

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 14, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman

CASE 03-E-0188 - Proceeding on Motion of the Commission  
Regarding a Retail Renewable Portfolio  
Standard.

ORDER DENYING REQUEST FOR RESTRUCTURING MAIN TIER CONTRACT

(Issued and Effective May 20, 2015)

BY THE COMMISSION:

INTRODUCTION

The Main Tier is a major component of the Renewable Portfolio Standard (RPS) program administered by the New York State Energy Research and Development Authority (NYSERDA), under the direction and supervision of the Public Service Commission (Commission). It provides financial incentives on a per megawatt-hour (MWh) basis to large-scale renewable resource generation facilities. The facilities and the amount of the incentive paid to them are chosen through a competitive bid solicitation process resulting in the awarding of long-term contracts. The solicitations are purposefully designed to be of a competitive nature so that the result will be the best price possible (lowest price after considering economic benefits), to minimize the cost to ratepayers of adding incremental renewable resources to the mix of resources generating the electricity consumed in New York. By this order, the Commission denies a request by Sterling Energy Group, Inc. (Sterling) and its wholly

owned subsidiary, Niagara Generation LLC (NiGen and collectively with Sterling, the Petitioners) to restructure an existing RPS contract executed with NYSERDA that was awarded in a competitive solicitation under the Main Tier of the RPS program.

#### BACKGROUND

The Niagara Generating Facility (the Facility) is a 51-megawatt (MW) generating plant located in Niagara Falls, NY that was converted to a co-firing facility to operate on biomass and other fuels. NiGen<sup>1</sup> participated in the second Main Tier solicitation conducted in December of 2006. As a successful bidder, it entered into a 10-year contract with NYSERDA on April 17, 2007 for \$21.6 million for renewable attributes associated with up to 180,500 MWh per year for electricity produced from renewable eligible biomass. The Facility is permitted to burn coal, tires, and various wood-based fuels but only receives RPS incentive payments for the amount of generation produced by eligible biomass defined by the Commission.<sup>2</sup>

NiGen has petitioned the Commission several times over the course of the RPS program, either to seek modifications to biomass fuel eligibility or to restructure its current contract with NYSERDA. The Commission granted a request to change biomass feedstock rules<sup>3</sup> but twice denied requests to modify its

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<sup>1</sup> At the time, NiGen was a majority-owned indirect subsidiary of U.S. Renewables Group, LLC (USRG).

<sup>2</sup> For a list of eligible fuels see NYSERDA's New York State Renewable Portfolio Standard Biomass Power Guide, revised July 22, 2014 at <http://www.nyserdera.ny.gov/Cleantech-and-Innovation/Biomass>.

<sup>3</sup> Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Approving Petition with Modifications (issued November 22, 2010).

awarded contract, stating that the Main Tier program is purposefully designed to be a competitive process and adjusting the contract price cannot be done without undermining the process.<sup>4</sup>

Sterling has since acquired all of USRG's ownership interests in the Facility. On May 5, 2014, Sterling, jointly with NiGen, filed a petition seeking to restructure its current contract.

#### SUMMARY OF THE PETITION

The Petitioners request that the Commission take expedited action to supplement the Facility's RPS contract awarded under the Main Tier.

Sterling states that since acquiring the Facility, the company has repaired and restarted the plant and returned it to reliable operation.<sup>5</sup> The Petitioners assert that the 51-MW plant currently operates reliably on 80 percent clean eligible wood fuel without using tire-derived fuel, which formerly represented 40 percent of the fuel consumed by the Facility. In support of the petition, the Petitioners claim that this increase in the use of renewable biomass will result in an increase of RPS eligible generation produced at the Facility and a reduction in harmful emissions. The petitioners assert that the Facility is currently operating at a loss and is only able to obtain funding to make necessary repairs required to restore the Facility and cover operating losses through a loan secured by the scrap value

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<sup>4</sup> Case 03-E-0188, supra, Order Denying Request to Adjust Contract Price (issued November 19, 2010) (November 19, 2010 Order); Order Denying Request for Restructuring of a Contract (issued August 16, 2012) (August 16, 2012 Order).

<sup>5</sup> On February 7, 2013, USRG informed the Commission of its intention to mothball the Facility effective May, 9, 2013.

of the Facility. The Petitioners contend that, with the loss of the Facility, the Western New York area will suffer a permanent loss of 100 direct and indirect jobs (the Facility currently has 26 part-time employees) and \$10 to \$15 million per year in local expenditures.

The Petitioners assert that since it entered into its contract with NYSERDA to receive \$11.99 per MWh for its renewable attributes in 2007, the wholesale prices for electricity in Western New York have fallen. It further maintains that the combined revenues from wholesale electricity and the RPS contract prove to be insufficient to cover the costs of operating the Facility. As a result, the Facility was again mothballed in August 2014 and is currently being maintained.

The Petitioners assert that the Commission has broad discretion to fashion supplemental RPS benefits required to ensure that the Facility can continue to operate. The Petitioners state that they are open to any potential programs to supplement the benefits available under their April 17, 2007 contract. The Petitioners suggest the Commission could provide enhanced benefits either by restructuring the RPS contract or by establishing a new program of supplemental benefits for biomass facilities similar to the Maintenance Tier program. The Petitioners stress a willingness to make available to Commission Staff its financial records, as required for facilities seeking to participate in the Maintenance Tier. In addition, the Petitioners are willing to enter into reasonable commitments concerning employment, capital improvements, or further increases in the use of clean biomass fuel.

#### NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the petition was published in the State Register on May 21, 2014 pursuant to the State Administrative Procedure Act (SAPA). SAPA

comments were due July 7, 2014. Comments were received from Multiple Intervenors, the City of Niagara Falls, a Facility supplier, and several Facility employees and are summarized below.

