



**State of New York  
Public Service Commission**

-----X <b>Proceeding on Motion of the Commission   Regarding a Retail Renewable Portfolio   Standard.  </b> -----X	<b>Case No. 03-E-0188</b>
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**Comments of Tannery Island Power Corporation,  
Hydro Power, Inc., and Energy Enterprises, Inc.**

The Commission’s Order Instituting Proceeding seeks comments on the feasibility of implementing a renewable portfolio standard (“RPS”) in New York State. The Commission’s Order states that “renewable resources represent a significant potential energy reserve, which (if properly developed) could lower air emissions and increase system reliability.” Order at 2. The Order also notes “an RPS has the potential to improve energy security and help diversify the state’s electricity generation mix.” Id. In Executive Order No. 111, Governor Pataki stated that “the generation and use of energy has a significant impact on the environment, contributing to emissions of sulfur dioxide, nitrogen oxides, greenhouse gases, and other pollutants.” Executive Order No. 111 directed that:

State agencies and other affected entities with responsibility for purchasing energy shall increase their purchase of energy generated from the following technologies: wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells. State agencies and other affected entities shall seek to purchase sufficient quantities of energy from these technologies so that 10 percent of the overall annual electric energy requirements of buildings owned, leased or

operated by State agencies and other affected entities will be met through these technologies by 2005, increasing to 20 percent by 2010. No agency or affected entity will be exempt from these goals except pursuant to criteria to be developed by NYSERDA, in consultation with DOB, OGS and the Advisory Council.

Executive Order, Paragraph IV.

The Executive Order refers to reducing emissions, and the directive to agencies to meet energy requirements through the procurement of energy through specified sources. The Executive Order does not direct that the threshold level of 20% of the State's energy be generated through renewable resources. The Executive Order only directs that State agencies should procure 20% of their energy needs through renewable resources by 2010. That being said, an over-reliance on fossil-fueled generation sources does impact the future of New York's energy security given today's uncertainty in the Middle East. Not listed in the Governor's Executive Order are hydroelectric power and waste-to-energy facilities. If the goal of New York State is to reduce emissions of SO<sub>2</sub>, NO<sub>x</sub>, greenhouse gases and other pollutants, then the inclusion of hydroelectric facilities, a non-pollutant emitting generation source, in the list of renewable resources is as equally compelling as that for wind, etc. Similarly, if the goal is generation resource diversification and the utilization of indigenous resources, then the case for inclusion of waste-to-energy and hydroelectric facilities is just as necessary, and as compelling, as that for using a mix of wind and solar.

This collaborative effort should also consider fashioning an RPS that addresses the need for standard interconnection and power purchase agreements for certain classes of renewable plants that would facilitate their participation in the ISO, financings to maintain and improve optimal plant performance, reduce operational costs, and clearly delineate the plant owner's rights to green energy credits. Moreover, as this collaborative

effort moves forward, and as has been done by several other states, the RPS should ensure the maintenance of investment in, improvements to, and expansion of existing facilities using renewable resources.

The Commission identified several threshold issues in its Order Instituting Proceeding. Tannery Island Power Corporation, Hydro Power, Inc. and Energy Enterprises, Inc. provide the following comments on those identified issues:

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

New York State is hydro rich and given that this generation source is fueled by a naturally renewable source, water, then it should qualify in any definition of “renewable.” Moreover, this resource is dispersed across most service territories of the investor owned utilities and municipal electric systems and offers a reliable source of power. The Public Service Law (“PSL”), § 66-c Conservation of energy, states it is “the policy of this state that it is in the public interest to encourage . . . the development of alternate energy production facilities, co-generation facilities and small hydro facilities in order to conserve our finite and expensive energy resources.” The PSL defines an “alternate energy production facility as “any solar, wind turbine, waste management resource recovery, refuse-derived fuel or wood burning facility.” PSL §2(2-b). The PSL clearly identifies both small hydroelectric facilities and waste-to-energy facilities when discussing energy conservation.

When determining what resources are to be included in the RPS it would behoove the parties to consider the State’s previous position on this issue. The State Energy Plan, New York’s statutorily definitive discussion of the State’s energy resources, defines

renewable energy as “energy derived from resources that are not depletable or are naturally replenished when used at sustainable levels.” This definition would clearly include hydroelectric facilities and would also encompass waste-to-energy facilities as renewable resources.

