

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 16, 2009

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
Robert E. Curry, Jr., dissenting  
James L. Larocca

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

ORDER ESTABLISHING NEW RPS GOAL  
AND RESOLVING MAIN TIER ISSUES

(Issued and Effective January 8, 2010)

BY THE COMMISSION:

INTRODUCTION

The Renewable Portfolio Standard (RPS) has been New York's primary policy initiative to promote the development of new renewable energy resources since it was established in 2004. In accordance with earlier Commission directives, Staff prepared a Mid-Course Report on the program that was issued for comment in October. This order establishes a new RPS goal and MWh target and resolves several issues related to the RPS program, with a primary focus on the Main Tier. It also authorizes an additional Main Tier solicitation of \$200 million, consistent with the results of a recent solicitation and the MWh trajectory needed to meet the revised goal. The Commission anticipates resolving other issues - most notably those related to the Customer-Sited Tier and geographic balance - in a subsequent order.

BACKGROUND

Generating energy from renewable resources has been a cornerstone of New York State's energy supply portfolio for over a century. Without further investment, the relative contribution of those energy sources to the State's portfolio will continue to decline as it has since the early 1960s. The question this poses is whether it is in the public interest to make a major resource and monetary commitment over a 15-year period to reverse that trend.

The RPS was designed to help attain a statewide objective of having 25% of the electricity consumed in the state produced from renewable resources by the year 2013. This initiative employs two programs as the principal means of obtaining additional renewable resources. The bulk of the electricity needed to reach this goal is obtained from competitive procurements of renewable resources (the Main Tier). A complementary program was established for behind-the-meter applications of renewable generation, allowing customers to directly participate in the promotion of innovative technologies (the Customer-Sited Tier).

When establishing the RPS, the Commission set an initial schedule of collections to fund most of the program's estimated costs through 2013. By the end of 2009, RPS funding should be committed to specific contracts which are expected to provide a total of about 2.7 million MWhs per year of renewable resources from the Main Tier and 98,808 MWhs from the Customer-Sited Tier through 2013 and beyond.

There are a number of important related initiatives that may affect RPS. Among them are regional and now federal efforts to internalize the cost of carbon and reduce carbon dioxide emissions, the expansion of net metering, and Federal and State tax policies. The most important external

consideration, however, is our ongoing Energy Efficiency Portfolio Standard (EEPS) program, which began in 2007, in combination with a variety of other efficiency initiatives that are also underway. In the EEPS program, the Commission has adopted a policy for New York to reduce electricity usage in the State by 15% below that projected for 2015 and established a MWh electricity target for 2015 that represents an appropriate level of savings from the State's electric utilities. If the State's overall goal<sup>1</sup> is achieved by 2015 as a result of EEPS and other ongoing efficiency efforts, the amount of renewable resources required to attain the 2013 RPS 25% goal is greatly reduced.

In light of these efficiency efforts, actual RPS results to date, the likely amount and cost of potential resources available in both the Main Tier and Customer-Sited Tier, and recent expressions of state energy policy,<sup>2</sup> it is necessary to take a hard look at the existing RPS program and its goals. This order represents a major step in that process.

#### PROCEDURAL HISTORY

The 2002 State Energy Plan warned of the possible consequences of New York's fossil fuel dependency, noting that the State's primary sources of energy have significant long-term environmental effects and ultimately face depletion.<sup>3</sup> In instituting the renewable portfolio standard proceeding, the Commission recognized these concerns, among others:

We are increasingly concerned with the effects on our climate of fossil-fired generation and the security implications of importing [from out of state] much of the fuel needed to supply our electricity needs.

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<sup>1</sup> NYPA and LIPA also contribute to the state's goal. See New York State Energy Plan, (December 2009) Volume I, p. 46.

<sup>2</sup> New York State Energy Plan (December 2009) p. 1.

<sup>3</sup> New York State Energy Plan (June 2002) p. 1-1.

Further, inasmuch as there is a finite supply of natural gas and other fossil fuels, over-dependence on such will leave the State vulnerable to price spikes and possible supply disruptions.<sup>4</sup>

The Commission noted that the State's reliance on electricity generated by renewable resources was declining over time, from over 30% in the early 1960's to less than 20% by 2003. This decline was attributable in large part to a massive but relatively constant contribution of the State's hydroelectric facilities at Niagara Falls and Massena as the State's electricity consumption continued to grow. Absent State action, this trend was expected to continue.

Ultimately, the Commission decided to increase the proportion of electricity produced by renewable resources from 19.3% to 25% by 2013.<sup>5</sup> The strategy was to provide financial incentives for the development of renewable generation resources

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<sup>4</sup> Case 03-E-0188, Renewable Portfolio Standard, Order Instituting Proceeding (issued February 19, 2003) p. 1.

