

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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In the Matter of
Proceeding on Motion of the :
Commission Regarding a : Case 03-E-0188
Retail Renewable Portfolio :
Standard :
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**COMMENTS
OF
ELIOT SPITZER
ATTORNEY GENERAL
Of THE
STATE OF NEW YORK**

Dietrich L. Snell
Deputy Attorney General
Public Advocacy Division

Loretta Simon
Environmental Protection Bureau

Keith H. Gordon
Telecommunications and Energy Bureau
Assistant Attorneys General
Of counsel

Judith Enck
Policy Advisor

Thomas Congdon
Policy Analyst
120 Broadway
New York, New York 10271
Tel No.: (212) 416-6343
Fax No.: (212) 416-8877
E-mail: keith.gordon@oag.state.ny.us

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BACKGROUND

On March 20, 2001, the New York State Attorney General (“AG”) issued an *Action Plan for a Balanced Electric Power Policy in New York State*.¹ After pointing out the looming imbalance between consumption and available electricity generation, the AG recommended a number of policies and goals to address New York’s electricity needs. The AG called upon New York to expand renewable generation resources by an additional ten percent of statewide consumption (existing renewable resources account for approximately 17% of statewide consumption) and to adopt a statewide renewable portfolio standard (“RPS”) that “would require retailers of electricity to include in their portfolio of supply an increasing percentage of renewable generation . . . [and] increase demand for renewables such as wind and solar, that would, in turn, create a competitive market for supplies of renewable generation.”²

The 2002 New York State Energy Plan directed the New York State Energy Research and Development Authority (“NYSERDA”) to examine the feasibility of establishing an RPS for New York. NYSERDA’s February 14, 2003 preliminary report found “that an RPS can be implemented in a manner that is consistent with and supports the State’s existing wholesale market and emerging retail market for electricity . . . [and] could improve energy security, complement the State’s current environmental disclosure program, and help diversify New York’s electricity generation mix.”³ On February 19, 2003, the Public Service Commission

¹ [Http://www.oag.state.ny.us/press/reports/power_policy.pdf](http://www.oag.state.ny.us/press/reports/power_policy.pdf).

² *Ibid*, pp. 38-39.

³ NYSERDA, *Preliminary Investigation into establishing a Renewable Portfolio Standard in New York*, February 14, 2003, p. 1 of 7.

(“PSC” or “Commission”) announced that it was commencing this proceeding to develop and implement an RPS “that will ensure, within 10 years, [that] at least 25% of the electricity purchased in New York is generated from renewable resources” (from the current level of approximately 17%).⁴ The PSC envisioned a collaborative proceeding drawing upon all interested parties’ expertise and addressing their various concerns. A list of fourteen “threshold issues” was identified by the PSC in its Instituting Order as matters the parties should consider and address.

Following an initial procedural conference on March 4, 2003, Administrative Law Judge Eleanor Stein directed the parties to submit on March 28, 2003 preliminary comments on the threshold issues identified by the PSC and other issues and concerns of the parties. The following is the AG’s initial statement of interests and concerns.

INTEREST OF THE ATTORNEY GENERAL

The AG is charged with enforcement of federal and state environmental, consumer and antitrust laws throughout New York State and is a party in numerous PSC regulatory proceedings advocating on behalf of residential and small business consumers and the State of New York. The AG is interested in protecting and improving New York State’s environment, to preserve public health, prevent ecological degradation, and to enhance sound economic development. Increased renewable electricity generation is an important element in assuring that adequate supplies of electricity will be available to meet businesses’ and consumers’ needs without

⁴ PSC February 19, 2003 release, *PSC Moves Forward With Renewable Energy Initiative: Achieving Goal of 25% Renewable Energy by 2013 Will Be a Priority*, <http://www.dps.state.ny.us/fileroom/doc12878.pdf>; *see also*, Case 03-E-0188 - *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Instituting Proceeding*, issued and effective February 19, 2003.

aggravating air pollution problems or imposing unreasonable burdens on densely populated communities. At the same time, it is important to design an economically sound RPS that is compatible with recently established electricity markets and that minimizes any financial burdens on electricity consumers.