The inclusion of hydroelectric and waste-to-energy facilities is important in the development of New York’s RPS. This would include both existing and new plants. The State’s current generation mix is comprised of 17.58% hydroelectric generation and 0.98% solid waste fueled generation. If the State currently has over 18% of its generation derived from these two sources it would seem reasonable to include these two sources of generation in the definition of renewables in the RPS, so as to maintain generation diversity in achieving the RPS' goal of 25% of the State's generation coming from renewables. Order at 2. In order to achieve the 25% goal identified in the Commission’s Order, it would be not only appropriate to encourage new renewable technologies, but equally important to include existing renewable resources with encouragement to upgrade and stabilize these existing facilities to ensure their continued contribution to a safe, reliable and secure source of renewable energy.

It should also be noted that there are significant public benefits associated with the proper operation and maintenance of existing hydroelectric facilities as those facilities support dam safety, public recreation, environmental monitoring, fish passage, etc. The importance of these existing facilities is best exemplified by the 1999 microburst in Upstate New York and the 1965 Blackout. In each event, the lights were kept on in local communities by the presence of small operating hydroelectric projects.

Hydroelectric power is one of New York's most abundant sources of renewable energy. During the early 1980s when New York was seeking alternate energy sources to decrease the State's over-dependence on imported oil, hydroelectric developers rose to the challenge. In today's market, where once again New York needs to focus on diversifying its generation base, hydroelectric producers can again assist the State in providing clean, and environmentally friendly, generation through the inclusion of existing hydroelectric facilities in the RPS. By including the existing hydroelectric facilities in the RPS, small hydroelectric producers would be better situated to perform the necessary upgrades and system reinforcements needed to maintain their contribution to the State's energy mix.

Although New York's hydroelectric facilities range in size from very large to small, it is the smaller facilities that would benefit most from inclusion in the RPS. The RPS being developed in this proceeding provides the opportunity to assist these important facilities in obtaining more stable revenue streams. The revenue streams can be solidified by the State's intention to encourage the purchase of hydroelectric power and allow for the execution of contracts with the small hydroelectric operators.

It is stressed that the RPS would not lessen environmental regulation of renewable facilities, e.g., emissions. Indeed, it is envisioned that the RPS would enhance a plant's ability to comply with its environmental licenses and permits, and also enhance its ability to exceed minimum compliance with environmental requirements, e.g., a hydroelectric plant's peaking operation could be altered or converted to run-of-river, impoundment fluctuations reduced, trash-rack spacing reduced, plant operations and data collection automated, dam repairs and improvements made, etc.

Last, it should be kept in mind that the RPS should have the ability to encourage the retention of electricity produced from in-State renewable resources from being exported. There is certainly the prospect of the larger hydroelectric plants located in the Capital region of being able to sell into the New England system.

The State Assembly has introduced several pieces of legislation in this session addressing waste tires in New York State. These bills include A3463 (Waste Tire and Recycling Act of 2003), A5876 (providing a tax credit for the beneficial use of waste tires), and A6552 (directing DEC to design and implement an integrated plan for developing markets for waste tires). It is clear from the proposed legislation that waste tires are a continuing problem in New York, and any new technologies that would take these tires and turn them into usable energy in a clean, safe and reliable manner would serve the dual purpose of finding a beneficial use, as well as providing renewable energy. As technologies advance, there are many proposed ways of converting tires to energy in existence.

Fuel cells should be included for their benefits as DG sources and low emissions. Similarly, gas-fired plants using natural gas produced from wells in New York should also be included as a means for lessening dependence on out-of-state resources.

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

Given that New York's current generation mix includes over 18% from renewable resources within the State, if the goal is to encourage new and indigenous sources of generation from renewables in New York, then including imports would defeat one

express purpose of the RPS. The use of imports to achieve the stated 25% goal of renewables in the New York generation mix would continue to make New York dependent on outside sources when, in fact, New York is almost at the 25% goal today.

Hence, an RPS should encourage the importation of energy produced from renewable resources as a means for reducing emissions in the State, but the energy produced should not be counted towards meeting a minimum renewable goal of 25%.

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

As the benefits associated with an RPS inure to all New York citizens, the costs thereof should be incurred by all consumers to the extent that a customer is required to either consume electricity that is produced by 25% renewable resources, or to pay a “fee” that would put that customer in the same position as if it had purchased electricity with a 25% renewable content.