<sup>5</sup> Case 03-E-0188, Supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) p. 4.

and the Commission authorized the utilities to collect funds from their customers for that purpose.<sup>6</sup>

To implement this initiative, the Commission also decided to employ a "central procurement model," which relies on the New York State Energy Research and Development Authority (NYSERDA) as the program administrator. Use of the central

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<sup>6</sup> The Commission established these objectives for the program:

Accordingly, . . . we adopt the following objectives:

- a. Renewable Resources: institute an RPS to increase New York State's supply of renewable resources with the ultimate aim of establishing a viable, self-sustaining competitive renewable generation market.
- b. Generation Diversity for Security and Independence: diversify the generation resource mix of energy retailed in New York State to improve energy security and independence, while ensuring protection of system reliability;
- c. Economic Benefits: develop renewable resources and advance renewable resource technologies in, and attract renewable resource generators, manufacturers, and installers to New York State;
- d. New York's Environment: improve New York's environment by reducing air emissions, including greenhouse gas emissions, and other adverse environmental impacts on New York State, including underserved communities, of electricity generation;
- e. Equity and Economic Efficiency: develop an economically efficient RPS requirement that minimizes adverse impact on energy costs, allocates costs equitably among ratepayers, and affords opportunities for recovery of utility investment;
- f. Administrative Fairness and Efficiency: develop an RPS that is administratively transparent, efficient, and verifiable; and
- g. Competitive Neutrality: develop an RPS compatible with competition in energy markets in New York State.

procurement model was considered to be an efficient way to insure compliance by individual load serving entities with RPS targets and therefore preferable to the individual procurement model advocated by some parties. The Commission determined that central procurement would expedite program startup and provide more immediate feedback and control of the initial procurements. Finally, the Commission called for a comprehensive mid-course review of the RPS program in 2009 and established the parameters of that review in April 2005.<sup>7</sup>

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the RPS program proposals under consideration in this order was published in the State Register on October 1, 2008 [SAPA 03-E-0188SP19]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the notice expired on November 17, 2008.

In addition, in anticipation of the mid-course program review, in early 2009 NYSERDA submitted its "New York Renewable Portfolio Standard Evaluation Report: 2009 Review" (Evaluation Report).<sup>8</sup> On April 27, 2009, comments were requested on the Evaluation Report, to be submitted by May 29, 2009. A Mid-Course Report was issued by Staff on October 26, 2009, and two technical conference sessions were held to explore the issues it

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<sup>7</sup> Case 03-E-0188, supra, Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program (issued April 14, 2005) (Implementation Order).

<sup>8</sup> The Evaluation Report relied in turn on the reports of two NYSERDA contractors: KEMA, New York Main Tier RPS: Impact and Process Evaluation (March 2009) and Summit Blue Consulting, New York Renewable Portfolio Standard: Market Conditions Assessment - Final Report (February 19, 2009). The Evaluation Report's assessment of the costs and benefits of the RPS program are discussed below.

raised. All of the comments received to date that relate to the issues dealt with in this order and to the underlying reports and technical conferences that have informed the Commission's consideration of those issues, have been carefully considered. Such party comments received are listed in the Appendix to this order and are addressed below. The Commission currently anticipates addressing the remaining RPS issues and comments that are not the subject of this order in March.

#### THE RPS GOAL

The Staff Mid-Course Report recommends that the original RPS MWh goal for renewable resources be revised from 25% to 30% of New York's projected total MWh load (by establishing a related target for acquisition of RPS resources of 10.4 million MWh) and extend the term for attaining the program goal to 2015.<sup>9</sup> The recommendations reflect use of the load forecast adopted for the EEPS proceeding adjusted downward to recognize expected energy efficiency achievements.

NYSERDA states that analyses conducted by its consultants indicate that the RPS Program has produced substantial economic, environmental and other benefits. More specifically, these analyses conclude that the RPS program is the key driver of renewable energy development in New York. NYSERDA estimates that the total direct and indirect economic benefits to the state resulting from the program are more than \$4.2 billion over the life of the generation facilities.

Turning to environmental benefits, NYSERDA asserts that if the energy expected to be generated by the new renewable resources was instead generated by the existing system-wide mix of resources, New York would experience substantial increases in particulate emissions. Using an approach relied on in a recent

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<sup>9</sup> Staff Mid-Course Report, p. 7.

National Research Council report to Congress, NYSERDA asserts that the monetized present value of avoided externalities of SO<sub>2</sub>, NO<sub>x</sub> and particulate matter associated with fossil fuels displaced by the RPS as of 2009 will equate to \$270.1 million over the next 20 years.<sup>10</sup> NYSERDA notes as well that the RPS reduces dependence on imported fossil fuel resources, making the State less vulnerable to volatile prices while increasing an economically stable source of domestic energy.

