

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 PROCEDURAL MOTIONS

(Issued November 26, 2003)

ELEANOR STEIN, Administrative Law Judge:

Two motions seek modification of aspects of the October 21, 2003 Further Ruling on Procedure.¹ Movants agree, although from somewhat different perspectives and offering different alternatives, that parties should have an additional opportunity to examine, at an on-the-record technical conference and in supplemental comments, further iterations of the cost studies, prior to the completion of a recommended decision. In addition, some parties assert the need for consideration of not only the first but the final phase of the NYSERDA/NYISO Study of the effects of integrating wind power on transmission system planning, reliability and operations (NYSERDA/NYISO Study).

In the Further Ruling on Procedure issued October 21, 2003, an on-the-record technical conference was scheduled to take place following the completion of the Draft Generic Environmental Impact Statement (DGEIS), notwithstanding that this schedule would preclude consideration of the results of that technical conference in the expected Recommended Decision. On November 3, 2003, Department of Public Service Staff (Staff) moved for reconsideration of that portion of the October 21 Ruling, arguing that a fruitful technical conference could be held in the next few weeks, to examine the methodology and assumptions underlying the cost information already placed on the record: and that such a conference would afford parties a useful additional opportunity to examine the studies and resolve

¹ Further Ruling on Procedure (issued October 21, 2003).

continuing questions. Staff proposed holding a technical conference on the filed cost studies during the first two weeks of December, followed by the filing of one round of comments on the conference two weeks subsequent.

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 the October 21, 2003 Ruling. Joint Movants assert the ruling erroneously found that the PSC would have a full record on costs and reliability impacts under the current procedures. Joint Movants propose that a recommended decision should not issue until after the completion of both phases of the NYSERDA/NYISO Study; revision by Staff of its cost study to recognize any cost consequences of the reliability study; and an opportunity for parties to analyze and comment on those two studies. Parties choosing to respond to these motions for reconsideration were afforded until November 13, 2003 to do so, and were advised that if a technical conference is scheduled any party seeking to question aspects of the cost and benefit studies filed in this proceeding by the Joint Utilities and RETEC, that party should so indicate in its response.

THE PARTIES' POSITIONS

Multiple Intervenors (MI) responds to Staff's motion, supporting the request for a technical conference on the Staff cost study and associated materials to be held prior to the issuance of the DGEIS or Recommended Decision. MI seeks to question authors of the RETEC report as well as Staff. MI reiterates its view that parties need the opportunity to examine on the record further cost studies prepared for the DGEIS as well. In the alternative, MI suggests that should the Recommended Decision be issued prior to the completion of Phase II of the Reliability Study, it should be deemed a draft

or preliminary recommendation, subject to change depending upon the Phase II reliability findings. MI is joined by Nucor Steel Auburn, Inc. (Nucor), and a group of New York Municipals, asserting the October 10 reliability conference indicated reliability concerns may be significant, and warning of premature adoption of an RPS program.

In response to Joint Movants, NYISO notes it shares the concern that the RPS be consistent with, and not undermine, the functioning of reliable, non-discriminatory, competitive energy markets in New York. NYISO expects Phase I of the NYSERDA/NYISO Study to provide a basis "to judge whether the New York power system has adequate resources to reliably incorporate and deliver a large amount of wind-generated power."² NYISO proposes another set of initial and reply comments after the results of Phase I of this study are issued, prior to the recommended decision. In the NYISO's view, the study and the comments will provide a substantive basis to determine the balance of the schedule.

The Joint Utilities³ oppose Staff's motion, on the ground that an immediate technical conference on the cost studies already completed provides little added value, urging instead further comments by parties on the next iteration of cost studies comprised in the DGEIS, even if those comments follow the issuance of the recommended decision as contemplated in the October 21 Ruling.

Staff is not convinced that this proceeding need come to a halt to await completion of Phase II of the NYSERDA/NYISO Study and argues for continuation of the existing procedures. Staff notes that NYISO rules currently provide for up to 500 megawatts of intermittent resources and, according to Staff

² NYISO Response, p. 2, quoting the reliability study proposal, at www.nyserda.org/825rfp.html.

³ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

projections, it will be several years before that level is reached. Staff also notes it has included \$100/megawatt in its cost study and, in the event the cost ramifications of additional wind resources substantially exceed that amount, the Commission may choose to modify the RPS. LIPA supports the Staff response, noting that it takes very seriously its responsibility to provide safe and adequate service and believes the public interest is best served by continuing the proceeding as is.

Similarly, the Attorney General does not oppose the Staff motion but urges denial of Joint Movants'. In the Attorney General's view, the reliability study will be important for RPS implementation, but the issuance of a recommended decision need not await its final stage, and a one-year delay will create uncertainty in the renewable energy market such as to cause developers to postpone or even abandon projects currently contemplated in New York.

Another group of parties strongly opposes aspects of the Joint Movants proposal. This group is comprised of Green Mountain Energy Company, Union of Concerned Scientists, SeaWest WindPower, Inc., Atlantic Renewable Energy Corporation, Conservation Services Group, US Energy Biogas Corporation, Global Winds Harvest, and Zilkha Renewable Energy (collectively, Green Mountain). Green Mountain notes the benefits of an RPS to New York State, and warns of negative consequences of the significant delay proposed by Joint Movants. Green Mountain asserts many developers have committed resources to New York, in anticipation of an RPS, that may be lost to the state by procrastination. Arguing that parties will have opportunity to analyze costs, Green Mountain does not oppose incorporating comments on the Phase I NYSERDA/NYISO Study, on the current schedule.

