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service at 28.

## 2. Compliance With a RPS Can Be Achieved Through Voluntary Programs

The proposed RPS envisioned by Governor Pataki and the Commission would increase New York's reliance on renewable resources to 25 percent of the State's load in 10 years (i.e., by 2013).<sup>55</sup> Importantly, given the current level of New York's reliance on renewable resources and ongoing efforts to increase renewable resources in the State, compliance with the proposed RPS, if implemented, can be achieved through voluntary programs.

By letter dated March 17, 2003, State of New York Department of Public Service staff ("Staff"), in consultation with NYSERDA, provided to the parties in this proceeding "a working baseline estimate of what percentage of the electric energy purchased in the State is derived from renewable resources" ("Staff Baseline Estimate").<sup>56</sup> The Staff Baseline Estimate indicates that New York already relies extensively on renewable sources. Accordingly to the Staff Baseline Estimate, renewable resources currently provide 19.34 percent of all electricity consumed in New York on an energy basis (18.35 percent if waste-to-energy generation is excluded).<sup>57</sup>

Moreover, efforts already are underway to increase the State's reliance on renewable resources without the imposition of potentially-costly or market-distorting

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<sup>55</sup> State of the State Address, Governor George E. Pataki (January 8, 2003); Instituting Order at 2.

<sup>56</sup> For reasons detailed, infra, Multiple Intervenors advocates that compliance with a RPS, if implemented, be measured on the basis of capacity, not energy.

<sup>57</sup> Staff Baseline Estimate at 5.

requirements or subsidies. NYSERDA recently awarded \$17 million to five developers to construct 315 MW of wind power.<sup>58</sup> The New York Power Authority (“NYPA”) recently solicited bids for 50 MW of wind power.<sup>59</sup> The Long Island Power Authority (“LIPA”) is seeking bids for up to 140 MW of offshore wind power, and reportedly sees potential for up to 5,200 MW of wind power.<sup>60</sup> Niagara Mohawk has agreed to develop up to 220 MW of transmission capacity that will help wind generators get their power to market.<sup>61</sup>

The State Energy Plan also details efforts underway to promote renewable resources in New York State. For instance, for the period July, 2001 through July, 2006, NYSERDA will invest over \$77.5 million in existing Systems Benefits Charge (“SBC”) funds to promote renewable energy in New York.<sup>62</sup> LIPA is administering a program designed to increase photovoltaic power on Long Island.<sup>63</sup> In addition to maintaining the generation of hydroelectric power, NYPA’s plans for 2002-2004 include projects involving the following renewable resource technologies: anaerobic digester gas fuel cells; other fuel cells and microturbines; landfill gas-to-electricity; photovoltaics; and wind power.<sup>64</sup>

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<sup>58</sup> “N.Y. Will Require 25% Renewables In All Power Sold Within 10 Years,” Electric Utility Week (January 13, 2003) at 22.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> State Energy Plan at 3-49; see also id. at 3-49 – 3-59.

<sup>63</sup> Id. 3-53.

<sup>64</sup> Id. at 3-55.

New York also has undertaken a number of legislative and regulatory initiatives designed to increase the State's reliance of renewable resources that do not depend on the imposition of costly or burdensome requirements on consumers. For instance, New York's net metering law allows residential electricity customers to offset their electricity use with power they send into the grid with photovoltaic equipment, and also provides a tax credit for the purchase and installation of qualifying photovoltaic equipment.<sup>65</sup> The Commission has directed the dissemination of "environmental disclosure labeling" information, which the State Energy Plan concludes "is likely to encourage electricity generators to provide more power from renewable resources."<sup>66</sup> The Green Buildings Tax Credit Law, enacted in May 2000, provides tax credits for qualifying fuel cells and photovoltaic arrays.<sup>67</sup>

There are ongoing efforts, both public and private, to increase New York State's reliance on renewable resources. Given the State's current use of renewable resources, as evidenced by the Staff Baseline Estimate, and the current NYSERDA, NYPA and LIPA initiatives, compliance with the proposed RPS, if implemented, should be achieved through voluntary programs. Such an approach is preferable to mandates that would increase electricity prices in New York and/or have negative impacts on the State's competitive electricity markets. Accordingly, if a RPS is implemented, Multiple Intervenors

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<sup>65</sup> Id. at 3-56.

