



**Department of  
Public Service**

**Public Service Commission**  
**John B. Howard**  
Interim Chair and  
Interim Chief Executive Officer

Three Empire State Plaza, Albany, NY 12223-1350  
www.dps.ny.gov

**Diane X. Burman**  
**James S. Alesi**  
**Tracey A. Edwards**  
Commissioners

May 14, 2021

**SENT VIA ELECTRONIC FILING**

Peter Costello  
General Counsel  
New York State Energy  
Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

Re: Case 15-E-0302 - Proceeding on Motion of the Commission to  
Implement a Large-Scale Renewable Program and Clean Energy  
Standard.

Dear Mr. Costello:

I am writing in response to your inquiry regarding the repowering language of the Public Service Commission's (Commission) October 15, 2020 Order Adopting Modifications to the Clean Energy Standard (Order). In order for a repowered facility to qualify as eligible for Tier 1 under the Renewable Energy Standard (RES), the Order directed that such facilities must satisfy certain criteria, including that:

The repowering must have the result that 80% of the tax basis per Generally Accepted Accounting Principles (GAAP) from the completed Repowered Facility (not including its property and tangible assets) is derived from capital expenditures made on or after the date of a Commission order implementing this proposal.<sup>1</sup>

It has been brought to my attention that the phrase ". . .tax basis per Generally Accepted Accounting Principles. . ." has no meaning in the real world and that these are actually competing principles. The tax basis is established by the Internal Revenue Service, not the Financial Accounting Standards Board which establishes the GAAP. In other words, property is valued

---

<sup>1</sup> Order, p. 105.

at GAAP or on its tax basis, but not both. Based on the forgoing, as well as the discussion in the Order, the only reasonable interpretation of this language is that it requires that 80% of the net book value (the Facility's original cost minus the accumulated depreciation) of the plant must result from measures installed as a result of the repowering.

Additionally, the term "tangible assets" in the parenthetical exclusion above appears to be a typographical error in the Order. To exclude all tangible assets would exclude the asset that was upgraded or replaced in order to qualify the facility as an eligible repowering project. Under this exclusion, the only assets that could be included are "intangible assets," like goodwill or patents, which are unrelated to the production of electricity - the propose of the program. Further, the Order acknowledges that hydroelectric facility repowerings often require substantial investment in equipment other than the prime mover. As a result, the Order allowed replacement of these non-prime movers to qualify hydroelectric facilities as repowering projects. It would be illogical to allow for these capital improvements, but then exclude them from the calculation of the 80% requirement. Again, based on the forgoing, as well as the discussion in the Order, I believe the only reasonable interpretation of this language is to exclude the value of property and intangible assets.

Please do not hesitate to contact me should you have any questions regarding this letter.

Regards,



---

Robert Rosenthal  
General Counsel  
Department of Public Service  
Ph: (518) 474-2510  
Robert.Rosenthal@dps.ny.gov