RETEC strongly opposes the Joint Movants motion, fearing the proposed schedule would halt further development of an RPS in New York for more than a year, making it extremely difficult or impossible to reach projected targets and

jeopardizing environmental, economic, diversity, security and reliability benefits sought by the Commission. Seeing no basis for parties' assumptions that reliability will be compromised by the addition of renewable generation, and assessing the record to date on cost impacts, RETEC urges proceeding on course. In addition, RETEC points to the extensive cost studies and comments already in this record, and the further opportunity for parties to examine costs in comments on the Draft Generic Environmental Impact Statement. Should a technical conference be convened on cost studies, RETEC asserts it should be convened immediately and only one round of expeditious comments afforded.

DISCUSSION

The positions of the parties imply proposals for the schedule of the next phase of this proceeding. Estimating the schedule for Commission consideration of an RPS policy statement, these proposals result in significantly different conclusions regarding timing to bring the issues in this case before the Commission. In summary, the Staff position would likely result in a Commission Policy Statement in Spring 2004. The Joint Movants seek to establish a schedule that would, in effect, delay Commission consideration of policy options for an RPS until well into 2005. Prompting this proposal are concerns that well over one year of additional exploration of reliability and related cost considerations is necessary for a complete record.

In order to ensure such a record and to respond to party concerns, the schedule has been modified several times. On May 29, 2003, a comment cycle was established, providing for a workshop on cost/benefit study methodologies, filing of cost studies, and initial and reply comments. It was then contemplated that the Draft Generic Environmental Impact Statement (DGEIS) would be completed in July 2003.⁴ The Ruling

⁴ Letter to Active Parties (May 29, 2003).

Establishing Comment Procedures (issued June 19, 2003), following the close of the collaborative process, scheduled a preliminary off-the-record workshop on cost and benefit methodologies. At that workshop several parties, including MI and Joint Utilities, argued for more formal examination of possible costs of an RPS and, in particular, for the retention in New York of Robert Grace and his associates, consultants responsible for a substantial portion of the cost work on the RPS done in the New England states. Robert Grace and his associates were retained and, in conjunction with NYSERDA and Staff, prepared a detailed cost study analyzing various models and options for an RPS design in New York. On July 28, that cost study, as well as a cost study prepared at the behest of the Joint Utilities, and a benefits study prepared for RETEC, were filed. At the request of the parties, a subsequent informational conference was held on August 13, 2003, to facilitate questions and answers regarding the methods, inputs and conclusions of the cost and benefit studies filed by parties on July 28, 2003. Following this conference, parties exchanged information requests and responses, and Staff updated and corrected its cost study.

Responding in part on September 4, 2003, to the August 14 blackout emergency, Tannery Island Power Corporation, Hydro Power, Inc. and Energy Enterprises, Inc. sought postponement of comments; MI, IPPNY and the Joint Utilities concurred; on September 8, 2003, the New York State Reliability Council (NYSRC) sought a conference for presentations by NYSRC and NYISO, and discussion, on any reliability impacts to New York's power system that might result from the addition of substantial amounts of intermittent resources. The on-the-record reliability technical conference was held October 10, 2003; reply comments were accordingly scheduled for October 31, 2003 so that parties could include information gleaned from that record.

On September 15, 2003, Joint Utilities, MI, Tannery Island and IPPNY moved for reserving completion of the

recommended decision until after further cost and reliability studies; MI requested an on the record opportunity to test modifications to the Staff cost study, specifically corrections as to two calculations: net present value and ICAP.

Anticipating that parties would request further opportunity to examine the next cost study iteration, to be contained in the DGEIS, the October 21 Further Ruling on Procedure granted the request but scheduled for post-DGEIS (and post-recommended decision), with parties free to comment on evidence adduced at that conference in their two rounds of briefs on exceptions and their comments on the DGEIS, both to the Commission and both before the Commission considers any recommendations on RPS policy.

CONCLUSION

The concern expressed by parties that they have a meaningful opportunity to review and comment upon the most recent cost studies practicable, prior to the completion of a recommended decision, is compelling and parties' motions seeking this opportunity are granted and the October 21 Ruling is so modified. Department of Public Service Staff represents it will use its best efforts to complete the next iteration of its cost study by late January 2004. An on-the-record technical conference for discussion of that new cost study and limited supplemental comments will immediately follow.

As represented to me in correspondence on November 24, 2003, the first phase of the NYSERDA/NYISO Study will be completed and released in final form by January 31, 2004. A technical conference on the reliability study will be held shortly after its release, followed by a supplemental filing by parties limited to these issues.

The motions and proposals of IPPNY, MI and others to hold in abeyance submission of a recommended policy decision to the Commission until after the completion of the Phase II NYSERDA/NYISO Study, scheduled for November 2004, have met with considerable opposition. Opposing parties assert, persuasively,

that most or all conceivable reliability concerns can be alleviated in RPS implementation, as it will be years before the network effects of substantial additional intermittent generation are felt. Parties urging delay of well over one year before the Commission issues an RPS Policy Statement have not, on this record, adduced more than generalized apprehensions.

However, as suggested by the NYISO in its response, that issue should await the outcome of the Phase One NYSERDA/NYISO Study, to ensure that no unforeseen impacts are ignored. Accordingly, decision is reserved as to motions to further defer completion of a recommended decision until after Phase II of the NYSERDA/NYISO Study.

(SIGNED)

ELEANOR STEIN