



National Energy Marketers Association

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

I. Executive Summary

The National Energy Marketers Association hereby submits Comments pursuant to the Commission's request for comments in its February 19, 2003, Order Instituting Proceeding and February 20, 2003, Ruling Concerning Procedure and Schedule in Case No. 03-E-0188.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial-related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy, financial services and technology firms has come together under NEM's auspices to forge consensus and to help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas and electricity in a competitively neutral fashion that bring suppliers and consumers together at the lowest possible cost;
- Standards rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;

- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecom, digital communications and Internet services to lower the cost of energy and related services.

As a general matter, NEM submits that for a competitive electricity market to develop, consumers must have meaningful choice at a reasonable price. When laws and regulations establish unfair market advantages for certain energy providers or mandate unreasonable and costly renewable portfolio standards (RPSs), market pricing gets distorted and market inefficiencies will be created. Imposing a RPS on ESCOs at this stage in the development of New York's retail market will increase the cost of serving New York consumers and decrease the amount of different products and services competitive suppliers will be able to provide. Additionally, a mandatory RPS will discourage the voluntary development of renewable retail products. The result will be a reduction of competitive offerings in the state.

NEM recommends that a RPS be implemented on a voluntary basis for competitive providers that wish to serve this market niche. Additionally, NEM submits that consideration of a RPS is premature. The NYPSC should not consider a RPS, if at all, until price freezes in the state cease since fixed rate services would have to be adjusted to reflect the cost of generating or procuring renewables.

II. A Cost/Benefit Study Should Be Conducted

The Order Instituting Proceeding¹ for Case No. 03-E0188 contemplates an "exam[ination of] appropriate methodologies for assessing benefits and costs . . ." NEM submits that if there is a need to procure additional renewable resources to meet a State-wide target, it is essential to conduct a quantitatively accurate cost/benefit study to identify the best means of achieving the target. If there is a need for additional resources, the NYPSC should evaluate different options for acquiring additional renewable resources including the purchase of 100% renewable power at State owned facilities, conducting a state-wide wholesale procurement of renewable energy, and providing incentives to marketers that achieve renewable targets and determine if the contemplated benefits will significantly exceed the added costs. The study should determine the public demand for renewable fuels and the increased costs that energy suppliers will incur by complying with such a mandate. The NYPSC should also investigate what kinds of renewables the New York market would best support and the methods other states and countries are developing and implementing to promote green energy.

NEM recognizes that some consumers will be interested in purchasing power from green sources, and the market should give them an opportunity to do so. However, the benefit

¹ Order Instituting Proceeding, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, issued on February 19, 2003, page 2.

of a RPS on all marketers of electricity in New York State may not justify the increased costs to suppliers and ultimately the consumers.

III. Commission Identified Threshold Issues

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

NEM supports a broad definition of "renewables" for purposes of a RPS. NEM submits that high efficiency natural gas is a premiere environmental fuel and should be a permitted part of any mandated RPS.

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

NEM urges the NYPSC to clarify its goal for imposing a RPS. The goals and priorities of a renewable energy program will ultimately shape its design, implementation, and the types of resources that will qualify as renewables. If its objective is to promote green energy manufactured in New York then it may not be appropriate to include renewable resource energy produced outside the State. However, if the goal is to provide New York consumers with the most cost-effective sources of renewable fuel, then it may be appropriate to include hydropower from Canada or wind energy from New England.

NEM urges the Commission not to impose a mandate, however, if one is imposed, it is appropriate to include cross border sales of physical units as well as environmental credits as renewable resources. Currently external renewable resources can only be counted towards a NY ESCO's fuel mix if it is physically delivered into NY. This discriminates against external intermittent resources that can not be physically scheduled due the unpredictable nature of their output. The NYISO has a process to coordinate with the surrounding jurisdictions to ensure that external installed capacity is not double counted, a similar process can be adopted to allow the use of “credits” from external resources while ensuring that the external renewable resources are not double counted.

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

NEM submits that ESCOs should have the opportunity but not the obligation to sell energy from renewable sources. Mandating a RPS on ESCOs is not consistent with ensuring the development of effective competition and increased consumer choice in New York State and will discourage the development of renewable products by existing marketers. Customer demand should ultimately determine the types and varieties of competitively provided products, services, information and technology offered in the New York marketplace.

