

March 28, 2003

VIA EMAIL

Honorable Eleanor Stein
Administrative Law Judge
New York State Department of Public Service
3 Empire State Plaza
Albany, NY 12233-1350

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

Dear Judge Stein:

Pursuant to your ruling of February 20th and subsequent letter following the March 4th procedural conference, the undersigned companies respectfully submit comments in the above captioned proceeding.

A copy of these comments will be sent to the service list in this matter via email, and hard copies will be mailed to Secretary Janet Hand Deixler.

Sincerely,

Thomas H. Rawls
Green Mountain Energy Company
75 Green Mountain Drive
South Burlington, VT 05403
802-846-2560 x6154
tom.rawls@greenmountain.com

American Wind Energy Association
Represented by Young Sommer...LLC
Douglas H. Ward
David R. Wooley
Valerie Strauss
5 Palisades Drive
Albany, NY 12205
518.438.9907 ext. 237
dward@youngsommer.com
dwooley@ef.org
vstrauss@youngsommer.com

Deborah Donovan
Clean Energy Program
Union of Concerned Scientists
2 Brattle Square
Cambridge, MA 02238-9105
ddonovan@ucsusa.org

Anna Giovinetto
Evolution Markets
10 Bank Street, 4th Floor
White Plains, NY 10606
Tel: 914.323.0255
agiovinetto@evomarkets.com

Darin Huseby
SeaWest WindPower, Inc.
5015 NE Cleveland Avenue
Portland, OR 92711
503.493.2270
dhuseby@seawestwindpower.com

William Moore
Atlantic Renewable Energy Corporation
7612 State Street, Suite #7
Lowville, NY 13367
315.377.3002
bill.moore@atlantic-renewable.com

Stephen Cowell
Conservation Services Group
40 Washington Street
Westborough, MA 01581
508.836.9500
Steve.cowell@csggrp.com

Dominic Antignano
US Energy Biogas Corporation
1420 D Church Street
Bohemia, NY 11716
631.563.6336
dantignano@usenergybiogas.com

Peter Wallis
Ameresco, Inc.
111 Speen Street, Suite 410
Framingham, MA 01701
508.661.2241
pwallis@ameresco.com

Erich Bachmeyer
Global Wind Harvest
424 Saratoga Rd.
Scotia, NY 12302
518.399.7342
ebachmeyer@globalwinds.com

Patrick Doyle
Zilkha Renewable Energy
1001 McKinney Suite 1740
Houston, TX 77002
518.452.1483
pdoyle@zilkha.com

Mel Jones
Steling Planet
3775 Mansell Road
Alpharetta, Georgia 30022
(770) 408-6389
mjones@sterlingplanet.com

Enclosure

cc: Active Party Service List (via email)
Secretary Deixler (via overnight mail)

March 28, 2003

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

**Initial Comments of the Undersigned Companies
Regarding a Retail Renewable Portfolio
Standard for New York State**

The undersigned companies submit these Initial Comments in response to the Order Instituting Proceeding issued on February 19, 2003. We would like to take this opportunity to applaud the Commission's February 19, 2003 Order Instituting Proceeding issued under Case 03-E-0188. We feel that a renewable portfolio standard (RPS) will offer a host of benefits to New York State and we very much support the Commission's expedited approach to develop a collaborative process to investigate the threshold issues outlined and to create a draft policy statement.

As outlined in the Order, there are several threshold issues that must be examined and resolved in order to ensure a successful RPS program for New York. One component to the RPS program that we feel is critical to program success is the development and operation of a certificates-based accounting and verification system. Such a system would facilitate the creation of an attribute commodity that would allow the purchase and sale of the generation attributes of all megawatthours of energy transacted through the New York Independent System Operator (NYISO) and neighboring systems. This system is needed to (a) enable retail suppliers to meet their requirements in the most cost-effective manner possible, (b) provide regulators with credible, precise, transparent data to verify supplier compliance with environmental requirements, (c) ensure consumer confidence in the retail electric products they purchase, and (d) provide owners of renewable generation a flexible system that will enable them to receive the full value of their environmentally preferable supply.