NYSERDA says that when environmental and price suppression benefits are included in a cost benefit analysis the benefit cost ratio ranges from 1.0 to 4.0, and that when macroeconomic benefits are included, the ratio ranges from 2.1 to 5.3.<sup>11</sup>

MI states that it supports the cost-conscious development of renewable resources and is fully aware of the potential environmental benefits associated with such resources compared with many forms of traditional electric generation. It suggests, however, that given that the Commission originally forecast total program costs of between \$582 million and \$762 million, the \$728 million that has already been committed represents between 96% and 125% of the original forecasted cost of the program.<sup>12</sup> It says that alone supports the scaling back of the RPS target, or at most, maintaining the existing 25% target for the time being rather than expanding the program. MI says that we should acknowledge that the RPS Program has been

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<sup>10</sup> NYSERDA's comments, p. 5.

<sup>11</sup> NYSERDA's comments, p. 7.

<sup>12</sup> We originally forecast an RPS program cost of up to \$741.5 million through 2013, but that forecast (a) assumed RPS Main Tier contracts would extend many years beyond 2013 for which the costs beyond 2013 were not forecasted on the assumption that annual costs beyond 2013 would not exceed the projected peak year cost of \$167.2 million for 2013; and (b) did not include administrative, evaluation or maintenance resources costs, which were to be added.

much more expensive than projected from customers' perspectives. It goes on to assert that:

Although the cost of the RPS Program already has been substantial, the projection of future costs associated with certain proposed modifications to the RPS are astronomical . . . the current high cost of electricity in New York State is not competitive with other states and nations. New York consumers currently pay the fifth highest electricity prices in the entire Nation-nearly double the national average price for electricity . . . the high cost of energy negatively impacts the State's ability to attract new jobs as well as to retain and grow its existing businesses and industries . . . there can be no dispute that the high price of electricity places New York business at a significant competitive disadvantage compared to businesses in other regions.<sup>13</sup>

Then, citing the recent order directing utilities to follow austerity plans,<sup>14</sup> MI says the time has come for the Commission to follow its own directive and reexamine RPS spending in light of current conditions.

NRDC comments, to the contrary, that there is no better time for the Commission to increase the scale of investment it is making toward renewable resources. It says the RPS is a key driver for New York State in meeting vital objectives and will ultimately reposition the State as a clean energy technology leader for a rapidly changing global world order. It says the public value from renewable energy development brought on by RPS greatly outweighs the costs to bill-paying customers. Turning to the Commission's

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<sup>13</sup> MI's comments, pp.6-9.

<sup>14</sup> MI's comments, p. 10 citing Case 09-M-0435, Development of Utility Austerity Programs, Notice Requiring the Filing of Utility Austerity Plans (issued May 15, 2009).

consideration of EEPS, NRDC says the Commission should not consider trading off energy efficiency investments to meet RPS requirements which would create uncertainty and would result in less development of renewable generation.

Con Edison expresses its concern that the RPS program may not be a cost-effective way to achieve environmental goals and that the program should be evaluated together with the Energy Efficiency program with a view of rebalancing a mix of resources to achieve the State's goals. It urges the Commission to manage the programs so that they complement each other.

#### Discussion

The proposed 30% goal equates to an annual target of 10.4 million MWh in 2015, an amount that is only slightly higher than the original 10.0 million MWh target established by the Commission for RPS in 2013. This convergence is possible only if the 30% goal reflects use of the load forecast adopted in the EEPS proceeding adjusted downward to recognize expected energy efficiency achievements. If the expected energy efficiency achievements are ignored, a 30% goal for 2015 would result in a substantially higher and more costly 17.0 million MWh target.

We will adopt the 30% goal and its associated MWh target. Our decision is based on a number of considerations, including results of quantitative analyses, recognition of qualitative benefits, as well as State and Federal energy policies.

Considering first the costs to ratepayers, the estimated incremental cost through 2024 of implementing staff's overall proposal, which included an estimated cost for the Customer-Sited Tier, is about \$2.3 billion overall (on average \$155 million per year) and about \$1.0 billion on a present value basis. The cost of our action today, approving funding for the Main Tier only, is about \$2.0 billion for the 2010-2024 time

period. This cost is a small percentage of the hundreds of billions of dollars that consumers will spend on electric commodity and delivery costs over the same period.

MI's recommendation for scaling back RPS due to its cost is based on an unduly narrow view of the costs as well as the benefits of the RPS program. MI is correct that this is a substantial commitment, but it is wrong to characterize the initial collection authorization as our estimate of the total cost of the program when we established the RPS in 2004. We realized that additional revenue collections beyond 2013 would be required when we established the program, so claiming the program failed to achieve its goals with what was, in effect, only a partial authorization isn't a persuasive criticism.<sup>15</sup>

Additionally, MI's concerns are exaggerated because it does not appear to seriously consider the effects of wholesale market price suppression caused by RPS in its analysis. Wholesale market price suppression produces lower market prices to customers than would otherwise occur and places downward pressure on customer bills. Considering 2015, the year annual costs collected from the public related to the RPS program would peak, and thus the year with the greatest potential bill impacts, the net effect of RPS -- after consideration of price suppression -- will be an increase in customer bills of no more than 1% for any utility and much less in most situations.

We also recognize that the RPS program will not in most instances be economic from the purely quantitative perspective of the "total resource cost test" adjusted for environmental factors and the "ratepayer impact test", the two tests the Commission has relied on most frequently when evaluating projects proposed in the EEPS proceeding. The RPS

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<sup>15</sup> Case 03-E-0188, supra, Order Regarding Petitions for Clarification and Reconsideration, (issued December 15, 2004).

program, however, comes close to achieving benefit cost ratios of 1 in several instances, and, in some version of the tests, exceeds that level.<sup>16</sup> However, all of these results do not capture a wide variety of program benefits that are difficult to quantify.<sup>17</sup> Thus, we conclude that the quantitative benefit cost analysis is not dispositive of the issue here because the qualitative benefits provided by RPS are substantial.

The need to transition from primary reliance on large, centralized fossil fuel plants is compelling:

Production and use of in-state energy resources - renewable resources and natural gas - can increase the reliability and security of our energy systems, reduce energy costs and contribute to meeting climate change, public health and environmental objectives.<sup>18</sup>

The history of oil and natural gas price shocks and supply disruptions clearly demonstrates the value in having a diversified energy mix without heavy reliance on one particular fuel source. The RPS program is an effective way to achieve that end, particularly when it can be accomplished at little or no net cost to customers.

Many renewable resources have very low running costs. This characteristic makes them potential candidates for transactions that could protect ratepayers from significant increases in energy wholesale market prices. The value of such arrangements is difficult to quantify as it depends largely on expectations about the future volatility of market prices. Nevertheless, the potential value to ratepayers of hedges could

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<sup>16</sup> See staff Mid-Course Report, p. 84.

<sup>17</sup> Staff Mid-Course Report, pp. 99-102.

<sup>18</sup> 2009 New York State Energy Plan, Volume I, p. xiv.

be significant.<sup>19</sup> A more diversified fuel mix and the potential to unlock the hedging potential of renewable resources are difficult to quantify but provide value to the public. Other benefits include economic development and reduced emissions of CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>x</sub> and fine particulates.

Con Edison's point that we should consider the relationship of RPS and EEPS is well taken.<sup>20</sup> However, because both EEPS and the Main Tier RPS programs appear cost-effective when all qualitative and quantitative effects are considered, the cost effectiveness of one approach versus the other is not as significant as Con Edison claims. Moreover, an energy future that is less reliant on carbon requires both demand-side and supply-side changes. While EEPS may well be effective in reducing demand and promises significant economic benefits<sup>21</sup> to the State, its results are less certain and more difficult to measure than the delivery of renewable resources to the power grid. Thus, the State should take steps now to alter its supply mix, and the RPS strikes us as a reasonable means to that end.

Given these considerations, we find that the RPS program represents an important part of the State's energy strategy and we will therefore increase the RPS goal to 30%. This goal equates to a fixed target of 10.4 million MWh of

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<sup>19</sup> Concerns about the effects of hedges being "out of the money" are minimal because they would not represent a large percentage of the State's energy mix and these circumstances imply that wholesale electricity prices have remained at levels that are very beneficial to the public.

<sup>20</sup> We note that we are already devoting significant resources to energy efficiency in New York. Overall, we are applying \$2 toward energy efficiency for every \$1 of RPS, and the RPS goal we establish here reflects planned energy efficiency achievements

<sup>21</sup> Transcript of the October 28 Technical Conference, pp. 144-147.

electricity from incremental renewable resources by 2015. This amount is based on a load forecast adopted for EEPS adjusted downward to recognize expected EEPS energy efficiency achievements. Reflecting expected EEPS energy efficiency achievements has the effect of saving customers money by assuming that energy that could have been obtained through more expensive RPS supply options that would otherwise not be required is instead paid for through EEPS. To moderate rate impacts and to better align our renewable resources planning with our energy efficiency planning, we extend the term for achieving the goal from 2013 to 2015.

#### GEOGRAPHIC BALANCE

The Mid-Course Report noted that most of the Main Tier projects were sited upstate, but recommended against proposals to earmark a portion of RPS funding to downstate projects.<sup>22</sup>

New York City and Con Edison took strong exception to this analysis both at the Technical Conference and in written comments. They say that there is a clear injustice in failing to recognize that City customers provide nearly half of all RPS revenue but get little benefit from the program.

New York City lists a series of possible initiatives to remedy the imbalance, including one approach that establishes a separate RPS tier or target for greater on-peak renewable resources in high-cost areas of the State. Alternatively, it urges a dedicated commitment to support a geographically focused incentive program to install at least 100 megawatts of large-scale photovoltaic systems in New York City. It proposes that the program be implemented through a cooperative venture involving Con Edison, NYSERDA, and the City and that it involve

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<sup>22</sup> Staff Mid-Course Report, pp.43-44.

utility scale projects including the potential of direct utility ownership.