SUMMARY OF INITIAL COMMENTS

The AG supports the creation and implementation of an RPS that would increase the portion of renewable resource electricity used in New York State from approximately 17% to 25%. The RPS should be designed to provide benefits to New York State and its residents, including:

1. Environmental and health benefits. Renewable resources should be clean, environmentally sound energy sources that improve and do not harm public health or the environment.
2. Diversification benefit. Renewable resources should contribute to the diversification of New York State's energy resources enhancing reliability, stability and security of the power base.
3. Economic benefits. Renewable resources should provide an economic benefit to the State, its local governments, ratepayers, and/or residents, and minimize adverse social impacts.

Despite the clear need for increased electricity generation to meet growing demand, inadequate new facilities have been added since 2001, especially from renewable resources.⁵ It

⁵ Only one major new gas-fired baseload plant has been built (at Athens, NY) and the New York Power Authority ("NYPA") built nine small turbine units for peak load requirements in New York City and Long Island. All of these units are fossil fueled, and not renewable

appears that absent targeted incentives, such as those the RPS is intended to create, New York will not develop enough new renewable resource electricity generation from merchant developers that depend on wholesale markets. Many industry experts suggest that, given the current state of capital markets, any new renewable resource project construction will require assurance of the production stability through long-term contracts (as opposed to the mere ability to bid power into the New York Independent System Operator (“NYISO”)⁶ controlled wholesale market at prices low enough to be dispatched). Most renewable resources likely to be built in or near New York are expected to cost more than recent average wholesale electricity market prices, so the RPS can only increase renewable resources if long-term contracts are made at an above-market premium. Given these current circumstances, the AG urges that any RPS be designed in as cost-efficient a manner as possible so as to minimize the economic impact on consumers and the New York economy.

At this preliminary stage of the proceeding, the AG recommends that the Commission consider two alternative models for constructing an RPS. A centralized model would charge a single neutral entity, such as a state agency, to procure through long-term contracts the additional renewable electricity generation and spread the resulting expense among all consumers via wires charges imposed on load serving entities (“LSEs”) such as distribution utilities and competitive energy service companies (“ESCOs”) similar to existing NYISO ancillary services uplift fees.

resources.

⁶ NYISO is responsible for managing the wholesale electric power markets for New York State and operating the transmission grid. It takes offers from generators and matches them to the bids from load serving entities to establish market prices and determine which generators are to be dispatched to meet customer load requirements.

A decentralized model would require LSEs to procure a quota of electricity generated from renewable resources, and establish a tradable credit system to track the generation and sale of renewable energy as well as LSE compliance with the RPS.

It is premature to determine which approach would be most appropriate for New York State. Instead, these comments are intended primarily to identify some of the relevant issues and provoke constructive discussion among the participants. The collaborative process should be used to evaluate the advantages and disadvantages to all parties and the State of each alternative (and any others suggested in other parties' comments), so that the most appropriate RPS policy can be fashioned. More comprehensive assessment of these and any additional issues that arise is more appropriate after the parties have exchanged information and viewpoints through the collaborative proceeding.

COMMENTS ON THRESHOLD ISSUES

The AG submits the following comments on the PSC's fourteen-point list of threshold issues. As this proceeding is at an early stage and a great deal of information exchange is expected to take place through the collaborative process to come, the AG reserves the right to revise, expand and supplement these comments during the course of the proceeding.

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

As one of the goals of the RPS is to enhance New York's environment, the AG recommends that eligible renewable resources be limited to those that provide clear environmental benefits to the State.

A wide range of “renewable” resources exist today. Resources included in the RPS policies of other states include wind, solar, hydropower, fuel cells, several forms of biomass (e.g., landfill gas, sewage gas, waste wood, agricultural residue, harvested wood, sustainable yield wood), tidal, geothermal, and municipal solid waste (“MSW”) incineration. The development of some of these resources in New York State, such as additional large-scale hydropower, MSW, and some biomass, however, would not be consistent with our environmental goals for the RPS and should not be included in the RPS definition of “renewables.” However, small scale hydropower projects, including conversions of existing flood control or water supply dams into dual purpose facilities should be eligible to participate in the RPS program.

A careful public health and environmental analysis is needed to determine which biomass resources should be eligible under the RPS, since the combustion of biomass produces air pollutants, including carbon monoxide, nitrogen oxides, and particulate matter. Some biomass resources, such as waste wood, produce emissions equivalent to a coal-fired power plant, and should therefore not be included in the RPS. Other biomass resources, such as landfill gas, have emissions equivalent to efficient natural gas turbines and provide broad environmental benefits.