A certificates-based accounting and verification system will also provide the opportunity to simplify cross-border trading of renewable energy attributes and potentially expand the market for New York generators. Such a system will facilitate the reduction of seams issues between New York and other control areas such as New England, where a certificates system is currently operating, and PJM and Ontario where regulators and market participants are in the process of developing certificates systems. In order to ensure compatibility and seamlessness between systems, coordination between regulators and other stakeholders in the different regions will be critical.

Adoption of a certificates-based accounting system will provide both short- and long-term benefit to New York consumers. A certificates-based accounting system for New York that accounts for all megawatthours of generation and load would offer tremendous flexibility in

supporting public policy initiatives as well as facilitating the development of emerging green markets. Information developed and managed by the accounting system would offer the most cost-efficient, understandable, verifiable and market-compatible approach to achieving a variety of private and public goals. These goals include accurate consumer disclosure and detailed verification of green marketing claims and RPS requirements as well as generation performance standards if adopted in the future. Many public benefits can be derived from achieving these goals, including expanded consumer choice programs through new products, greater education, and increased renewable energy production – eventually leading to a reduction in air emissions.

A tradable certificates system would provide an efficient process for retail suppliers to develop specific products for retail consumers with a high degree of certainty that their product claims can be verified. For owners of generation, a tradable certificates system would provide a means to precisely measure the value of particular generation attributes to retail customers and offer an effective mechanism for owners to secure that value in the market. In addition, New York's adoption of a certificates-based system would provide the opportunity for New England's recognition of New York certificates and the reduction of barriers to cross-border trades providing benefit to both New York and New England renewable generators. For state agencies seeking effective ways to implement policies and regulations, a tradable certificates system with a central database will provide a comprehensive means to monitor and verify compliance.

In addition, the adoption of a certificates-based system will enhance the Niagara Mohawk Renewable Energy Program. Approved by the Commission as part of the Merger Settlement with National Grid, the Niagara Mohawk Renewable Energy Program enables renewable energy service providers (Green ESCOs) to sell renewable energy certificates directly to Niagara Mohawk customers through the Niagara Mohawk billing system. The sales are made consistent with the Commission's environmental disclosure requirement through a series of transactions that utilize Niagara Mohawk's spot market purchases to complete conversion transactions. The resulting renewable energy product is billed in its component parts ("commodity" from Niagara Mohawk and "renewable premium" from Green ESCO) and sold to New York consumers. While this multi-party conversion transaction is feasible, it is inefficient and requires a series of complicated transactions between generators, Green ESCOs, Niagara Mohawk, the ISO, and the PSC Staff. At the very least, these complexities add cost. The conversion transaction system also limits available generation resources by requiring all transactions to pass through the spot market. A certificates-based system would eliminate the complicated and time-consuming processes needed to complete the conversion transactions and would allow greater flexibility for both buying and selling renewable energy attributes.

In the Order, the Commission listed several threshold issues that are relevant to the adoption of a certificates-based accounting and verification system. These include:

- The appropriateness of a "renewable attributes trading" system, and the components of any such system that might be developed.
- The impact, if any, on the Commission's Environmental Disclosure Label Program, and any modifications that might be needed and appropriate for that program.

- The appropriate means to monitor progress towards meeting the goal and to ensure the results, including possible rewards and incentives.
- The best methods for retail suppliers to procure renewable resources (e.g., construction and ownership versus purchases).

Below, we provide some comments on a certificates-based system in the context of each of these threshold issues.

