

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition of GP Renewables & Trading, LLC for the
Creation of an Opt-In Mechanism in the SBC Program**

Matter 13-01601

In the Matter of the System Benefits Charge IV

Case 10-M-0457

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

Case 03-E-0188

**COMMENTS OF
THE CITY OF NEW YORK**

Dated: August 8, 2014

PRELIMINARY STATEMENT

The City of New York (“City”) hereby submits comments pursuant to the Notice of Proposed Rule Making published in the June 25, 2014 issue of the *NYS Register* (ID No. PSC-25-14-00012-P). The comments contained herein pertain to the *Petition to NY State Public Service Commission Re System Benefits Charge and Renewable Portfolio Standards Surcharge* (“Petition”) filed in the above-captioned proceedings by Global Structured Finance Advisors and GP Renewables & Trading, LLC (collectively, the “Petitioners”) on behalf of certain municipal and school district customers of the New York Power Authority (“NYPA”) that are located in Westchester County.

Pursuant to long-standing precedent established by the New York State Public Service Commission (“Commission”), NYPA municipal customers are exempt from the surcharges that finance the Renewable Portfolio Standard (“RPS”), the Energy Efficiency Portfolio Standard (“EEPS”), and the System Benefits Charge (“SBC”; collectively, the “Existing Surcharges”).¹ NYSERDA previously has broadly determined that customers that do not pay the Existing Surcharges are not eligible to benefit from (*i.e.*, participate in) the clean energy programs supported by those collections at any of their locations. The Petitioners explain that, although the Existing Surcharges exemption is essential to furthering significant public policy goals (Petition at 2), the blanket ineligibility associated with that exemption has limited the extent to which NYPA municipal customers can undertake clean energy projects at their facilities.

The Petitioners explain that there is a present opportunity to extend the gains achieved under the RPS, EEPS and SBC programs by offering NYPA municipal customers the

¹ The term “NYPA municipal customers” as used in these Comments includes school districts and any other governmental entity that is a customer of NYPA and subject to the exemption discussed herein.

option of electing to pay for the Existing Surcharges with respect to specific accounts. (Petition at 4-5.) The Petitioners further propose that any NYPA municipal customer that exercises this “Opt-In Mechanism” (denominated herein as an “Opt-In Customer”) would remain exempt from the Existing Surcharges with respect to all accounts *other than* those specifically identified for participation in the RPS, EEPS, and/or SBC initiatives. (*Id.*)

The City has developed an ambitious slate of energy policies that is set forth in its *PlaNYC 2030: A Greener, Greater New York* (“*PlaNYC*”) and associated updates and reports.² *PlaNYC* is the City’s comprehensive policy blueprint to harmonize environmental preservation and improvement with population growth and economic development. *PlaNYC* includes numerous initiatives to increase the deployment of renewable energy systems and energy efficiency measures throughout the City, including on municipal properties, as well as to expand the City’s role as a center of innovation for clean energy technologies.³

The Opt-In Mechanism proposed in the Petition offers a narrowly tailored opportunity to increase participation in the State’s clean energy initiatives, and thereby advance multiple State policies that are reflected in the RPS, EEPS and SBC programs, while allowing NYPA municipal customers to maintain the critical Existing Surcharges exemption for accounts that do not “opt-in.” Accordingly, as detailed herein, the City supports the Petition, which should be granted *subject to* the qualifications and recommendations advanced in these Comments.

² *PlaNYC* is available at <http://www.nyc.gov/html/planyc/html/publications/publications.shtml?process=1&title=PlaNYC>.

³ *PlaNYC Progress Report 2014* at 19-23, available at http://www.nyc.gov/html/planyc2030/downloads/pdf/140422_PlaNYCP-Report_FINAL_Web.pdf; *New York City’s Pathways to Deep Carbon Reductions* at 47, 71-72, available at <http://www.nyc.gov/html/planyc2030/html/publications/publications.shtml>.

COMMENTS

POINT I

THE PROPOSED OPT-IN MECHANISM SHOULD BE ADOPTED WITHOUT IMPACTING THE GENERAL NYPA MUNICIPAL CUSTOMER EXEMPTION FROM EXISTING SURCHARGES

The City generally supports the Opt-In Mechanism proposed by the Petitioners and, for the reasons set forth in the Petition and in Point II, *infra*, agrees that the mechanism should be adopted, including the changes recommended in Point III, *infra*. Importantly, however, the City's support for the Opt-In Mechanism is contingent on approval of the proposal that NYPA municipal customers be allowed to "opt into" paying the Existing Surcharges with respect to individual accounts, without jeopardizing the exemption with respect to all other accounts associated with the Opt-In Customer, as proposed by the Petitioners. The City urges the Commission to preserve this critical design element in the Opt-In Mechanism, if it approves the implementation of same.