Any retail supplier that currently has renewable resources in its portfolio should be required to continue selling energy from those sources. To the extent that it has excess renewable generation, the owner thereof should be allowed to sell the “renewable attributed” to a provider that is deficient in meeting the renewable standard.

Further, all providers should have to meet the standard, albeit that the deadlines for compliance may have to be fashioned to accommodate municipal utilities, ESCOs, and regulated electric companies, which may need to accommodate long term supply agreements, the formation of, and participation in markets, e.g., NYISO, credit trading, etc.

- 4. The impact, if any, on the ability of energy service 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 should be addressed by an RPS that has a minimum threshold for its applicability to a provider, e.g., provider must serve a minimum summer load of “x”, or a load of “y” during the previous 6 months, etc.

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

The market should dictate the method.

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

No comment at this time. All providers of a certain size should bear their own costs with the customer deciding from whom to purchase or to continue to purchase from.

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

No comment at this time.

- 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.**

System reliability and operations are the responsibility of the distribution and transmission serving entities. They should be free, as they are now, to contract for

system support, and to impose in their interconnection agreements components necessary to ensure reliability and safety. This is not an energy issue unless congestion prevents importation of load, in which case DG should be encouraged, e.g., eliminate or reduce exit fees, coordinate parallel operation, etc.

Moreover, an RPS that promotes small sources of renewable power could also encourage location of plants away from congested transmission corridors and into areas that would benefit from more generation to eliminate load pockets, etc. For example, regional DAM pricing would encourage a waste-to-energy plant to locate in the Capital region. The RPS could provide incentives to locate the plant in other regions even though the regional pricing is less than that of the Capital region. This would help to offset, or eliminate, some of the economics that drive the location of such facilities near metropolitan areas, e.g., access to waste, transportation, etc.

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

At start up, an average should be used to facilitate compliance, e.g., three years to average 25%. Then, a fee should be assessed for deficiencies as a disincentive. Any such fee should be able to be passed on by the provider to its customers, who should then be allowed to switch providers as a further disincentive to non-compliance.

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

The creation of a "trading" system could easily defeat the Governor's goal of reducing emissions. If non-renewable generation is able to somehow obtain a credit in

place of the State encouraging renewable resource generation, then there could be a situation in which emissions are not reduced, but remain at today's status quo level. Until an RPS is in place, and the State is able to determine the impact of the RPS on the development of renewable resources and their attendant beneficial impact on the environment, no trading program should be adopted.

At a minimum all providers of electricity within and into the New York market should be required to have a 25% renewable content from renewable generation within New York or credits from New York renewable projects. Permitting credits to be imported would be contrary to the reduction of emissions in the State and in the region, and would be contrary to enhancing indigenous sources of renewable power, greater diversification, and reliability.

**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.**

This issue should be addressed as part of a compliance-monitoring program. The market may dictate more disclosure to justify prices or as marketing tool, e.g., percentage procured from in-State wind, solar, hydroelectric, etc. Hence, mandated changes are not thought to be necessary at this time.

- 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.**

This is more of an issue for the transmitting and distributing entities. Waste-to-energy, fuel cell, solar, and wind could be, and should be, encouraged to locate in high load areas.

- 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 State has an opportunity in this proceeding to identify ways in which small renewable developers can be assisted in such a way that the stated goal of 25% can be readily achieved. The anticipated impact of the RPS would be to encourage increased sources and diversity of renewable generation, which will help the green market to mature at a quicker pace than has been observed to date. However, renewable resources do not necessarily have to mean green, or meet various certificate problems, in order to participate in and benefit by the RPS.

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

No comment. However, information on the utilization and success of the SBC program would be of value. Also, information on the expenditure of funds and resulting projects successfully implemented would also be of help.

## Conclusion

Tannery Island Power Corporation, Hydro Power, Inc., and Energy Enterprises, Inc. believe that the threshold issue of identifying what resources will be deemed “renewable” needs to be addressed prior to the collaborative tackling the matter of implementation of an RPS in New York State. The first three questions listed in the Commission’s Order: what is a renewable, the treatment of imports, and which retail sellers should be required to participate, are the questions that need to be resolved before the proceeding can begin to address the questions of the impact on competition, pricing and cost recovery.

Dated: March 28, 2003

/s/

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