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

There is consensus among many New York stakeholders that the State needs an accounting system that is compatible with systems in other control areas and that facilitates and supports the sale of certificates across borders. New England has recently reaffirmed rules affecting imported certificates¹. These rules effectively impose a barrier to imports from control areas that do not have a compatible, certificates-based generation information system. At a time when the Federal Energy Regulatory Commission is moving towards regional transmission organizations and standard market design, the development of non-compatible tracking systems is leading to additional seams issues between control areas. There are major impediments to cross-boundary transactions as long as each control area has a uniquely different system driving the costs of cross-border trades to the point where the trades are uneconomical. As a result of generators’ inability to sell across borders, the market for renewable energy generation is potentially limited.

We believe that in order to eliminate these limitations and to spur the market for renewable energy in New York, the state needs an accounting system that allows for the separation or unbundling of energy and attributes. Furthermore, we believe that certificate-based verification systems have demonstrated the potential to improve the liquidity of renewable energy in wholesale markets, simplify the disclosure of accurate information to consumers, and support renewable portfolio standards. Since 1998, there have been many advances in other states, regions, and across the nation that have important implications for the success of New York’s program. Key developments include the following:

On July 31, 2002, the NARUC Committee on Energy Resources and the Environment adopted a “Resolution to Support the Incorporation of Regional Energy Generation Tracking Systems in ISO/RTO Responsibilities and in FERC’s Standard Market Design.”² The resolution supports the separation of energy and attributes, the implementation of regional accounting systems to verify green power marketing claims and public policies such as disclosure and portfolio standards, and comprehensive systems that cover all generation, not just renewable energy. The NARUC Board of Directors further encourages each RTO/ISO or larger geographic region to assume responsibility for developing certificates-based accounting systems, and encourages the Federal Energy Regulatory Commission to include a requirement that each regional transmission

¹ 12/19/02, Memo from A. Kuznecow to NEPOOL Participants Committee, “Actions of the NEPOOL Markets Committee”

² For the full text of the Resolutions, refer to http://www.naruc.org/Resolutions/2002/summer/ere/tracking_systems.shtml

organization develop and maintain a certificates-based system as part of its standard market design.

In April 1999, New England convened a private-public effort to create a NEPOOL Generation Information System (GIS) to support all state programs relying on generation attributes to verify compliance. A working group including NEPOOL Participants, the ISO and various New England state energy and environmental regulatory agencies departed from an earlier New England Tracking System (NETS) design, similar to that described in the White Paper, and spent the next two years formulating a conceptual design for a GIS database and certificate system. On November 3, 2000 the NEPOOL Participants Committee adopted a “Resolution Regarding Generation Information System.” In March 2001, the Committee issued a Request for Proposal³ setting forth the conceptual design.

An Administrator was selected in October 2001 and NEPOOL adopted detailed operating rules⁴ in January 2002. The GIS began operations in April 2002. The system allows load serving entities to demonstrate compliance with various state programs⁵ by trading GIS certificates, which represent the generation attributes of electricity, as a product entirely separate from the commodity energy. New England State regulators are relying on the GIS to verify compliance with various RPS, generation performance standards and environmental disclosure programs. New England regulators have declined to recognize New York conversion transactions because the New York system is not deemed to be compatible with New England’s GIS.

Recent developments in other regions also validate requirements for a certificates-based accounting system. Ontario is moving ahead with the development of a certificates-based accounting system. The Ontario Ministry of Energy was given the authority to develop and implement a certificates-based system in legislation that amended the Ontario Energy Board Act of 1998. The legislation stipulates that the Ministry can develop regulations “providing for the establishment, administration and operation of a tracking system to associate electricity with the processes and fuel types used by generation facilities and with the types and quantities of contaminants emitted by generation facilities” and “authorizing and governing the issuance of certificates related to determinations made for the purposes of the tracking system.”⁶ Based on this authority, the Ministry of Energy issued these regulations for public comment on March 24, 2003 designating the Ontario Independent Electricity Market Operator as the program Administrator. Ontario has selected a certificates-based system for a number of reasons, such as the desire to harmonize its markets with those in other regional control areas, including New England.