The incineration of municipal waste, which contains toxic metals, chlorinated compounds, and plastics, generates harmful emissions, and should not be considered eligible for RPS treatment. MSW incineration is a leading source of mercury emissions in New York State and a significant source of dioxin emissions. The New York State Department of Environmental Conservation has explicitly excluded MSW from its definition of a renewable energy project.⁷

⁷ 6 NYCRR part 204-1.2 (67).

It is unlikely that any additional large-scale hydropower will be developed in New York State. However, there is more potential outside New York that could be developed, depending on the demand for the power. The reservoirs created by such development could flood native lands, large areas of forest, farmland, wildlife habitats, scenic areas, and towns. The dams necessary to create such reservoirs can cause radical changes in river ecosystems, both upstream and downstream. This kind of development should not be encouraged. Accordingly, only small-scale hydro projects that have low-to-moderate social and environmental impacts should qualify for RPS participation.⁸

By increasing diversity in the energy mix, the RPS can also improve system reliability and counter electricity price volatility during fossil fuel scarcity periods. The AG recommends that renewable distributed generation (*e.g.*, solar, fuel cells, wind, landfill gas) be included in the RPS. Renewable distributed generation can reduce the burden on transmission lines, limit the need to construct new transmission facilities and ameliorate peak demand price spikes.

The PSC estimates that renewable energy sources (excluding biomass and MSW) already provide approximately 17% of New York State's consumed electricity. To encourage the development of new resources, and to meet the Governor's stated goal of 25%, the definition of renewable energy should contain a distinction between existing resources and new resources. To minimize the economic impact of RPS incentives and prevent a windfall to existing renewable resource generators that compete in NYISO wholesale markets, the RPS should only apply to new resources brought online after January 1, 2000. Thus, the RPS incentive would focus on

⁸ The parties would need to develop appropriate definitions for such hydroelectric project eligibility.

those new facilities that increase the proportion of renewable resources from the preexisting 17% to 25% of electricity used in New York State.

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

The goal as announced by the PSC in this proceeding is to ensure that at least 25% of the electricity purchased in New York State is generated from renewable resources. While alternative sources may be available out-of-state, the AG supports development of new renewable energy sources in New York State. As much as legally possible, the RPS should spur development of new eligible renewable sources actually located in New York State so as to maximize benefits to the State and its residents. These benefits should include environmental and health benefits, diversification of energy resources, and economic benefits. RPS eligibility should be restricted to generation, wherever located, that produces such specific benefits to the State. An example of an environmental benefit to the State could include that the generator's output displaces generation that contributes to pollution affecting New York. To achieve diversity, the RPS generator could be required to contribute to advancement of eligible renewable technologies. An economic benefit could be generation that promotes economic development within New York, such as locating wind generators on farms, resulting in annual payments to farmers. Given the distance limitations inherent in electricity transmission, use of out-of-state generators likely will be limited to states near New York. Clean renewable resources generated in- or out-of-state should be required to meet specific criteria as indicated above.

Approximately 16% of consumption in New York State is currently generated from large scale hydroelectric power, comprising nearly all of the existing renewable electricity generated in

New York today. To further diversify New York's power base beyond large scale hydroelectric, the RPS should allocate the remaining 7-9% of the 25% RPS goal to development of new, clean, eligible renewable resources.

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

All customers should participate equally in the RPS program since all share in its benefits, either directly or indirectly. Applying the RPS broadly will also maximize the development of renewable energy. Therefore, no retail supplier should be exempt from participation (whether the supplier's own decentralized procurement or indirectly through a wires charge administered by a centralized purchasing agency).

We note that the largest part of existing renewable generation is currently controlled by NYPA (Niagara Project hydroelectric plants), and state law restricts this below-market cost power to specific customers (*e.g.*, MTA, municipalities, economic development projects, etc.). The RPS must not contravene statutory mandates regarding NYPA's supply of its own generation to serve eligible end users.