<sup>66</sup> Id. at 3-56 – 3-57.

<sup>67</sup> Id. at 3-57.

recommends that initial efforts at compliance be voluntary only, with an examination of the State's performance to be conducted approximately five years after the implementation date.

#### **POINT IV**

##### **MULTIPLE INTERVENORS' INITIAL POSITIONS ON THE "THRESHOLD ISSUES" IDENTIFIED IN THE COMMISSION'S INSTITUTING ORDER**

In its Instituting Order, the Commission articulated a list of 14 "threshold issues" to be addressed in this proceeding. (Instituting Order at 3-5.) It is Multiple Intervenors' understanding that the list of "threshold issues" is not intended to be exhaustive, nor is it. For the reasons detailed in Points I and II, supra, two additional, overriding issues must be addressed, namely the impact of the proposed RPS on electricity prices in New York; and the impact of the proposed RPS on the State's developing competitive electricity markets. Moreover, as detailed below, many of the Commission's "threshold issues" are not yet ripe for resolution, and additional factual information and analyses are required and should be undertaken before finalizing or implementing a RPS.

- 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. Other definitions of renewable resources also may warrant consideration. Multiple Intervenors advocates utilization of an inclusive definition of renewable resources as part of any RPS that may be implemented.

The State Energy Plan refers to the following technologies as renewable resources: hydropower, solar, wind, biomass, ocean energy, landfill gas and fuel cell technology.<sup>68</sup> The Commission's Instituting Order, which states that "about 17% of the electricity currently used in New York State is provided by renewable resources" (Instituting Order at 2), also includes implicitly hydropower as a renewable resource. 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 cells." Part 204 of the regulations promulgated by the New York State Department of Environmental Conservation defines a renewable energy project as "[a] power generation technology that produces electricity from wind energy, solar thermal energy, photovoltaics, methane waste, or sustainably managed biomass...." 6 N.Y.C.R.R. § 204-1.2(b)(67).

There is no compelling reason why any of the technologies heretofore identified by the State as renewable should be excluded from the definition of renewable resources utilized in any proposed RPS. Moreover, other technologies may warrant consideration for inclusion in a RPS. Renewable resources should not be defined so narrowly that existing or future technologies that possess characteristics comparable to more established renewable technologies are excluded.

Multiple Intervenors would oppose any proposal that defines new renewable resources more narrowly than existing renewable resources. If an existing project is deemed to satisfy the definition of renewable resources, then new projects relying on the same

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<sup>68</sup> State Energy Plan at 3-40.

technology also should be considered renewable resources. The proposed RPS, if implemented, should be focused on achieving a specified level of reliance on renewable resources in general, without favoring certain technologies over other technologies. Accordingly, Multiple Intervenors urges that a broad, inclusive definition of renewable resources be adopted in this proceeding. Multiple Intervenors also renews its proposal advanced at the March 4, 2003 Procedural Conference that the parties focus initially on establishing the definition of renewable resources; and determining the amount additional renewable capacity would be needed to satisfy the 25% goal articulated in the Commission's Instituting Order.

**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 be included in calculating compliance with any RPS that may be implemented. To decide otherwise would be inconsistent with how competitive electricity markets operate. It also could raise legal issues regarding unconstitutional impediments to interstate commerce.

To exclude electricity generated by renewable resources located out-of-state would conflict with how the State's competitive electricity markets operate. In the wholesale electricity markets administered by the NYISO, generation facilities located outside the State can (and do) supply capacity and energy to meet New York's electricity needs. Similarly, in the State's retail electricity markets, ESCOs can sell electricity supplies that are located physically either within or outside New York. It would be inconsistent with the structure of

the competitive electricity markets to count only those renewable resources that are located within New York State.