Market participants in PJM are also currently exploring the potential development of a certificates-based tracking system through the Generation Attributes Tracking System Working Group. The group’s recently adopted mission statement is: “To recommend to the PJM Energy

³ Request for Proposal to Develop and Administer Generation Information System Database and Certificate System for NEPOOL

⁴ New England Power Pool Generation Information System Operating Rules. See http://www.iso-ne.com/committees/Generation_Information_System/Approved_GIS_Operating_Rules.doc

⁵ environmental disclosure labels, renewable portfolio standards, and emission portfolio standards

⁶ Please refer to Ontario Energy Board Act, 1998 Part 88, Section a.1 through g for the full text. This text can be found at http://192.75.156.68/DBLaws/Statutes/English/98o15_e.htm#P1163_99393.

Markets Committee a single information system that will support reporting, compliance, and verification requirements related to generation attributes of electric generation. Such a system should: Ensure accurate accounting and reporting, facilitate efficient and transparent transactions among market participants, provide flexibility to accommodate varied and changing State policies or programs, maintain liquidity in the energy market, mitigate seams issues, and be cost effective.”

The impact, if any, on the Commission’s Environmental Disclosure Label Program, and any modifications that might be needed and appropriate for that program.

As part of the RPS proceeding, we recommend that the Commission revise its December 15, 1998 “Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism” to allow for the separation of energy and attributes and hence allow the use of a certificates based information system to support the state’s current and future environmental requirements. We also request the Commission to work closely and diligently with other regions to assure reciprocity in treatment of imported and exported certificates, leading the way to a seamless, broad trading market for certificates.

In November 1997, the New York Public Service Commission initiated proceedings to develop and implement an environmental disclosure system that would facilitate informed customer choice through environmental disclosure, which could, in turn, lead to improved environmental quality and resource diversity. Numerous parties participated in a series of conferences, informational meetings, and initial and reply comments that culminated in an August 1998 Staff white paper⁷ setting forth a number of issues and endorsing a single “tracking” mechanism. After considering initial and reply comments on the White Paper, the Commission adopted the "Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism," on December 15, 1998. This Order institutes a contract-path tracking methodology to provide the information needed to support environmental disclosure requirements. The verification methodology described in the regulation tracks energy purchases through bilateral contracts back to the source of electric generation and allows limited unbundling of energy from environmental characteristics through a retroactive conversion process.

As market participants and interested parties in the New York electric market, we have identified critical limitations to the current system as described above. The current tracking system hinders the ability of retail suppliers to offer green power products because it requires that generation attributes remain bundled with the underlying energy commodity. In areas where there are transmission constraints and inadequate local renewable resources, suppliers must use conversion transactions to support their green portfolios. However, the necessity to purchase all the green resources out of the spot market places financial burden and risk on these suppliers because they cannot be flexible in their procurement strategy. Furthermore, the current tracking system limits retail suppliers’ ability to compete in the competitive marketplace. The system creates transaction costs that are higher than necessary, because the only opportunity to purchase attributes without the associated energy is through the spot market. Similarly, generators’ ability

⁷ Environmental Disclosure: Empowering New York Consumers to Make Informed Electricity Choices (White Paper)

to compete is compromised because they are sometimes forced to sell into the spot market for conversion transactions and cannot engage in bidding strategies that maximize return. The generators' ability to compete is also compromised by the current limitations on the markets they can access. To maximize new renewables development, generators need access to the largest market possible, and their market should not be limited by prohibitive costs on export transactions.

The conversion transaction creates further hindrance to the development of renewable energy markets because the process does not support one of the key business models being used to develop new projects. One of the key renewable energy business models that has emerged relies on an entity, in most cases a power market company, taking on all the market price risk of projects. However, the model depends on that entity's ability to rapidly transact a standardized, transparent attribute product that the conversion transaction does not provide. Unnecessary transaction costs, as exist in the conversion transaction process, take away the incentive for that entity to play in the market thus putting new renewable energy projects at risk.

