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July 8, 2004

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**By Hand**

Hon. Jaclyn A. Brilling,  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

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

Dear Secretary Brilling:

Enclosed please find the original and twenty-four (24) copies of the Brief  
Opposing Exceptions of the New York Power Authority.

Thank you.

Very truly yours,

*Timothy P. Sheehan*

Timothy P. Sheehan  
Managing Counsel

Enclosures  
cc: Hon. Eleanor Stein

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the  
Commission Regarding a Retail  
Renewable Portfolio Standard

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Case 03-E-0188

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**BRIEF OPPOSING EXCEPTIONS**  
**OF THE**  
**NEW YORK POWER AUTHORITY**

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Dated: July 8, 2004

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the  
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Case 03-E-0188

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**BRIEF OPPOSING EXCEPTIONS**  
**OF THE**  
**NEW YORK POWER AUTHORITY**

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**Preliminary Statement**

The New York Power Authority hereby files its Brief Opposing Exceptions.

**Introduction and Background**

The New York Power Authority ("NYPA" or the "Authority") is a corporate municipal instrumentality and political subdivision of the State of New York. While NYPA is not subject to Public Service Commission jurisdiction in this matter<sup>1</sup>, the Authority has voluntarily participated in the Renewable Portfolio Standard ("RPS") proceeding since its inception. NYPA

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<sup>1</sup> See, e.g., Public Authorities Law, §1014.

supports the effort to initiate an RPS in New York State. A Renewable Portfolio Standard can spur economic development, provide significant environmental benefits, diversify the State's electric generation mix and increase the Empire State's energy security.

The Authority is the major supplier of renewable energy in New York. More than 80% of all the electricity generated by NYPA is renewable power. The Authority's two large hydroelectric projects, Niagara and St. Lawrence-FDR, and five small hydroelectric projects currently account for more than half of all renewable energy consumed in the State. To maintain these renewable resources, NYPA has made and will continue to invest hundreds of millions of dollars in the life extension, modernization, and relicensing of the Niagara and St. Lawrence-FDR projects. These major capital expenditures will assure that New York State can continue to rely on a significant, dependable base of emissions-free, renewable energy for decades to come.

In addition to its stewardship of hydroelectric resources, NYPA is investing in a range of other renewable energy initiatives. The State Energy Plan recommends that NYPA purchase a total of 100 MW of wind power and the Authority has already taken steps to purchase 50 MW of power from New York wind projects. NYPA is also engaged in the innovative use of fuel cells to generate electricity, such as the pioneering project at the Westchester County Wastewater Treatment Plant in Yonkers that was the first commercial fuel cell in the world to run on anaerobic digester gas produced during sewage treatment. Eight other ADG-powered fuel cells projects have been installed at wastewater treatment plants in New York City.

In addition, the Authority is installing microturbines at wastewater treatment facilities, using waste gas as the fuel source. NYPA installed microturbines at the Lewiston wastewater plant in Niagara County and is engaged in a similar project in Brooklyn. The Authority is also working to develop landfill gas power projects that capture methane emissions to use as fuel.

NYPA is also developing solar power applications, including one of the world's largest rooftop photovoltaic arrays at the Gun Hill Bus Depot in the Bronx. The Authority has nearly 20 other solar projects sited at public facilities from Long Island to Buffalo.

Further, NYPA is a leader in energy efficiency, having undertaken some 1,400 energy efficiency projects at 2,200 public buildings across the State. These projects, conducted independently of the System Benefit Charge programs, have resulted in an aggregate demand reduction of over 175 MW and reduced annual emissions of greenhouse gases of 630,000 tons.

Administrative Law Judge ("ALJ") Eleanor Stein's Recommended Decision ("RD") in this proceeding was issued on June 3, 2004 and numerous parties filed Briefs on Exceptions ("BOE") on June 23, 2004. NYPA's response regarding two issues raised in certain Briefs on Exceptions follows.

### **Argument**

#### **I. The ALJ Correctly Determined That NYPA's Customers Should Be Excluded From Payment Of The Premiums Involved In The RPS Program.**

Initially, the ALJ correctly noted that NYPA is not subject to the jurisdiction of the Commission in this matter. RD, p. 70. The ALJ also recommended, for several reasons, that NYPA's customers not be required to fund the costs of premiums involved in the RPS program. First, the ALJ determined that it would be counter-productive to add cost burdens to NYPA's economic development customers<sup>2</sup>. RD, pp. 69-71. Second, the ALJ found that excluding NYPA's customers from payment of RPS premiums would have an insignificant impact on remaining ratepayers in the State. *Id.*, p. 70. Third, the ALJ recognized that NYPA's existing generation resources account for approximately 55% of all renewable energy consumed in the

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<sup>2</sup> NYPA's economic development customers include businesses and industries (including high load factor industries) that receive allocations from NYPA of Replacement Power, Expansion Power, power under the Power for Jobs program, Economic Development Power, as well as other low cost power. *See, e.g.*, Public Authorities Law, § 1005.

