

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

RULING ON MOTION TO FURTHER POSTPONE

(Issued April 7, 2004)

Eleanor Stein, Administrative Law Judge:

On February 2, 2004, the report titled "The Effects of Integrating Wind Power on Transmission System Planning, Reliability, and Operations—Report on Phase 1: Preliminary Overall Reliability Assessment" (the Phase 1 Report) was issued. The report, commissioned by the New York State Energy Research and Development Authority (NYSERDA), was prepared by GE Power Systems Energy Consulting. On March 8, 2004, a technical conference was held with the report's preparers responding to parties' questions. A 258-page transcript was compiled. Parties were informed on March 8, 2004, following the technical conference, that they were welcome to include in supplemental comments concerning substantive issues, any additional arguments regarding the pending motion to delay preparation of a recommended decision and a Commission policy statement until after the completion of Phase 2 of the Reliability Study.¹

In comments filed March 19, 2004, some parties restated or raised additional reasons to delay preparation of a recommended decision and a Public Service Commission policy statement concerning adoption of a renewable energy portfolio standard for New York State. These parties assert that the recommendation or a policy statement in this proceeding require the completion of Phase 2 of the reliability report, expected in

¹ See Further Ruling Establishing Schedules (issued March 10, 2004), pp. 3-4.

December 2004, and additional cost studies, technical conferences, and comments. To accomplish all the additional steps these parties seek would take at least one more year. Other parties oppose further delay.

Based upon a review of the status of the extensive record, compiled in part in response to parties' concerns, and the necessity for timely policy recommendations and decisions to the State's renewables development, among other reasons, the motion is denied.

BACKGROUND

On November 5, 2003, Independent Power Producers of New York (IPPNY), Energy Association, Business Council, Municipal Electric Utility Association, Multiple Intervenors (MI), Utility Workers of America, Local 1-2 and International Brotherhood of Electrical Workers, Locals 83, 97, and 503 (Joint Movants) moved for clarification and reconsideration of an October 21, 2003 Further Ruling on Procedure. Joint Movants asserted, among other things, that the procedures established in the ruling would preclude development of a full record on reliability impacts. Joint Movants also proposed that neither a recommended decision nor a Commission policy statement should be issued until after the completion of both phases of the reliability study; revision by Department of Public Service Staff of its cost study to recognize any cost consequences of the Phase 2 reliability report; and an opportunity for parties to analyze and comment on those two studies. The motions to hold in abeyance a recommended decision or a Commission policy statement until after the completion of the Phase 2 Report, scheduled for the end of 2004, met opposition. Opposing

parties, including the RETEC Coalition², the Attorney General, and Department of Public Service Staff asserted that most or all conceivable reliability concerns could be alleviated in Renewable Portfolio Standard (RPS) implementation, as it would be years before any network effects of substantial additional intermittent generation are felt.³

Decision was reserved as to this motion until the outcome of the Phase 1 Report, to ensure that no unforeseen impacts were ignored.⁴ On February 2, 2004 the report on Phase 1 was released. Parties had reviewed and submitted written comments on the draft results of this report, and on January 14, 2004 participated in a formal presentation and discussion of these initial findings by the preparers of the report, prior to the report's completion.

On March 19, 2004, ten parties filed comments concerning the Phase 1 Report. Parties filing comments were AES-NY, Sithe and Reliant (the AES group), the Attorney General, the Business Council, Central Hudson, Joint Utilities, IPPNY, MI, the

² RETEC is a coalition including the American Lung Association of New York State; American Wind Energy Association; Citizen's Advisory Panel; Community Energy; Fuel Cell Energy, Inc.; Hudson River Sloop Clearwater; Natural Resources Defense Council; New York Lawyers for the Public Interest; New York League of Conservation Voters; New York Public Interest Research Group; New York Renewable Energy Coalition; New York Solar Energy Industries Association; Pace Energy Project; Plug Power; PowerLight; Public Utility Law Project; Riverkeeper; Safe Alternatives for Energy Long Island; Scenic Hudson; Sierra Club Atlantic Chapter; Solar Energy Industries Association; Sustainable Energy Developments, Inc; and Union of Concerned Scientists.

³ At a preliminary technical conference held October 10, 2003, the New York State Reliability Council discussed reliability concerns with parties, including the NYISO.

⁴ Ruling on Procedural Motions (issued November 26, 2003). The other concern expressed by parties: that they have an opportunity to review and comment upon the most recent cost studies practicable prior to the completion of a recommended decision, was compelling and the motion seeking this opportunity was granted.

NYISO and NYPA. Issues raised included further argument on the procedural motion to delay a recommended decision and Commission consideration of its policy statement in this proceeding until after the completion of the Phase 2 Report, a further revision of the Staff Cost Study Report to reflect cost consequences of the Phase 2 Report, and an opportunity for parties to analyze and comment upon both the Phase 2 Report and the ensuing Revised Cost Study. In addition, parties raise substantive arguments concerning the reliability impacts assessed in the Phase 1 Report. This ruling will only address the pending motion to postpone.

THE PENDING MOTION TO DELAY THE
RECOMMENDED DECISION AND POLICY STATEMENT

In instituting this proceeding, the Commission expressed its intention to expedite it.⁵ To fully air preliminary reliability concerns, a conference of parties was held on October 10, 2003, at the request of the New York State Reliability Council. A substantially similar group of parties requested delay of the comment filing schedule to await a conference outcome; others opposed on the ground that the record could be developed on other issues. Because parties had three weeks between that conference and reply comments, had already had an opportunity to shape the scope of the comprehensive NYSERDA-sponsored evaluation of the effects of integrating wind power and were expected to review preliminary and final Phase 1 results prior to a Commission policy statement, the delay motion was denied.⁶

Arguing for further delay, the AES Group and the Business Council assert that Phase 1 did not approach the level

⁵ Order Instituting Proceeding (issued February 19, 2003), p. 2.

⁶ Further Ruling Concerning Schedule and Procedure (issued September 19, 2003). Several previous motions for additional time had been granted. See Ruling Granting, in Part, Motions to Amend the Comment Schedule (issued August 18, 2003), Ruling on Motion to Amend Comment Schedule and Convene Reliability Impacts Meeting (issued June 13, 2003).

of reliability impact study needed for the Commission to act, as it was designed as a snapshot of data rather than an operational analysis over a year's time; that the findings were preliminary and premature; and that certain important concerns will not be evaluated until Phase 2, including re-dispatch implications, interface capability, and operational concerns such as quick start capability and forecast accuracy. They also express concern that specific generation to be backed down to accommodate wind as available had not been modeled. In addition, parties note the study proponents describe it as "a very, very high level look" at and "a screening level analysis only" (Tr. 155, 169) of the impact of additional wind on the bulk power system, and that specific sites and points of interconnection have yet to be studied. Movants note that while Phase 1 identified 101 potential wind sites, site-specific operational or cost examination is still to be done. Phase 2 will assess impact of forecast accuracy of wind variability; quantify effective capacity of installed wind generation; determine changes if any, needed in ancillary services operating practices; NYISO market rules to facilitate behavior to maintain reliability and economy, and NYISO Transmission Reliability Assessment and ICAP requirements. Phase 2 will also provide an estimate of the operating cost impact of these recommendations.

IPPNY also asserts that this record is insufficient to support a recommended decision or Commission policy statement, adding that the fatal flaw power flow analysis inadequately reflected reliability and cost considerations in estimating the impact of the addition of wind. MI added that further study is needed prior to the issuance of a recommended decision as to specifics of, for example, degradation of operating capacity, accounting for reserves, and ancillary services and restoration practices. MI quotes the NYSRC at the October 10, 2003 technical conference, urging that potential reliability impacts be taken into consideration when RPS decisions are made.⁷

⁷ MI Comments, p. 19.

In opposition to the motion for delay, the NYISO finds nothing in the Phase 1 Report that would require delay, and recommends the Commission move forward on basic RPS design, including the funding mechanism, eligibility, and development of a generation attributes trading system. In its March 19, 2004 filing, the NYISO also recommends that the Commission not conclude this proceeding until after it receives comments from the parties on the Phase 2 Report. The NYISO plans to examine in greater detail specific operational requirements for adding significant amounts of wind and other intermittent resources concurrently, and urges that specific decisions affecting reliability, including the details of the impact on existing capacity, should await the outcome of Phase 2.⁸ Specifically, the NYISO proposes the Commission impose a statewide interim limit on wind eligibility, as well as locational limits where physical transmission limitations may be implicated.⁹

The RETEC coalition argues that, insofar as ruling on this motion was deferred to ensure that no unforeseen impacts were ignored, the Report findings reveal no such unforeseen impacts.¹⁰ Indeed, in RETEC's view, the Phase 1 Report supports its position that the preparation of a recommended decision and Commission policy statement should proceed expeditiously. The Attorney General also opposes further delay, noting parties have had 13 months to study and brief the most basic RPS design questions, such as resource eligibility, procurement structure, and renewables credit trading. In its view, with the parties' comments on the cost studies filed on April 8, the Commission will have "more than an adequate record" to decide these

⁸ Phase 2 will assess methods for quantifying the effective capacity of installed wind generation and for modeling wind generation; variations in actual delivery from forecast production and improvements in forecast accuracy; changes in NYISO planning and in reliability standards, rules, operating practices, variability measurements; and associated costs. NYISO Comments, p. 5.

⁹ NYISO Comments, pp. 2-3.