Finally, market liquidity and price transparency are essential supports to the long-term growth of attribute markets. However, if the ability to unbundle attributes is hindered as it is under the current system of conversion transactions, these necessary supports will not develop.

The appropriate means to monitor progress towards meeting the goal and to ensure the results, including possible rewards and incentives.

A certificates-based accounting and verification system will provide the most cost-effective approach to meeting environmental requirements thereby ensuring that retail suppliers will pay the least amount to procure the necessary portfolio of resources and ensuring that requirements are met. In Texas, the Renewable Energy Credit program has been so successful that goals have been met ahead of schedule. While Texas regulation called for 400 MW of new renewables capacity by 2003, over 1000 MW are already on-line.⁸

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

As stated above, tradable certificates provide the most flexibility for suppliers in procuring the required renewable energy attributes. Transaction costs are reduced because suppliers do not have to enter into bilateral contacts with each renewable generator that they wish to purchase from. The supply procurement options are expanded, allowing suppliers to negotiate the best deals for the power and attributes separately and to balance their portfolios between procurement options. This reduces transaction costs for suppliers and allows them to offer more competitively priced products.

⁸ From "An Overview of the U.S. Renewable Energy Certificate Markets," presented by Anna Giovinetto of Evolution Markets at the Massachusetts Electric Restructuring Roundtable, December 13, 2002.

In conclusion, we encourage the Commission to adopt a certificates-based accounting and verification system as the means to show compliance with the renewable portfolio standard and provide data for environmental disclosure labels, as well as support Executive Order 111 and the emerging green power markets.

Very Truly Yours,

Thomas H. Rawls
Green Mountain Energy Company
75 Green Mountain Drive
South Burlington, VT 05403
802-846-2560 x6154
tom.rawls@greenmountain.com

American Wind Energy Association
Represented by Young Sommer...LLC
Douglas H. Ward
David R. Wooley
Valerie Strauss
5 Palisades Drive
Albany, NY 12205
518.438.9907 ext. 237
dward@youngsommer.com
dwooley@ef.org
vstrauss@youngsommer.com

Deborah Donovan
Clean Energy Program
Union of Concerned Scientists
2 Brattle Square
Cambridge, MA 02238-9105
ddonovan@ucsusa.org
617-547-5552, ext 221

Anna Giovinetto
Evolution Markets
10 Bank Street, 4th Floor
White Plains, NY 10606
Tel: 914.323.0255
agiovinetto@evomarkets.com

Darin Huseby
SeaWest WindPower, Inc.
5015 NE Cleveland Avenue
Portland, OR 92711
503.493.2270
dhuseby@seawestwindpower.com

William Moore
Atlantic Renewable Energy Corporation
7612 State Street, Suite #7
Lowville, NY 13367
315.377.3002
bill.moore@atlantic-renewable.com

Stephen Cowell
Conservation Services Group
40 Washington Street
Westborough, MA 01581
508.836.9500
Steve.cowell@csggrp.com

Dominic Antignano
US Energy Biogas Corporation
1420 D Church Street
Bohemia, NY 11716
631-563-6336
dantignano@usenergybiogas.com

Peter Wallis
Ameresco, Inc.
111 Speen Street, Suite 410
Framingham, MA 01701
508-661-2241
pwallis@ameresco.com

Erich Bachmeyer
Global Wind Harvest
424 Saratoga Rd.
Scotia, NY 12302
518.399.7342
ebachmeyer@globalwinds.com

Patrick Doyle
Zilkha Renewable Energy
1001 McKinney Suite 1740
Houston, TX 77002
518-452 1483
pdoyle@zilkha.com

Mel Jones
Steling Planet
3775 Mansell Road
Alpharetta, Georgia 30022
(770) 408-6389
mjones@sterlingplanet.com