Mechanisms are also needed to ensure that RPS benefits and costs are distributed evenly among customer classes and regions of the State. Under a centralized model, a designated state agency could contract with renewable energy generators to meet any incremental RPS requirements, and could distribute the resulting expense evenly on a consumption basis to all end users similar to other system-wide "uplift" charges. In a decentralized model, LSEs could also enter into long-term contracts with, and/or purchase renewable credits from, eligible renewable generators outside their service area to comply with the RPS. In this manner, no LSE would be

competitively advantaged or disadvantaged based on the location of the greatest renewable energy resource potential. In either model, measures are also needed to ensure resources are developed in areas where additional electricity capacity is most needed.

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.

If a centralized model is adopted, the designated state agency would be required to contract with renewable energy generators to fill the needed RPS output, so there would be no adverse competitive impact. All LSEs would be on a level playing field with no exemptions or advantages accorded to any retail market participant. This approach would mitigate the danger that small scale ESCOs would face difficulty contracting for their annual incremental proportional percentage of power with renewable generators in a manner consistent with business realities.⁹ So long as all retailers are required to participate proportionately through an uplift-style wires charge collected by distribution companies and paid to generators via NYISO's billing system, then there should be no need to procure more renewable energy than customers want.

If, on the other hand, a decentralized model is adopted, the RPS instead would impose the renewable resource procurement obligation on each LSE. Here, issues of scale might arise, preventing small ESCOs from contracting for their proportional renewable electricity quota. A

⁹ For example, under the decentralized model, if tradable credits require a minimum sized unit of energy, such as one mWh, an ESCO serving a small load might be competitively disadvantaged by having to purchase energy or credits in whole units of a scale that exceeded their annual RPS target percentage.

system for trading renewables credits could be designed so as to alleviate this scale problem, but such a credit trading system will add some administrative costs.

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

If the centralized procurement model were adopted, there would be no need to require individual retail suppliers to procure renewable resources directly. Instead, retail suppliers' proportionate share of the designated state agency's expense of procurement would be allocated through a wires charge distributed by the NYISO and collected from each LSE's end user customers on a consumption basis. While the state agency would most likely rely upon long-term contracts to spur development of new renewable resources needed to fulfill the 25% goal, the RPS should permit other alternatives that may be useful in particular circumstances. For example, if private developers failed to produce the added resources needed to meet the quota, reliance upon public authorities (such as NYPA and Long Island Power Authority) would become necessary (especially if it proved necessary to locate new resources within load pockets¹⁰).

If the decentralized LSE procurement model were adopted, then New York's RPS should not restrict LSEs' flexibility in building their own renewable generation facilities, entering long-term contracts with independent renewable resource power developers, or indirectly procuring renewable resource output by means of renewables credit trading arrangements. No single

¹⁰ A load pocket is a region where load threatens to exceed the sum of in-region supply and import transmission capacity. As the amount of surplus generation capacity diminishes, the wholesale market price of power climbs steeply. Price volatility can be ameliorated through demand reduction efforts (such as efficiency improvement and incentives to reduce load temporarily during peak periods, and through supply relief from increasing transmission and/or generation capacity.

method or approach would be most appropriate for all LSEs, as a number of conditions might vary causing each LSE to select one or more solutions that best met its financial, geographic, and other circumstances. So long as adequate auditing systems were established to assure that each LSE's procurement commitments actually were met, the choice of how the renewable electricity would be procured should be left to each LSE's discretion.

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

Using the centralized model, the designated state agency could contract directly with renewable energy generators to procure the desired incremental output, and could allocate the resulting expense evenly among all market participants as an added component of the "uplift" charge distributed by NYISO (which currently includes load balancing, reserves and other similar ancillary service expenses).

If the decentralized LSE procurement model were adopted, the expense of each retailer's RPS procurement should be charged to all of its end user customers on a consumption basis. Where regulated utilities currently have rate adjustment mechanisms that pass the cost of generation through to consumers, these provisions could be modified to include RPS costs.