NEM recognizes the benefits of green power and suggests that instead of mandating a RPS at the retail level, the NYPSC should look to the NYISO to implement any future RPS program if the benefits have been proven to outweigh the costs. The overwhelming majority of power in New York is purchased directly from NYISO. Additionally, NYISO can more easily comply with any potential mandate, saving retail energy providers from needless complexity and business risk.

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.

NEM recognizes the value of "improv[ing] energy security and help[ing] diversify the state's electricity generation mix."² However, the method the Commission chooses to achieve this goal should avoid hindering the development of competitive retail energy markets. In order not to impede the growth of the competitive ESCO market, the Commission should not mandate a RPS on ESCOs. An environmental policy should seek to strike the proper balance between promoting the availability of renewable energy sources to consumers who desire such products and avoiding costly requirements on ESCOs that could impede the growth of competition and consumer choice.

Mandating a RPS on all ESCOs will force them to incur costs for which they will not be compensated, whereas utilities will be able to recover compliance costs from captive customers. Whether the ESCO constructs renewable energy generation plants or purchases emission credits or qualifying eligible resources it will incur the costs of providing renewable energy to consumers who may not even value such a product. Green energy is an important potential market, however, the economically efficient means of developing these resources should rely on the unregulated market to establish both their supply and price. Clearly, identification of energy sources by marketers that wish to market green energy should be the primary mechanism to provide the public with renewable energy. Forcing ESCOs to absorb the loss or attempt to pass the RPS costs to its consumers is not equitable or efficient and will result in subsidies and market inefficiencies. Competitive retail suppliers do not have the sales margins available to absorb additional mandates and many ESCOs cannot succeed unless they can offer consumers lower prices than the local franchise monopoly. The true supply and demand for green energy must be permitted to develop in a manner that properly prices this important resource. Additionally, imposing additional compliance costs on marketers as well as additional administrative complexity will likely discourage participation in the New York market.

If the Commission ultimately decides to mandate a RPS on all electricity retailers, NEM urges that the cost of complying with the RPS be shared equally among all consumers. Additionally, the costs of compliance must be paid by all providers of retail electricity over an equivalent time scale (i.e. the utilities should not be allowed to spread the cost over several years). NEM implores the Commission to consider that New York is in

² Id.

competition with other states for capital investments of quality energy retailers, and such companies will avoid the New York market if complying with a RPS renders the rate of return on such investments non-competitive.

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

NEM submits that the best method for retail suppliers to procure renewable resources is a business decision that should be determined by each individual supplier and will depend on their business strategy, retail contracts and risk management policy. Retail suppliers with a business strategy to sell renewable products over a long time or those with long term retail contracts may wish to enter into long term renewable supply contracts. Others are likely to meet their obligations with purchases that match the volume and duration of their retail sales. Mandating a particular method may not be consistent with individual business models or business plans.

NEM urges the NYPSC not to impose a RPS mandate, however, if a RPS mandate is unavoidable the NYPSC should set up a tradeable green certificate system (or other emission credits system) for retailers to comply. Under a tradeable system, retailers who can build and operate renewables more cheaply than the market price for certificates (or emission credits) will do so, thus increasing the supply of renewables without a costly and complicated mandate.

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

If regulated utilities offer customers renewable products, they should include the full cost of those products in the price they charge those customers. This is essential to avoid giving the utility a competitive advantage over other suppliers of renewable products and avoids the need for cost recovery entirely. For example, if renewables form part of POLR service, then POLR service must be priced to reflect the costs of procuring these resources. NEM submits that if the utility, acting as POLR, is allowed to subsidize the costs of complying with a RPS by embedding the retail costs of providing renewable energy in its distribution rate, the default service price will be an artificially low, subsidized price. If the default service does not reflect the true costs of providing retail generation service including maintaining a portfolio with renewables, true competition on the basis of price and quality of service will not be possible. Competitive suppliers will be challenged to cover the costs they must incur to abide by a mandated RPS. Additionally, an artificially low, subsidized default service price, will not only provide false price signals but also establishes a significant barrier to effective price competition by forcing customers who switch to competitive suppliers to pay twice for the costs associated with complying with a RPS. Under these circumstances fewer customers will choose competitive energy suppliers, the utilities market share will be maintained or increase, consumers will not benefit to the degree they should, and green energy will not be properly priced or supplied. NEM believes that green energy is a premier product and there is a market for this product. However, mandating all marketers to be "partially" green will not permit this important resource to be developed efficiently. Green Energy

Suppliers specialize in bringing green energy to market at the lowest possible price - others do not.