State; NYPA's customers have financed these renewable energy resources through the rates they pay for this power; and, accordingly, it would be inequitable given these facts to require NYPA's customers to pay RPS premiums toward the development of additional renewable resources. RD, pp. 70-71.

Several parties criticize the ALJ's recommendation that NYPA's customers should be exempt from payment of RPS premiums. See RETEC BOE, pp. 23-25; Joint Utilities BOE, pp. 45-46; Constellation New Energy BOE, pp. 15-16. RETEC and the Joint Utilities argue that NYPA's and its customers' significant, ongoing contributions toward achievement of the State's 25% RPS goal is "irrelevant" because the purpose of the RPS program is to promote the development of new renewable energy resources. These parties also contend that NYPA's customers should be required to pay RPS premiums because NYPA's hydroelectric power is low cost. Id.

These arguments are without merit. As stated by the Commission, the objective of the RPS program is to ensure that 25% of the energy retailed in New York State in 2013 is from renewable energy resources. Order Instituting Proceeding, issued February 19, 2003, p. 2. The simple facts are that NYPA and its customers have expended and will expend hundreds of millions of dollars to ensure that NYPA's hydroelectric resources continue to be available, thereby making achievement of the Statewide 25% RPS goal possible<sup>3</sup>. In other words, NYPA's customers already are bearing substantial costs relating to renewable energy resources and it clearly would be inequitable to shift RPS compliance costs to them from customers of other load serving entities that have contributed little or nothing toward the achievement of the Statewide 25% RPS goal.

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<sup>3</sup> Indeed, in the absence of NYPA's existing hydroelectric facilities, the costs to achieve the Statewide 25% RPS goal would be several times greater than forecasted in this proceeding.

Constellation NewEnergy asserts that exclusion of NYPA's customers from payment of RPS premiums could result in harm to the competitive market because such customers might be "discouraged from leaving NYPA's below market service." BOE, pp. 15-16. This exception is without merit inasmuch as it ignores the fact that NYPA's statutory role is to provide low cost power to business and industry, municipal and rural cooperatives, and governmental entities. See, e.g., Public Authorities Law, § 1005. Indeed, NYPA's statutory mission is to reduce the cost of electricity for customers in order to assist economic development and reduce the cost of government. Id. Thus, the RD's recommendation to exempt the load served by NYPA from assessment of RPS premiums is both completely appropriate and necessary to avoid interference with accomplishment of NYPA's statutory mission.

For the foregoing reasons, the ALJ's recommendation that the load served by NYPA should not be assessed RPS premiums should be adopted by the Commission.

## **II. The RD's Cost Analysis As It Pertains To NYPA Generation Included In The RPS "Baseline"**

In discussing the revised RPS "baseline" set forth in the RD's Cost Analysis (Appendix B of the RD), the ALJ stated that annual production from NYPA's Niagara and St. Lawrence-FDR-projects was reduced in order to be consistent with NYPA's comments concerning the prior baseline calculations. RD, pp. 42-43; see also NYPA's Supplemental Comments on the Cost Study Report II, dated April 8, 2004; Letter from ALJ Stein to NYPA, dated April 30, 2004; Letter from NYPA to ALJ Stein, dated May 3, 2004.

In its BOE, pp. 32-33, Multiple Intervenors assert that the baseline in the RD's Cost Analysis should be increased to reflect a recent order of the Federal Energy Regulatory Commission ("FERC") which determined that 4.8 MW of hydropower from the St. Lawrence-FDR project no longer had to be provided to Massachusetts. See Project No. 2000-046, Power

Authority of the State of New York, Order on Rehearing, issued June 4, 2004. While this matter is currently still under review by the FERC and will likely be reviewed by the courts, NYPA has no objection to this proposed adjustment to the baseline<sup>4</sup>.

### Conclusion

For the reasons stated, NYPA's arguments on the RPS program set forth herein should be adopted.

Respectfully Submitted,

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Dated: July 8, 2004

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<sup>4</sup> It is not clear whether Multiple Intervenors take issue with any other baseline calculation as it relates to NYPA's hydroelectric generation. See Multiple Intervenors' BOE, pp. 32-33. However, the only specific issue raised in this regard is the 4.8 MW adjustment discussed above and, accordingly we have limited our comments to that issue. See 16 NYCRR 4.10 (c)(2)(iii).