Care is needed to avoid to the greatest degree possible uneconomic contract prices with renewable energy generators, so that the shortcomings of the former 6¢ law are not repeated.¹¹

To protect consumers from unreasonably high energy price effects under either the centralized or

¹¹ In order to stimulate construction of independently owned electric generation, New York utilities were required by law to purchase power from non-utility generators at a price no less than 6¢/kWh. Public Service Law § 66-c (repealed as to generators built from 1992 on). Some utilities entered long-term contracts for this independently generated power that later became a serious economic burden when wholesale prices dropped well below their contract terms.

decentralized approach, the state agency or LSEs should use competitive bidding processes to secure the desired RPS output at the least possible cost. A centralized model could permit greater competition among bidders for renewable generation contracts and act as a restraint on their prices. On the other hand, if LSEs were appropriately given effective incentives to secure RPS electricity at the least cost, the decentralized model might encourage competition between LSE purchasers that would give discipline to the RPS generation contract bidders.

7. Individual retail suppliers' targets, if appropriate.

If the centralized procurement model were adopted, this issue would not arise, as retail suppliers would not be assigned renewable resource targets or quotas. Instead, the state agency would have incremental targets assigned each year designed to increase the percentage of New York electricity consumed from renewable resources gradually until the 25% goal were achieved. The pace of each incremental step towards achieving the 25% goal should be gauged according to realistic expectations for the addition of new renewable resources, taking into consideration the time required to construct and interconnect new generating facilities. Thereafter, this target might have to be revised as a result of demand growth and efficiency efforts that either increased or decreased the total electricity consumed.

If the decentralized LSE procurement model were used, similar graduated targets should be assigned annually, proportionately allocated among all LSEs according to their customer consumption levels.

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.

This issue is potentially highly significant as many industry experts are convinced that wind power offers the most potential for renewable generation in New York in the near future and solar power may be important for meeting summer peak demand requirements. In terms of mechanical failure exposure, wind and solar generators are likely more reliable than traditional fossil fuel facilities because of the reliance by these renewable resources upon multiple small units (turbines or solar panels). Shut down of individual components could diminish the total output from a wind or solar power generator, but would have far less of an impact upon system reliability than a mechanical failure taking a much larger gas or nuclear unit off line.

If most or a large portion of added renewable generation obtained to fill the RPS goal is to come from wind power, it might not be suitable for sale into the Day Ahead Market (“DAM”) due to the uncertainties of weather forecasting. Similarly, unanticipated cloud cover could reduce significantly solar generator output. Forecasting inaccuracy would pose a risk of delivery uncertainty, exposing intermittent resource generators to the need to replace DAM generation commitments from spot market suppliers and possibly making DAM offers uneconomic for these intermittent resources.

The use of additional intermittent renewable resource generators ought not cause any significant increase in the reserve contingency margin NYISO maintains to ensure reliability in case a baseload generator or transmission line suddenly ceases operating. Undue augmentation of the existing reserve power requirement would burden ratepayers and the State’s economy.

Intermittent resources may be better suited to the Hour Ahead Market (“HAM” or “spot market”) since large scale wind generators can more reliably predict output on this time span, and wind changes are not normally instant but instead result in gradual ramp-down or ramp-up of generation. Currently, NYISO rules exempt wind generators that supply power to the New York wholesale market from balancing obligations.¹² While the existing minuscule scale of New York’s wind and solar generation has not posed reliability problems to date, if intermittent resources are going to play a more significant role in achieving the 25% RPS target, careful analysis of the potential reliability impact of greater reliance upon such resources should be undertaken.

One means to mitigate the potential reliability issue is to distribute wind and solar generation resources geographically, so that their share of output in any single NYISO zone is kept below levels that might affect system reliability.¹³ However, if intermittent resources such as solar and wind generation are needed to relieve supply scarcity in downstate load pockets, where dense development makes reliance upon expansion of conventional generation undesirable, reliability impacts would have to be weighed carefully.

If, in achieving the RPS target, much of the roughly 7% addition to the State’s generation output is likely to be derived from intermittent renewable resources, then the PSC must consider how this circumstance might alter current state wholesale markets where, on average, 95% of

¹² NYISO maintains the state electricity grid to keep supply and load in balance on a continual basis, and either calls up more generation or curtails scheduled generation as variations in load or supply require at any moment.

¹³ Having wind generation de-concentrated would also distribute the economic benefits of this renewable resource over a broader area.

electricity is purchased in the DAM and through bilateral contracts. Since the HAM comprises approximately 5% of New York's total energy consumption currently, it is unclear what the impact(s) from substantial addition of intermittent generation output offers to the HAM would be on all wholesale markets and the bidding behaviors of LSEs.