¹⁰ RETEC Comments, p. 3.

threshold questions. Both RETEC and the Attorney General point out that further delay prejudices the attainment of 25 percent renewables.

DISCUSSION AND CONCLUSION

As parties note, the Phase 1 Report found that operating procedures need not be updated immediately in order to proceed with the RPS; however, "these procedures will need to be updated before significant wind penetration levels are achieved" (Phase 1 Report, 2.8). At issue is not whether the Phase 1 report is a detailed and comprehensive site-by-site, generator-by-generator analysis of the impact of additional wind generation. The Phase 1 Report makes no such claim.

At issue is whether the record in this proceeding, as it now stands, is sufficient for the preparation of a recommended decision and, following additional briefs, comments, and further environmental impact study, Commission consideration of a policy statement on the RPS.

I find that the extensive record already developed is sufficient for the preparation of a recommended decision and a policy statement concerning fundamental RPS program initiation and design issues. Indeed, without Commission guidance on these issues, further studies in the abstract will be of academic value only.

Determinations for which there is a complete record include the objective of the RPS to encourage the construction of new renewable generation facilities that would not be built absent the RPS. The consequence of postponing these decisions is that developers postpone action until the program is launched. While the RPS was instituted to increase renewable capacity, delay in announcing the rules has the opposite affect.

A recommendation as to what should comprise RPS eligible resources could be made. The record is complete as to why certain generation technologies and fuels should or should not be RPS-eligible. No further deliberations or process among the parties is warranted. It is anticipated the Draft, and then

the Final, Generic Environmental Impact Statement will analyze the individual resources.

A recommendation as to an appropriate procurement structure can also be made. Whether procurement is accomplished individually or centrally is largely independent of the reliability rules and concerns.

In addition, a complex implementation design phase is going to be required regardless of which options are chosen. Moving forward on fundamental design decisions will enable that process to begin.

The record is also sufficient to develop a generation attribute accounting/tracking system to register generation attributes and track their sale into various markets. The use of renewable energy credits, or certificates, as a means of meeting RPS obligations is not dependent on a resolution of the specific reliability requirements.

The NYISO recommends the Commission "move forward on basic infrastructure issues such as portfolio design, funding mechanisms, eligible technologies" and other policy issues that would allow a generation attributes trading program to develop. As to those issues, the record in this proceeding is voluminous and complete. Fifty-two parties and coalitions of parties filed preliminary comments on these policy issues in March 2003. Three studies of costs and benefits associated with adoption of an RPS were prepared and subject to party review at a technical conference in July 2003. Fifty-two parties and coalitions filed comprehensive initial and twenty-nine filed reply comments in September and October 2003. Department of Public Service Staff completed a further cost study, completed in February and March 2004 (Cost Study II), consisting of two volumes, Volume A consisting of approximately 300 pages, and Volume B consisting of 34 pages of text and separate tabulations of results for 19 scenarios, analyzing cost, rate, and bill impacts of a broad range of options for RPS design through the year 2013. Parties submitted numerous data requests and interrogatories, and an on-the-record technical conference was held on March 17-18,

2004. Following additional exchanges of information, parties will file supplemental comments on the Cost Study II on April 8, 2004. Parallel draft generic environmental impact studies will be released and subject to public comment prior to adoption of the final.

The creation of an RPS in New York has long been in the making. The development of additional renewable energy sources for commercial generation of electric power is an explicit and mature energy policy objective of New York State. The 2002 State Energy Plan (June 2002) warned of the dangers of New York's fossil fuel dependency: the State's primary sources of energy are imported from abroad, have significant long-term environmental effects, and ultimately face depletion (State Energy Plan, 1-1). By 2002, 13 states had developed RPS programs and today the border states, Massachusetts, Connecticut, New Jersey, and Pennsylvania, have implemented renewable portfolio standards. Similar projects are underway in Quebec and Ontario. Over 100 parties have labored for over a year with the assistance of consultants experienced in these sister efforts, to collaborate on some issues and analyze many more.

As the Phase 1 Report states, "The results of the Phase 1 Assessment presented in the following report assume the immediate inclusion of a relatively large amount of wind generation in the New York State bulk power system. In reality the pace of development would be slower, with market and operating experience increasing with each development cycle, and with reasoned and timely system planning and operating practices being applied in response."¹¹

As the NYISO points out, basic RPS issues including portfolio procurement design, eligible technologies, funding mechanisms, as well as specific requirements for wind (best practices and establishment of a forecast center) are ripe for Commission determination. Many other issues of concern to parties will, in any event, await the implementation phase of

¹¹ Phase 1 Report, p. ii.

this proceeding. Accordingly, the motion to further postpone the preparation of a recommended decision and issuance of a policy statement is denied.

(SIGNED)

ELEANOR STEIN