Initially, the City is a strong advocate for the increased deployment of renewable energy systems and energy efficiency measures, as well as the innovation of new clean energy technologies. The City has hired energy management staff at strategic agency locations, trained municipal employees in facility energy management, and supported the commercialization of new clean energy technologies. Although the City is continuing such projects and initiatives, there are numerous meritorious clean energy projects that could proceed at discrete locations if additional opportunities to leverage the City's investment were available (*i.e.*, an opportunity to leverage municipal investment with RPS, EEPS, and/or SBC incentives), and the Existing Surcharges exemption is preserved for accounts that do not "opt-into" the NYSERDA programs.

The Existing Surcharges exemption that is accorded to NYPA municipal customers has been a feature of the State’s customer-funded clean energy programs since the SBC commenced in 1998.⁴ The Commission affirmed the exemption when it renewed the SBC in 2001, stating that “[b]y design, the current SBC is not applied to NYPA and LIPA customers.”⁵ In 2005, the Commission again extended the SBC. In so ruling, the Commission rejected arguments to modify the surcharge exemption accorded to NYPA municipal customers, stating that “[i]t was not our intention to reopen the *settled* issue of which customers may pay the SBC”⁶ NYPA advocated for this outcome, explaining that its primary statutory objectives are to promote economic development and reduce the cost of government by providing low cost power, and eliminating the exemption would interfere with its ability to accomplish its statutory mission.⁷

The Commission extended the surcharge exemption for NYPA municipal customers when it established the EEPS and RPS, explaining (with respect to the RPS) that the exemption furthered the public interest by reducing electricity prices to “achieve economic development objectives.”⁸

⁴ Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 98-3, Opinion and Order Concerning System Benefits Charge Issues (issued January 30, 1998) at 6-7.

⁵ Case 94-E-0952, *supra*, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs (issued January 26, 2001) at 22.

⁶ Case 05-M-0090, *In the Matter of the System Benefits Charge III*, Order Continuing the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs (issued December 21, 2005) at 30 (emphasis added).

⁷ Case 05-M-0090, *supra*, Comments of New York Power Authority (dated October 13, 2005) at 1.

⁸ Case 03-E-0188, *supra*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 11.

Although the City supports expanding access to the RPS, EEPS and SBC incentives to municipal customers, it is imperative that any such program change be implemented in a manner that preserves the well-established Existing Surcharges exemption. Any modification of the Existing Surcharges exemption that is broader than that proposed in the Petition could expose the City to tens of millions of dollars of incremental annual utility costs. A cost increase of this magnitude would impair the City's ability to continue (or expand) its historic rate of expenditures on clean energy projects.

The Commission should recognize that any modification of the Existing Surcharge exemption broader than that proposed by Petitioners would undermine efforts to promote economic development and control governmental costs. The significant cost increase associated with a broader change to the Existing Surcharges exemption also would undermine the State's efforts to expand statewide participation in clean energy initiatives such as the RPS, EEPS and SBC. These outcomes would be counterproductive to City and State energy policy goals, and should be avoided. Accordingly, the City urges the Commission to approve the Opt-In Mechanism proposed by the Petitioners, *provided* that the Mechanism is implemented in a manner that allows the customer to "opt-into" the programs only for specific accounts.

POINT II

THE OPT-IN MECHANISM WOULD HELP THE STATE MEET ITS ENERGY EFFICIENCY AND RENEWABLE ENERGY GOALS AND PROVIDE COST REDUCTION OPPORTUNITIES FOR MUNICIPAL CUSTOMERS

The Petitioners explain that there currently exists a considerable barrier to the increased development of clean energy projects by NYPA municipal customers. (Petition at 4.) The Petitioners' proposal would mitigate this barrier by (i) fostering economic development and lowering the cost of government via reduced-cost energy, (ii) expanding statewide access to the State's clean energy initiatives, and (iii) ensuring that clean energy program benefits are directed to the customers that bear responsibility for program costs. If adopted as proposed, the Opt-In Mechanism would preserve the balancing of interests that underlies the Existing Surcharges exemption for NYPA municipal customers while facilitating expansion of the RPS, EEPS and SBC programs to a pool of customers that heretofore have been unable to participate in same.

The Commission recently confirmed that the State is not on a path that will allow it to meet its energy efficiency and renewable energy goals. For example, the Commission stated that "both the RPS and the EEPS goals have thus far appeared to be unattainable," explaining that, as of December 31, 2013, the RPS and EEPS electric programs had achieved only 49% and 55%, respectively, of their 2015 program goals.⁹ The City alone has thousands of electric accounts, serving large public buildings, schools, water pollution control plants, other governmental buildings, and libraries and cultural institutions. Some of these locations could offer excellent strategic opportunities for significant projects, and the other NYPA municipal customers also have multiple accounts. Allowing these entities access, on an account-by-account basis, to the

⁹ Cases 14-M-0094 *et al.*, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Order Commencing Proceeding (issued May 8, 2014) at 2 and n.3.