#### SUMMARY OF COMMENTS

##### Multiple Intervenors

Multiple Intervenors (MI) objects to Sterling's petition seeking specific financial relief and believes that approving the Petitioners request would set a detrimental precedent in the RPS proceeding and increase costs to customers.

MI states that the Petitioners acquired the Facility knowing it was uneconomic to operate and already in default of the RPS agreement. Further, MI asserts that the Petitioners were aware of the Commission's previous denials of enhancing or restructuring the Facility's RPS contract at the time of plant acquisition and that this petition fails to distinguish itself from the previous requests.

MI expresses concern that should the requested relief be granted and the RPS contract modified, it would signal that the RPS program could be used as an insurance policy for renewable developers and owners against investment risk, at the expense of electric rate-payers that pay into the RPS program.

MI also objects to the Petitioners' request for establishing a new program, similar to the Maintenance Tier, that provides economic support for certain renewable resources.

Finally, MI disputes the Petitioners argument that electricity prices have remained low in the Western New York area, noting the high electricity prices experienced this past winter, and the potential that future electricity prices may remain at or above minimum.

Senators Michael Ranzenhofer, Robert Ortt, Marc Panepinto, and Timothy Kennedy

Four New York State Senators, representing the Western New York region in the New York State Senate, submitted a letter in support of Sterling's petition and urged the Commission to consider a resolution that would preserve the operation of the Facility. The Senators expressed concern about the economic impact that the loss of jobs may have on one of the most economically challenged areas in the State, especially the City of Niagara Falls, which, the Senators assert, cannot afford to lose any more businesses or employment opportunities.

#### City of Niagara Falls

The Mayor of the City of Niagara Falls (City) supports the petition to keep the Facility in commercial operation. The Mayor asserts that the plant is a significant commercial investment in the area and that jobs are needed in the community. The comment notes that the Petitioners' had focused their hiring practices to support the local community. The Mayor also notes that the Petitioners are working with the City to enter into the micro-grid competition sponsored by the Governor's Office<sup>6</sup> and without operation of the Facility, the micro-grid may not be a suitable location for Niagara Falls.

#### Steam Plant Systems

Steam Plant Systems, which states that it has worked with NiGen for the past fifteen years, supports the Petitioners' efforts to receive a better price for their renewable energy credits. Steam Plant Systems expresses its concern that equipment and service providers to the Facility will experience a negative financial and employment impact should the Facility close.

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<sup>6</sup> Information on the competition is available at <http://www.governor.ny.gov/news/governor-cuomo-announces-launch-40-million-ny-prize-microgrid-competition>.

NiGen Employees

NiGen plant employees express concern about the potential loss of their jobs and the adverse impact it would have on their families. Many employees state that there are limited job opportunities available in Niagara County and urge the Commission to provide increased support to keep the plant fully operational.

DISCUSSION AND CONCLUSION

The Commission is cognizant of the challenges that face the large scale renewable industry in general and the biomass sector in particular. Sustained low wholesale energy prices that have resulted from historic low natural gas prices have placed unprecedented financial operating pressure on fuel-based renewable generating plants, like the NiGen Facility, and the Commission has structured the RPS program rules over the course of this proceeding to assist the biomass industry and to enable it to competitively compete within the Main Tier.

The Petitioners have requested that the Commission provide additional financial incentives that it has twice denied in the past and the Commission does not see any significant material differences in this request that compels the reversal of earlier decisions. The facts are that Sterling chose to purchase the Facility in October 2013 while aware of its current operating and economic conditions. It should have also been aware of NiGen's unsuccessful attempts to restructure its RPS contract.

To that end, the Commission denies the Petitioner's request for additional financial incentives under its current contract and restate what the Commission opined in its April 16, 2012 Order:

It would be unfair to the other bidders in that auction to now allow an adjustment to NiGen's contract that was not part of the terms of the auction or process available to all under which the competitors bid.<sup>7</sup>

The Commission also reiterates the fact that the contract was awarded under a competitive solicitation at a price chosen by NiGen and for the term of years chosen by NiGen. Adjusting NiGen's RPS benefits would undermine the competitive nature of the solicitation process established by the Commission for the Main Tier.

Sterling's request to establish a new program to provide for supplemental benefits for biomass facilities, similar to the Maintenance Tier, is also denied. The Commission ruled in its April 2012 Order that NiGen is not a maintenance resource and therefore is not eligible for restructuring under rules applicable to the Maintenance Tier.<sup>8</sup> As noted by MI, the Commission should not create a new category of RPS benefits in order to circumvent the current maintenance resource eligibility requirements.

The Commission is currently examining the future of the RPS program as it considers renewable energy issues within the Reforming the Energy Vision (REV) and Clean Energy Fund (CEF) Proceedings and expects that Staff and NYSERDA, in consultation with stakeholders, will address maintenance of existing renewable resources.

The Petitioners have made substantial efforts to convert the Facility to burn up to 80% clean biomass instead of carbon-based fuels. Since this should enable the Facility to provide for incremental generation output, the Petitioners have

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<sup>7</sup> April 16, 2012 Order at 12.

<sup>8</sup> Id. at 10.



an opportunity to bid any new incremental renewable generation not currently under an RPS contract into future Main Tier solicitations under the current RPS program. They are encouraged to do so in the near-term.

The Commission orders:

1. The request of Sterling Energy Group, Inc. and Niagara Generation LLC to provide supplemental benefits to the April 17, 2007 Renewable Portfolio Standard Main Tier incentive contract is denied.

2. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary