

Brief

RUDY STEGEMOELLER
Attorney at Law
P.O. Box 359, Poestenkill, NY 12140
(518) 283-0933
rudysteg@capital.net

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C 03-E-0188

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BY HAND

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

July 1, 2004

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

Dear Secretary Brilling:

Enclosed please find an original and twenty-five copies of the Reply Brief on Exceptions of Plug Power Inc. A copy will be served electronically on all parties on or before July 8, 2004.

Sincerely,



Rudy Stegemoeller, Esq.
P.O. Box 359
Poestenkill, NY 12140
(518) 283-0933
rudysteg@capital.net

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

Case 03 -E- 0188

REPLY BRIEF ON EXCEPTIONS OF PLUG POWER INC.

**Rudy Stegemoeller, Esq.
For Plug Power Inc.**

**P.O. Box 359
Poestenkill, NY 12140
(518) 283-0933
rudysteg@capital.net**

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission
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REPLY BRIEF ON EXCEPTIONS OF PLUG POWER INC.

Summary

Multiple Intervenors and Joint Utilities exaggerate the costs of the SBC-like tier and do not acknowledge the benefits to all customers that will accrue from the inclusion of an SBC-like tier in the RPS.

Argument

1. The cost of the SBC-like tier is overstated.

Multiple Intervenors ("MI") describe the cost of the SBC-like tier in the RD as "almost \$150 million." As Plug Power and others have shown in Briefs on Exceptions, the real cost of the SBC-like tier is not the gross cost estimated in Appendix B of the RD, but rather the net life-cycle cost (\$71,101,187) estimated on page 31 of the accompanying worksheet entitled "RD case results 6-3-04."

The SBC-like tier is not, as described by the Joint Utilities, an "additional" cost. Rather, it displaces the last 2% of the main tier. Because the SBC-like tier backs out the most expensive energy from the main tier, and because it is paid in the form of capital buy-downs, the net life-cycle cost of approximately \$71 million is far more relevant than the gross cost of approximately \$149 million.

MI's statement, that the SBC-like tier would cost \$543 per megawatthour, is misleading. This figure accounts for the full cost of the capital buy-down in the first year of operation. If the premium per megawatthour in the first year of a fuel cell's operation were \$543, then the premium for the next fourteen years would be zero.

Finally, any consideration of the cost of an SBC-like tier should recognize the benefits of distributed generation ("DG") that are not presently accounted for by the regulatory system. DG units under 100 kW cannot receive credit for capacity values in regional markets. Line losses prevented by DG units remain uncounted. The potential for DG to reduce costly transmission and distribution investment remains uncounted. Security and reliability benefits of DG, which are heavily underscored by recent events, remain

uncounted in the regulatory process. All of these considerations were before the ALJ and they support her decision that inclusion of an SBC-like tier is "essential" to an RPS.

2. The ALJ properly considered the economic and environmental benefits of an SBC-like tier.

MI questions whether an SBC-like tier will have a stimulative effect on emerging technologies. It is ironic that MI questions the efficacy of economic development programs, considering how strenuously MI defends the existing economic development contracts enjoyed by its members. It is axiomatic that increasing the revenues of an emerging industry will stimulate the development of that industry's products.

The second public policy objective adopted by the New York State Energy Planning Board in its most recent State Energy Plan is as follows:

"Stimulating sustainable economic growth, technological innovation, and job growth in the State's energy and transportation sectors, through competitive market development and government support." (New York State Energy Plan, page S-2, June 2002)

Creation of an SBC-like tier fits squarely within this policy objective and is consistent with the economic development mission of NYSERDA and the Commission.

In recent years the Capital Region has begun to attract high tech alternative energy interests in growing numbers, and the adoption of a forward-looking RPS, including an SBC-like tier, will greatly encourage this form of economic growth in upstate New York. Companies such as Plug Power, Intermagnetics General, Blasch Precision Ceramics, MTI-Microfuel Cells, Day Star Technologies, Inverters Unlimited, and Starfire Systems are examples of this growth.

MI questions the Judge's emphasis on distributed renewables as a means of locating generation near heavy load areas. Neither hydro nor large wind farms will be located in the New York City area. If the RPS is to encourage the location of non-combustion renewables such as solar and fuel cells within the City area, an SBC-like tier will be necessary.

MI also objects to the "front-loading" of the SBC-like tier. An analysis of the RD reveals that the "front-loading" actually reflects the elimination of the incentive for fuel cells after 2011. As Plug Power and RETEC have indicated in earlier filings, anticipated cost reductions in fuel cell technology may warrant the elimination of additional incentives after 2011, but only if the technology receives the support that it needs during the crucial years of 2006-2011. In other words, the future cost reductions to which MI refers will not happen without the "competitive market development and government support" recommended by the State Energy Plan and the RD.

3. Conventional generating sources already receive subsidies far greater than the subsidies for renewables that are contemplated in the RPS.

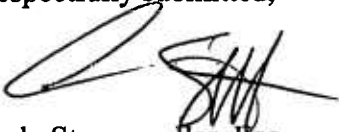
The Joint Utilities argue that any resource already receiving a state or federal subsidy should be ineligible for the RPS. Conventional generating sources, however, have enjoyed and continue to enjoy huge subsidies. Past and present subsidies of the oil, gas, coal and nuclear industries literally overwhelm the relatively modest subsidies proposed for the RPS. From 1948 through 1998, the federal government spent \$66 billion on nuclear research and \$26 billion on fossil fuel research. These industries presently enjoy annual subsidies exceeding \$3 billion. (See "Running On Empty," a report by Green Scissors, a coalition of environmental and taxpayers' groups, as referenced in Reply Comments of RETEC, pg. 24, October 31, 2003.) It is unlikely that any nuclear plants would operate in the U.S. were it not for federal liability coverage under the Price-Anderson Act. In New York, a large number of independent power plants obtained taxpayer-subsidized financing through Industrial Development Agencies. Many of MI's member companies enjoy the benefits of subsidized economic development rates. The level playing field envisioned by the Joint Utilities simply does not exist. Disqualifying projects from the RPS because they may be recipients of other subsidies is neither practical nor fair.

More importantly, the existence of other subsidies will help to reduce the cost of the RPS, and the SBC-like tier in particular. The level of capital buy-downs in the SBC-like tier will be established either competitively, or administratively, and in either event the existence of other subsidies will result in a lower cost to the RPS.

Conclusion

The RPS serves many purposes: energy diversity, environmental protection, and economic development. Each of these purposes is furthered by the creation of an SBC-like tier. With respect to issues other than the SBC-like tier, Plug Power supports the Reply Brief of RETEC.

Respectfully submitted,



Rudy Stegemoeller, Esq.
For Plug Power Inc.

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Poestenkill, NY 12140
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