Con Edison notes that resources have been concentrated in the upstate portions of the State with little built downstate. This imbalance, it asserts, not only has fairness and economic development impacts, but also affects the State's long term ability to achieve its efficiency and renewable power goals. It says that because the load is predominantly downstate, enabling both efficiency and renewable power to take root downstate is critical for achieving the State's policy objectives. It would establish downstate targets within the Main Tier and the Customer-Sited Tier. Con Edison argues that part of the Main Tier program should be designated as a utility tier program that would be focused on utility deployed resources. It also says that allowing Con Edison to build and own rate based renewable generation would be fully consistent with the Commission's vertical market policy on generation ownership and would do much to overcome certain structural barriers. This is because it is difficult for large solar projects to obtain funding from either the Main Tier (where the costs of solar resources make them unlikely to be selected in a competitive solicitation) or the Customer-Sited Tier program (which does not fund projects larger than 80kW).

Central Hudson asserts that allowing utilities to use their core competencies to site solar generation in areas south of Albany would distribute economic development opportunities to communities throughout the State and be closer to parity with wind and hydro technologies when losses and regional energy costs are considered.

NYSERDA comments that including a geographical preference in the Main Tier program would add complexity to the competitive process and would almost certainly result in higher

prices and ultimately increase program costs. It says that it would likely be ineffectual as well since the resources and feasibility of project development are simply not uniform across the State.

NRDC asserts that determining the flow of RPS program funding along a measure of intrastate geographic location is not beneficial to ratepayers. Nevertheless, it says that many high-priced load pockets in downstate New York would benefit from distributed generation renewable resources and the utility should be given the option to consider siting those resources in high-priced load pockets.

Discussion

New York City, Con Edison, Central Hudson, and NRDC all make valid points: the apparent imbalance between the provision of RPS funding and RPS project locations warrants the Commission's attention.<sup>23</sup> Careful consideration of these issues is required and ultimately the final decision regarding an option that provides a degree of geographic balance can only be made with additional information.

Staff should report to us in three months with a recommended implementation plan designed to address this imbalance. Staff should consult with the interested parties and develop a plan, including solicitation method and data regarding potential MWh savings. For planning purposes, it should use a budget of up to \$30 million annually through 2015 for

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<sup>23</sup> Con Edison's suggestion that a perfect correlation should exist between the geographic source of funding and the location of RPS resources, however, misses the mark. The cost of obtaining nearly 50% of the State's renewable resources in the most expensive NYISO zones does not represent a reasonable use of ratepayer funds because far cheaper renewable resources are likely available elsewhere in the State. The entire RPS program, in fact, was premised on the goal of obtaining resources in the most cost-effective manner.

solicitations for larger-scale downstate solar PV, anaerobic digester and fuel cell projects to develop RPS projects in downstate NYISO Zones G, H, I and J. Our decision on the funding budget and scope of the program will be linked to our decision on such programs in the Customer-Sited Tier in order to optimize program expenditures and deployment across these technologies. We expect to make the decision on both of these matters in the next few months. Additionally, (1) the Main Tier program should not be disrupted, (2) any program should fully account for the knowledge and expertise of downstate utilities and should be developed with an eye toward integration of utility and NYSERDA EEPS and demand response programs, (3) cost effective administration should be an important consideration, (4) the program should be focused on projects above 50 kW; and (5) anaerobic digester and fuel cell projects should have a renewable resource feedstock to be eligible.

#### ADMINISTRATIVE ISSUES

##### Scheduling Procurements

Commission approval has been required prior to each solicitation for renewable energy attributes in the Main Tier. While there are certain advantages to this approach, such as a higher degree of Commission oversight and public participation for each solicitation, the process for seeking Commission approval is difficult to predict. The unknown timing of subsequent solicitations leads to uncertainty among potential bidders - with the possible result that development capital may be invested elsewhere. In anticipation of the Commission's mid-course review, NYSERDA's Evaluation Report noted that:

The lack of regularly scheduled and known RPS competitive solicitations, and that the Program does not disclose the funding available for each procurement, send an

uncertain market signal that impedes the development of new renewable capacity.<sup>24</sup>

The staff Mid-Course Report recommended that NYSERDA should be given flexibility, in consultation with Staff, to schedule Main Tier solicitations on a more regular basis. Regularly scheduled RPS solicitations should lead to greater developer and generator certainty, which can in turn lead to better planning and lower overall costs. Additionally, eliminating the requirement of prior Commission approval would give NYSERDA the ability to respond to changing circumstances in a timely manner.<sup>25</sup>

Brookfield comments that the Commission should provide standard procurement schedules with "long-term visibility" at least over the next five years.