Also, depending upon how a RPS is implemented, the exclusion of out-of-state renewable resources that serve New York could raise constitutional issues. The United States Constitution provides that Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes. U.S. Const. art. I, § 8, cl. 3. When Congress regulates interstate commerce (as it does with respect to wholesale electricity markets), conflicting state laws are superseded under the Supremacy Clause of the Constitution. U.S. Const. art. VI, cl. 2. At this point, it would be premature to assert that a RPS discriminates against interstate commerce. However, to the extent parties propose that a RPS be implemented in a manner that favors renewable resources located physically within New York – to the exclusion of renewable resources located out-of-state that compete in New York’s wholesale electricity markets – constitutional concerns could be triggered.

For the foregoing reasons, renewable resources imported into New York State should be included in any RPS that is implemented.

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

Any proposed design of a RPS and the potential impacts of imposing requirements on retail suppliers, or ESCOs, needs to be analyzed thoroughly before this issue can be resolved. Multiple Intervenors does not have sufficient information to address this issue at this time. However, as stated in Point II, supra, there only are a limited number of retail suppliers competing actively in New York State. It is important that the suppliers

increase in number of order for the State's retail electricity markets to become fully competitive.

- 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.**

This issue is not yet ripe for resolution. It is impossible, at this time, to determine the impact of a RPS on ESCOs. It is premature to start addressing how negative impacts related to the imposition of RPS requirements on ESCOs could be overcome – efforts instead should be directed at ensuring that neither customers, nor ESCOs, experience negative impacts associated with a RPS, if implemented.

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

This issue is not yet ripe for resolution. Before the issue can be decided, additional analyses need to be conducted as to, *inter alia*, the appropriate design of a RPS and whether any RPS-related requirements would be imposed on retail suppliers.

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

This issue is not yet ripe for resolution. Initially, for the reasons detailed in Point I, *supra*, it is imperative that any RPS that is implemented not increase electricity prices in New York State. Additionally, it is premature to consider methodologies by which

regulated utilities would recover costs that have not even been identified. Before this issue can be resolved, additional information is needed, including, but not limited to: the types of incremental costs that would be incurred by regulated utilities; whether such costs also are being incurred by competitive suppliers; the magnitude of the costs; the availability of any potentially-offsetting revenues or cost savings; and whether the costs are being incurred as part of a voluntary program to acquire additional renewable resources (in which case the costs of the program should be recovered solely from the participants).

Issues such as cost recovery methodologies to be employed by regulated utilities cannot be resolved in a vacuum. The consideration of this issue should be postponed until additional information regarding any proposed RPS is known.

#### **7. Individual retail suppliers' targets, if appropriate.**

This issue is not yet ripe for resolution. Initially, issues pertaining to the design of a RPS, the cost impacts of a RPS, how much additional renewable resources are needed, and how compliance with a RPS is to be measured, all must be decided before any determination can be made as to whether it is appropriate to impose individual targets on retail suppliers.

Moreover, if the goal, as discussed in the Instituting Order, is a statewide goal of 25 percent, then that goal may be met without every individual retail supplier procuring 25 percent of its electricity from renewable resources. (Instituting Order at 2.) Individual retail suppliers' targets may be unnecessary and, if implemented improperly, could increase total costs to consumers – an outcome that should not be allowed to happen.

- 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.**

This issue requires further analysis before it can be resolved. The reliability of New York's electric system is of paramount importance and must not be comprised. If a RPS would reduce the reliability of the State's electric system, it should not be implemented. Whether certain measures would be required to ensure that reliability is maintained would depend, in large part, on the design of any RPS, and require coordination with the NYISO and the NYSRC. The potential impacts of a RPS on system operations also must be examined thoroughly before a RPS is implemented.