7. Individual retail suppliers' targets, if appropriate.

NEM urges a voluntary approach to a State-wide renewable target. It is not appropriate to mandate individual retail supplier targets. See NEM's responses to Question 3 and 4.

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

If utilities are forced to incur increased costs for procuring renewables and to maintain system reliability, NEM submits that the fully allocated embedded costs must be reflected in the utility service rates and presented to customers on an unbundled basis to compare with other service options.

The issue of reliability is more appropriately addressed by the NYISO and the Reliability Counsel. Currently renewable resources can qualify as Installed Capacity in NY and the current use of Unforced Capacity (where the rating of the unit is reduced by its outage rate) should address any reliability concerns.

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

NEM recommends that whatever process is used to monitor progress should be as simple and inexpensive as possible. NEM supports the promotion of renewable energy through the use of incentives rather than mandates. Incentives could be in the form of tax credits and/or adders or increased back-out credits for customers buying green power.

NEM suggests that the NYPSC consider a similar approach to that used in New Jersey. In Case No. EX01110754³, the NJBPU approved JCP&L's Green Pilot Proposal to procure 200 Mw of its residential load or 150,000 customers, whichever is greater, through a retail green auction. The NJBPU "believes that voluntary customer choice would advance customer awareness of renewable energy and the changing retail electric marketplace."⁴ (emphasis added). In the same case, the Board approved another pilot program, the Retail Green Marketing Program, to "help develop the fledgling green retail market in New Jersey. . . .through a process that has customers affirmatively choosing green power" ⁵

³ Decision and Order, In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. - Post Transition Procedures, Docket No. EX01110754 and EO02070384 , issued November 6, 2002, p.16.

⁴ Id. at 15.

⁵ Id. at 16.

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

Absent a mandate, it may be appropriate to have a system to capture and report on the sales of renewable attributes. However, NEM urges that the costs and benefits associated with such a system be assessed.

Generally a "renewable attributes trading" system would allow those retailers who are most efficient at selling green energy to provide more of their green energy supply to the market while allowing retailers who are not as efficient at generating or procuring green energy to concentrate their efforts elsewhere. However, the benefits of efficiency can easily be offset by the costs and complexities of compliance.

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.

NEM submits that an effective labeling program is important to the operation of a voluntary green power market. Without labels customers will not be able to discriminate between rival offers or validate retailers' claims as to the renewables portion of their portfolio. Additionally, customers' preference for different renewables varies. An effective labeling system permits a range of different green products to be offered into the market making it more attractive to consumers who choose to purchase green energy.

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.

While renewables may help meet future needs, they should not be relied on as the solution to either locational or state-wide requirements. For example, would offshore wind be economic if built close to New York city? Could it get permission to be built if it was? If wind farms are forced to be built in out-of-the-way places, would they end up being constrained off? If so, would renewables collect certificates for being willing and able to generate but not actually generate because of transmission constraints.

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.

If the RPS adopted by the Commission is more onerous than current green marketers can provide, the Commission runs the risk of discouraging competitive entry and possibly causing market exit by those suppliers that offer the product. Again, NEM recommends that a RPS be implemented on a voluntary basis for competitive providers that wish to

serve this market niche. If the NYPSC ultimately decides to mandate a RPS, NEM suggests that it work very closely with existing green marketers in developing and implementing the program.

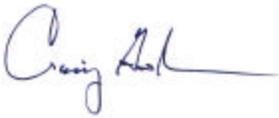
14. Changes needed, if any, by the Public Service Commission and NYSERDA in the SBC-funded renewable energy program to coordinate with the new target.

NEM submits that New York's renewable energy policy has to be properly analyzed and compatible with otherwise conflicting regulations and goals so as not to confuse consumers, frustrate the industry and potentially waste resources.

IV. Conclusion

NEM appreciates this opportunity to comment on the threshold issues of a retail renewable portfolio standard.

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Goodman", followed by a vertical line.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: March 26, 2003.
Washington, D.C.

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