NRDC comments that a solicitation schedule extending through 2015 with annual or bi-annual competitive solicitations should be published and that procurement selection criteria should emphasize quantity of renewable energy credits produced. It notes as well that it is more efficient and cost effective for Main Tier procurements to be regularly scheduled by NYSERDA.

NYSERDA states that it would be more efficient and cost effective for Main Tier procurements to be regularly scheduled by NYSERDA in consultation with Staff without the need for individual Commission authorization. It says that authorization to conduct up to two solicitations per year would provide the level of certainty and frequency desired by market participants. Several parties made similar points at the October 28 Technical Conference.

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<sup>24</sup> New York Renewable Portfolio Standard Evaluation Report: 2009 Review, p. 8.

<sup>25</sup> Staff Mid-Course Report, p. 39.

Discussion

We agree that greater predictability has value to developers. However, we are also concerned that a rigid approach is more likely to encourage gaming by potential bidders and as such might not provide the best tradeoff between MWh and ratepayer costs. In any event, NYSERDA should be authorized to conduct no less than one solicitation per calendar year. This approach provides greater predictability but also allows NYSERDA to conduct, after consultation with Staff, as many solicitations per calendar year as are deemed necessary to obtain attributes in the most cost effective manner consistent with our target, cost estimates and collection schedule. In all instances, Staff should be given at least 30 days notice before any RFP is issued.

Separately, we also authorize an additional \$200 million Main Tier solicitation and urge NYSERDA to move forward with an RFP as soon as possible. The results obtained from the recent solicitation suggest that financing may not be as problematic as some parties have claimed and the dual effects of federal tax incentives (most notably the investment tax credit grants) and lower equipment costs appear to offset the effect of current commodity prices on the premium required for renewable attributes. The investment tax credit grants are currently slated to expire at the end of 2010 for projects not under construction at that time. Given the likely effect of these tax benefits on the recent Main Tier bids, having another solicitation as soon as practical in order to take advantage of these credits before they expire is warranted. While the number of new renewable resources that can be obtained given the limited time horizon is unknown, authorizing a further solicitation for new resources now is consistent with our RPS objectives.

It is important to recognize that the 2015 MWh target requires the acquisition of significant renewable resources over the next six years. As a result, it makes sense to open the next procurement to existing resources by restoring the 2003 vintage date requirement. Consequently, we think that the most cost effective, competitive and beneficial approach for ratepayers is to conduct a solicitation for both new and existing resources at the same time early in 2010. After the \$200 million solicitation authorized here we will revisit vintage, economic development, and related matters discussed in this order prior to authorizing any further solicitations.

Central Procurement and Program Administration

Staff's Mid-Course Report recommended the continuation of the "central procurement model" - that is, allowing NYSERDA to continue to administer the program. Most parties support the continuation of that approach, noting that it has been efficient. NYSERDA says that central procurement has allowed the RPS to integrate well with New York's competitive energy markets and that the solicitations to date have been highly competitive and successful in stimulating renewable resource development in New York. It highlights the economic efficiencies in the approach and concludes that the central procurement system is performing efficiently both economically and administratively. The Small Marketer Coalition asserts it would be inappropriate and inefficient to terminate that approach now inasmuch as the parties have dedicated considerable resources and valuable time to develop, analyze and modify the model. The Retail Energy Supply Association also supports continuation of the model noting that to transition away from it would engender significant delays and potentially hinder the ability of the State to achieve its designated RPS goals.

Brookfield says the central procurement platform lacks regularity, transparency and liquidity and is not consistent with other state RPS programs. It says that a competitive market-based structure where the marginal clearing price sets the price of the auction instead of a sealed bid priced auction provides more transparency and liquidity for both buyers and sellers.

IPPNY comments that the centralized model has not provided developers with a liquid market in which to sell their "RECs" (renewable energy credits). It says that one of the important advantages of a non-centralized model in which load serving entities are required to include specified percentages of "green" power as part of their load serving obligations, is that it creates a multitude of potential buyers for any developer.<sup>26</sup> It says the Commission should therefore transition from its current centralized procurement approach to a decentralized approach. It argues that such a change is not a radical shift since an alternative approach was contemplated early in the proceeding and the Commission's current review is intended to examine a move to such an approach. It says Staff's claim that costs would increase is speculative and that no evidence has been provided that such a model would be more costly than a central procurement model. It says that

. . . it is hard to imagine that the many state utility commissions which have decided not to pursue a central procurement model have done so while believing that this decision would increase the costs to their ratepayers.<sup>27</sup>

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<sup>26</sup> Staff is working with NYSERDA and the NYISO to develop a REC tracking system compatible with those used in New England and PJM.

<sup>27</sup> IPPNY's comments, p. 3.