As substantial wind power development has been deployed elsewhere, including in Texas, Spain and the Netherlands, the collaborative should examine how reliability issues are being addressed in these places. In short, the AG believes the collaborative should anticipate potential system reliability ramifications and make appropriate adjustments that harmonize the goals of diverse generation and reliable power supply.

Solar and wind generation may also prove important means of deploying distributed generation installed on the customer's side of the electric meter. As such, the intermittent nature of these resources could impact the demand side of the reliability balancing equation instead of the supply component. By its very nature, distributed generation is not concentrated, so it is unlikely that output variability concerns would damage system reliability, unless a substantial number of such facilities were installed within individual distribution zones. In all likelihood, distributed generation, particularly solar power in high peak regions of the State, will improve reliability.

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

The AG recommends a system for compliance and verification of the RPS goals that would include administration, incentives, and enforcement, with significant penalties for noncompliance. The general suggestions listed below will need to be adjusted depending on the

system the State adopts to implement the RPS (*i.e.*, centralized or decentralized model). Some administration will be required in any event. A centralized procurement approach could reduce the oversight and enforcement costs of the RPS, since a single entity would have all the data on what eligible renewable power was delivered.

Designation by the State of an administrator or agency responsible for compliance is important. The agency would review applications from proposed generators and approve or disapprove them as eligible under the RPS, based on the criteria adopted by the State. The agency should create, oversee and maintain the RPS. If credits and trading are to be used the agency should establish some form of electronic database to register, issue, and monitor the credits.

There should be a mechanism for verification and enforcement of the RPS. Specifically, a system should be developed to verify compliance and, in the event of non-compliance, impose penalties. The State should develop incentives – such as tax credits and other financial incentives – to help encourage new, clean renewable industries to locate in New York State.

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

Tradable Renewable Certificates, also referred to as Renewable Energy Credits (“credits”), represent the renewable attributes of a specific amount (usually 1 mWh) of electricity from renewable sources that is sold into the power pool. Credits provide renewable generators with another source of revenue beyond the sale of the energy. This is an important source of revenue, since most renewables currently cannot compete with fossil fuel generation.

While a credit system would be a core component of the decentralized model – the tracking of credits would be the primary means to determine compliance – it could also work in conjunction with a centralized model to allow in-state generators to sell their credits in other state RPS markets.

Credits can be documented by metering or by delivery into the grid, and can therefore be used by regulators to track and verify renewable sales. They may also provide a tool for giving a policy preference for certain technologies or for development of renewables in areas of the State where supply is most needed.

The PJM and the New England Power Pools have already adopted renewable credit systems. If a credit system is developed in New York, it should be, to the greatest extent possible, consistent with neighboring power pools' renewable credit systems. This will provide a greater incentive to develop renewable resources in New York, as generators will have more options to sell their credits.

Strict oversight will be required to avoid “double counting.” Credits must be tracked from cradle to grave, and should represent all attributes of the renewable energy. That is, a credit should not be broken up and sold for other uses beyond the RPS, such as carbon emissions avoided or pollution allowances. We must ensure generators do not sell the same mWh credit to two different power pools, and we must be sure that any “green power” marketing claims are limited to green power purchased above and beyond the RPS obligation.

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.

Retailers’ marketing materials must not be deceptive or otherwise misrepresent to consumers the amount of renewable energy being supplied. Disclosure standards may be needed to address what representations may be lawfully made about renewable energy content if the use of RPS trading credits results in indirect procurement of renewable electricity.

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 (*sic*).

Under the centralized model, the designated State agency would issue requests for proposals from developers seeking to build the new renewable generation facilities needed to fill the RPS quota. In order to address those load pockets where installed capacity and existing transmission limitations may not be adequate to meet load or may result in scarcity prices, the centralized RPS procurement authority could concentrate, to the extent feasible, its contracts in locations that would deliver the new electricity to regions where it is needed most. To the degree that adding generation to load pockets would result in moderating price volatility during peak load periods, this savings would serve to offset the premium paid for new RPS power produced at above the market average price.