NYSERDA programs will result in more projects that will help to meet the State's aggressive energy efficiency and renewable energy goals.

The Opt-In Mechanism also provides municipal customers with the ability to determine the amount of incremental utility costs that they should incur (by opting in) without unduly burdening the taxpayers that ultimately are responsible for such costs. This element of the proposal is an essential component that establishes the Opt-In Mechanism as a meritorious solution that will provide for the increased development of clean energy projects in New York State.

The City has a deep and long-standing commitment to sustainability and environmental improvement. To this end, the City is implementing a comprehensive suite of programs designed to improve the climate resiliency of its infrastructure, increase the deployment of renewable energy systems and energy efficiency measures in municipal, residential, and commercial buildings, and promote the development and commercialization of new clean energy technologies. The City's commitment to these goals is evidenced by its annual expenditures of tens of millions of dollars on renewable and energy efficiency projects. The City pursues these projects on its own and through programs offered by NYPA.

Notwithstanding the City's record of achievement with respect to furthering the State's (and City's) clean energy policy goals, there are numerous projects that are unlikely to be developed in the near- or medium-term unless a new opportunity materializes for the City to leverage its investment in such projects. The Opt-In Mechanism, as proposed, presents such opportunity, and likely would enable the City to accelerate the development of certain projects. Moreover, the City believes that many other NYPA municipal customers would utilize the Opt-In Mechanism, if it is implemented, to support the development of new clean energy projects within their respective jurisdictions. The proposed Opt-In Mechanism therefore presents the Commission

with an opportunity for immediate action that would have a material impact on achieving the goals of the RPS, EEPS and SBC programs.

POINT III

THE COMMISSION SHOULD ADOPT A REASONABLE LIMITATION ON SURCHARGE COLLECTIONS ALLOCABLE TO OPT-IN CUSTOMERS DURING THE FIRST YEAR OF THE OPT-IN MECHANISM

It is clear that the City and other NYPA municipal customers would utilize the Opt-In mechanism to access the RPS, EEPS and SBC programs. It is not clear, however, how much program funding would be required to support the projects sponsored by Opt-In Customers.

The City recommends that the Commission address this uncertainty by incorporating the following two recommendations into the Opt-In Mechanism that it approves. First, the Mechanism should be designed to collect the information necessary to assess program participation and outcomes. For example, data regarding the number of participating municipalities, accounts, and facilities should be tracked to identify trends, if any, in the governmental entities that utilize the Mechanism and/or the projects developed by such customers. The program also should track the energy and peak load savings achieved by Opt-In Customers, as well as reductions in the emissions that contribute to climate change or impact public health. The foregoing data will allow the Commission to compare the benefits and costs associated with implementation of the Opt-In Mechanism, and to identify program modifications – if any – that would increase NYPA municipal customer participation in the RPS, EEPS and SBC programs.

Because of the uncertainty about the amount of program funding that will follow adoption of the Opt-In Mechanism, the City recommends that the Commission restrict annual expenditures on such projects to a percentage (*e.g.*, 10% to 15%) of the aggregate annual RPS, EEPS and SBC budgets for the initial year of program implementation. This limitation would

provide a reasonable maximum budget for Opt-In Customers during the first year of the program while allowing funds to be drawn from any of the initiatives as needed to satisfy market demand. The Commission might later decide to adjust (or eliminate) this cap based on its review of actual and projected demand for the Opt-In Mechanism.

CONCLUSION

For the reasons described above and in the Petition, the City urges the Commission to approve the Opt-In Mechanism as proposed by the Petitioners, subject to clarification that: (a) the Mechanism is triggered only by the customer “opting into” programs for specific accounts; (b) if triggered, the Mechanism will not disturb the Existing Surcharges exemption with respect to all other accounts associated with the Opt-In Customer; and (b) the temporary limitation on funding for Opt-In Customers that is described in Point III, *infra*, is adopted.

Dated: August 8, 2014
New York, New York

Respectfully submitted,

/s/ Michael Delaney

Michael Delaney, Esq.
Director, Energy Regulatory Affairs
NYC Mayor’s Office of Long Term
Planning & Sustainability
253 Broadway, 10th Floor
New York, New York 10007
mdelaney@cityhall.nyc.gov

/s/ Susan Cohen

Susan Cohen
DCAS Energy Management
Assistant Commissioner
1 Centre Street
New York, New York 10007
scohen@dcas.nyc.gov