Discussion

We see no basis for changing our conclusion that the central procurement model provides efficiencies and is the most cost effective approach to administering the RPS program. We do not believe that possible (speculative) benefits would offset the certainty of delay and increased costs. The Main Tier has, generally, been effectively administered, although certain improvements are possible. Along those lines, we will require that Staff - and not NYSERDA - conduct the next evaluation of the program.<sup>28</sup> Having consultants employed by NYSERDA evaluate its administration of the program could raise questions regarding the independence of the review; questions we prefer to avoid.

We will also require that the upset price -- the level at which bids are rejected -- be subject to approval by Staff as conforming to the RPS goal in an efficient manner, as an additional safeguard inasmuch as Staff brings to the effort its charge to protect ratepayers. Staff shall be present at the bid opening and subsequent briefings and evaluations of those bids. The point is that Staff and NYSERDA work together cooperatively (as they have in the past), but that there is a need to make clear that the ultimate decision of how much of the money gets awarded and who it gets awarded to should, in the final analysis, not be controlled solely by NYSERDA. We are responsible for the RPS program, and we have a broader mandate than NYSERDA to foster the public interest and balance the interests of ratepayers and shareholders. To satisfy that responsibility we shall ensure the money is spent in the most

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<sup>28</sup> Any necessary consultants can be funded out of evaluation funds as they are now, using the approach employed in EEPS.

cost effective and beneficial manner possible.<sup>29</sup> Finally, NYSERDA is directed to develop a procedure to insure that its cash collections reasonably match its cash outlays for renewable resources.

#### Vintage Date

In our order establishing the RPS program, we determined that renewable generation facilities, which commenced commercial operation prior to January 1, 2003, would not be eligible for RPS incentives. In its Mid-Course Report, Staff examined the advisability of updating the vintage date.

The Mid-Course Report proposed retaining the original vintage date:

[A] change in the vintage date could reduce the number of bidders and the total megawatts bid, compromising the likelihood of reaching our renewable goal, and would likely preclude the opportunity to acquire otherwise available low cost renewable attributes. [U]pdating the vintage date would also harm those generators with existing plants that might have otherwise bid already existing capacity. . . . Finally, as major developers and others have noted, any substantial rule change may create a perception of increased investment risk in New York.<sup>30</sup>

#### Discussion

The reasons supporting retention of the existing vintage date (January 1, 2003) currently outweigh the reason for changing it. At the same time, we also direct NYSERDA to clarify its economic development bid evaluation criterion to

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<sup>29</sup> This order supersedes the existing Memorandum of Understanding. Staff and NYSERDA should develop a new MOU to implement this order.

<sup>30</sup> Staff Mid-Course Report, p. 38.

require that operating projects get no points for non-incremental economic development. In these ways we maximize the number of MWh available for the program while showing continued preference for new projects. We intend to reexamine our vintage policies as part of our evaluation of the success of the \$200 million solicitation.

### Hedging

The staff Mid-Course Report recommended that

Parties should have the opportunity to make bids that act as hedges to offset future increases in wholesale commodity prices. (This could be accomplished in a variety of ways ranging from a contract for differences to a solicitation bid that establishes a maximum commodity price.) In order to realize the benefits produced by these mechanisms, it will be necessary to develop an RPS cost recovery mechanism that varies by month.<sup>31</sup>

IPPNY says early in the development of the RPS program the Commission considered a bidding process where awards by NYSERDA would vary inversely with energy prices. IPPNY objected to the use of that approach involving contracts for differences (CFD) because it would harm the efficiency and competitiveness of wholesale electricity markets. It says that the market structure values energy where and when it is needed most and that any contract for differences proposal would need to ensure that such facilities are not provided an incentive to run at times when the market does not need the power. It says that if the Commission decides to adopt a variable price approach, it should require NYSERDA to pay renewable resources a price that

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<sup>31</sup> Staff Mid-Course Report, p.42

is indexed inversely to average annual zonal LBMPs. It says this indexed payment approach would be much simpler to implement than a contract for differences proposal.

NYSERDA notes that while current market conditions may not be favorable for developers to obtain hedges, it is quite reasonable to expect that market conditions will improve and that energy hedge products will become available. It says the Commission should exercise caution when considering how NYSERDA could step into the market, using ratepayer money, in an attempt to modify prevailing conditions, especially when traditional market actors with risk-balancing abilities and experience have chosen not to do so. It adds that CFD contracts, where the monthly electricity price received by the generator is higher than the strike price, will place credit risk on New York ratepayers. It says that the pluses and minuses of alternative pricing mechanisms are worthy of further attention and that it would be happy to participate in that process with the various stakeholders.

National Grid comments that if New York's electric utilities are to participate in these types of financial hedging contracts there should be clear rules for future cost recovery and any incremental costs should be borne by all delivery customers. It also asserts that appropriate compensation must be provided for the risks assumed by utilities in undertaking such a long term contract.