A decentralized model would allow LSEs to procure credits from generators outside the LSEs’ own service areas to meet their RPS obligations. This might spur the development of new renewable resources, but would not help load pocket areas of the State, which most need additional generation capacity. Wind resources, for example, which are likely to provide a large

amount of the RPS requirement, have the most potential in Central New York and Long Island, but may not supply electricity during summer heat waves when downstate demand is greatest. Solar power, while currently more expensive to develop than wind power, has a greater potential benefit in New York City since it generates the greatest power during hot, sunny peak demand hours. Adding supply of such renewable resource distributed generation during peak demand periods could also have a significant benefit in moderating market price volatility.

Unless the PSC requires that LSEs procure at least a percentage of their RPS power from resources serving load within the LSEs' service areas, LSEs serving New York City may purchase their RPS credits from generators serving load outside that region, preventing the RPS from achieving the goals of improving system reliability and moderating electricity prices in load pockets. One market-based approach could be to enhance the credits allocated to renewable resources serving customers in a load pocket.

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.

New York should encourage the development of a robust green marketing program to provide additional incentives for developers to build renewable resources in-state. However, LSEs should not be allowed to make any green marketing claims for renewable energy purchased pursuant to their obligations under the RPS. By limiting green marketing claims to energy purchased beyond that of the RPS obligation, New York will maximize the development of renewable resources and will help thwart deceptive marketing practices. A well-designed credit

tracking system (in the centralized or decentralized model) could provide regulators with information needed to ensure LSE compliance with such a requirement.

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.

Because part of the System Benefit Charge (“SBC”)¹⁴ now addresses some renewable resource stimulation efforts, establishing the RPS should trigger some adjustments to the project focus of NYSERDA’s SBC program. Creation of an RPS should not diminish effective programs already established through the SBC. To ensure the greatest possible benefits to New York, the SBC and RPS programs should complement, not offset each other.

The creation of an RPS should create the demand needed to develop renewable power, without reliance upon the SBC subsidy in most cases. SBC support may still be required, however, for research and development of emerging technologies that might not compete for RPS credits. Indirect SBC support for renewable resources, such as the development of transmission connections to the grid, or reducing the cost of distributed generation metering, should be considered for RPS-eligible projects. Once the design for New York’s RPS is clarified, technical issues surrounding eligibility of SBC-assisted generation can be addressed.

PSC and NYSERDA must determine how to address existing NYSERDA contracts with renewable developers that require NYSERDA to provide production incentives (a payment per

¹⁴ The PSC previously directed New York’s six investor-owned utilities to collect \$234.3 million from ratepayers over three years to fund system-wide benefits such as research and development, energy efficiency and low-income consumer programs. Case 94-E-0952 *In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Competitive Opportunities for Electric Service*, Opinion 96-12 issued May 20, 1996. The Commission later extended this public benefit program. Case 94-E-0952, *supra*, *Order Continuing and Expanding the System Benefits Charge for Public Benefit Program*, issued January 26, 2001.

kWh supplied to the grid funded by the SBC) once the resource is developed. Under an RPS, these payments may be unnecessary and may create a competitive advantage for such developers. The SBC's energy efficiency programs should be expanded to curb the growth in over all electricity demand. This will have the added benefit of minimizing the cost of compliance with the RPS by reducing the amount of renewable power LSEs must procure.

CONCLUSION

The Attorney General is encouraged by the Commission's plan to establish a state-wide renewable energy portfolio standard and is committed to work towards bringing it to life. New York State, its businesses and residents deserve to receive the benefits of clean electricity generation, diversified power sources, economic stimulus and electricity price stability that implementation of the RPS should yield. We look forward to the collaborative process and will work with all interested parties towards designing and implementing New York's RPS promptly so that its benefits can be enjoyed as soon as possible.

Dated: New York, New York
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Respectfully submitted,

ELIOT SPITZER
Attorney General of the
State of New York

By:

Loretta Simon
Assistant Attorney General

Dietrich L. Snell
Deputy Attorney General
Public Advocacy Division

Loretta Simon
Environmental Protection Bureau

Keith H. Gordon
Telecommunications and Energy Bureau
Assistant Attorneys General,
Of counsel

Judith Enck
Policy Advisor

Thomas Congdon
Policy Analyst

120 Broadway
New York, New York 10271
Tel No.: (212) 416-6343
Fax No.: (212) 416-8877
E-mail: keith.gordon@oag.state.ny.us
loretta.simon@oag.state.ny.us
thomas.congdon@oag.state.ny.us
judith.enck@oag.state.ny.us