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

It is premature to adopt rewards and disincentives associated with the proposed implementation of a RPS. Initially, for the reasons set forth in Point III, supra, compliance with any RPS that is implemented should be through voluntary programs. The RPS envisioned by Governor Pataki would ensure that 25 percent of New York's electricity load be served by renewable resources within 10 years (i.e., 2013). According to the Staff Baseline Estimate, renewable resources currently provide, on an energy basis, 19.34 percent of the electricity consumed in the State (18.35 percent if generation from waste-to-energy resources are excluded). In light of ongoing efforts to increase New York's reliance on

renewable resources, it is very possible that a RPS, if implemented, could be satisfied entirely through voluntary programs.

Additionally, before possible rewards and disincentives can be instituted, numerous other issues need to be resolved. Such issues include, but are not limited to: the design and implementation of any proposed RPS, how compliance with a RPS would be measured (e.g., on a capacity basis), which parties would be subject to the RPS, what the impact would be on the competitive electricity markets, and how any costs associated with a RPS would be recovered. If rewards and disincentives are implemented prematurely or inappropriately, it could: (a) increase the price of electricity in New York; (b) distort the State's developing competitive electricity markets; and/or (c) create a disincentive for certain ESCOs to conduct business in New York.

Accordingly, Multiple Intervenors recommends that consideration of this issue be postponed for a minimum of five years. During that time, efforts should focus on satisfying any RPS that is implemented through voluntary programs. If, after five years, it is determined that voluntary programs are not resulting in the addition of adequate renewable resources, possible penalties and disincentives could be considered, along with other potential modifications to the RPS. By waiting to gain experience with a voluntary RPS (if implemented), all entities, including the Commission, would possess a much greater understanding of how the RPS is working and what modifications to the RPS, if any, may be needed.

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

The above issue is not yet ripe for resolution. Initially, there would need to be a common definition of “renewable attributes trading.” Whether a “renewable attributes trading” system is necessary or desirable depends upon, *inter alia*, whether a RPS is implemented and, if it is, how the RPS is structured. A “renewable attributes trading” system cannot be designed or evaluated before other issues are resolved, including, but not limited to: the types of resources that are considered “renewable”; how compliance with any RPS would be measured; and the entities that would be subject to a RPS. Accordingly, consideration of this issue should be postponed pending resolution of other “threshold issues.”

**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.**

Multiple Intervenors advocates no position with respect to this issue.

**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.**

Additional information and analyses are required before the above issue can be addressed. However, in light of existing transmission constraints, if a RPS is being added to

increase reliability, then it is imperative that the new resources be added where additional capacity is most needed. Multiple Intervenors recommends that this issue be examined thoroughly before completing the design of, or implementing, a RPS.

**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 above issue is not yet ripe for resolution. Numerous issues, including those related to the design of any proposed RPS, must be resolved before the impacts, if any, that a RPS would have on existing green marketing programs can be evaluated. For the reasons detailed in Point III, supra, Multiple Intervenors asserts that compliance with a RPS, if implemented, initially should be through voluntary programs. Green marketing programs, along with RFPs issued by load serving entities, are examples of the voluntary programs that should be allowed to develop prior to the imposition of any RPS-related requirements. Green marketing programs also are preferable to RPS-related requirements because, pursuant to such programs, only willing customers pay for the programs' costs, and such costs are not imposed on the broader population of consumers. Thus, to the extent measures can be adopted that improve the effectiveness of green marketing programs, without imposing additional costs on non-participating consumers, such measures should be considered in this docket.

**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 above issue is not yet ripe for resolution. Additional information and analyses are required before any changes to the SBC-funded renewable energy program are implemented. For instance, the RPS must be designed before potential changes to the SBC-funded renewable energy program are evaluated. Additionally, the potential costs, if any, of proposed changes to the renewable energy program must be examined thoroughly. Accordingly, Multiple Intervenors recommends that the resolution of this issue be postponed to a later date.

## CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges that: (a) if implemented, a RPS must not increase electricity prices in New York; (b) if implemented, a RPS must not impact negatively the State's developing competitive electricity markets; (c) compliance with a RPS, if implemented, initially should be through voluntary programs; and (d) the "threshold issues" identified in the Instituting Order should be addressed and resolved in the manner articulated in these Initial Comments, with additional analyses being conducted where warranted.

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Respectfully submitted,

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