#### Discussion

These are reasonable concerns, although they are somewhat mitigated by the intermittent nature of most RPS resources. Nevertheless, it is also important to consider the potential value to ratepayers of limiting exposure to the dual effects of rising commodity prices in the face of fixed payments for renewable attributes. Staff should explore uses of hedging

and alternative contractual arrangements to facilitate financing and protect customers from upward swings of energy prices. It should report back to us in three months, including its analysis of the issues raised on this topic at the Technical Conference.<sup>32</sup>

#### AUTHORIZATION OF UTILITY CHARGES

The incremental Main Tier funding needed to achieve the 30% goal is about \$2.0 billion. The relevant net cost to ratepayers is likely to be minimal as the Main Tier produces the vast majority of price suppression impacts and the Main Tier technologies generally have lower costs per MWh of attribute than the Customer-Sited Tier technologies, such as solar photovoltaics.

Because we will consider issues related to the Customer-Sited Tier and geographic balance at a subsequent session, we intend to set a new collections schedule in March (when all amounts are known) in time to commence new collection rates on April 1, 2010 and continuing through 2024 (insuring funding of all expected RPS contracts through their expected terms).

#### 2013 REVIEW OF ENERGY PROGRAMS

The RPS program is part of a broader set of programs driven by New York's policy favoring development of clean and stable energy sources. We are directly involved in three related initiatives: System Benefit Charge (SBC)-funded NYSEERDA programs, EEPS programs, and RPS. Nevertheless, our experience with all of these programs is limited, there may well be serious, unexpected bumps in the road over time, and actual

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<sup>32</sup> See, for example Transcript of the November 12 Technical Conference, p. 67.

results may be more or less favorable than anticipated. The progress of all of these initiatives should be carefully evaluated, measured and verified so that we will have sufficient information in the future to revisit the initiatives it controls and determine if there is a more effective allocation of resources among them. We will, therefore, review the status of all these initiatives simultaneously in 2013.

The Commission orders:

1. The Renewable Portfolio Standard (RPS) goals and targets are revised as set forth in the body of this order.
2. The New York State Energy Research and Development Authority (NYSERDA) is authorized to conduct a further \$200 million Main Tier solicitation as described in the body of this order, in the manner described in the discussion on "vintage", "central procurement and program administration."
3. Staff and NYSERDA shall prepare a revised Memorandum of Understanding regarding the RPS program that reflects the discussion in the body of this order.
4. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

**Parties Commenting and Corresponding Abbreviations<sup>1</sup>**

<b>Name of Commenter</b>	<b>Abbreviation of Commenter</b>
Brookfield Renewable Power, Inc.	Brookfield
Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc.	Con Edison
Earthkind Energy, Inc. and its subsidiary, Earthkind Solar	Earthkind
eGensolar, Inc.	eGEN
Ener-G-Rotors, Inc.	Ener-G-Rotors
The New York Farm Bureau	Farm Bureau
Hudson Valley Clean Energy, Inc.	Hudson Valley Clean Energy
Independent Power Producers of New York, Inc.	IPPNY
Invenergy LLC	Invenergy
Multiple Intervenors	MI
Niagara Mohawk Power Corporation d/b/a National Grid, The Brooklyn Union Gas Company, d/b/a National Grid NY, Keyspan Gas East Corporation, d/b/a National Grid	National Grid
National Milk Producers Federation	National Milk Producers Federation
New York Biomass Energy Alliance	New York Biomass Energy Alliance
New York State Gas & Electric Corporation and Rochester Gas and Electric Corporation	NYSEG/RGE
New York State Energy Research and Development Authority	NYSERDA
New York State Department of Environmental Conservation	DEC
Northeast Biogas LLC	Northeast Biogas
Plug Power Inc.	Plug Power
RCM International LLC	RCM
Retail Energy Supplier Association	Retail Energy Supplier Association
Small Customer Marketer Coalition	Small Customer Marketer Coalition
SunEdison LLC	SunEdison
Vote Solar Initiative	Volt Solar Initiative
ZeroPoint Clean Tech, Inc.	ZeroPoint

<sup>1</sup> This list does not reflect letters from individuals.

Robert E. Curry, Commissioner, dissenting:

Renewable generation can play an important role in New York State's energy policy, and the RPS program is a reasonable means of achieving that important end. Certainly, the Obama Administration champions this and, years after New York's leadership in the renewables sector resulted in the adoption of the RPS, has provided generous Federal tax incentives that dwarf those available through the RPS.

I respectfully dissent because the RPS as proposed is too costly to New York ratepayers and the Commission has not taken sufficient time to adequately and completely debate the issues embedded in the expansion of the existing program. Given the manner in which the Main Tier procurements have historically been processed (the results of the \$95 million procurement bid in early November have as of January 1, 2010 yet to be announced), it is unlikely that developers seeking to invest in New York will be disadvantaged by an in-depth reconsideration of a large number of important issues, as contemplated by the RPS Order requiring the 2009 Review.<sup>1</sup>

The RPS program is expensive enough standing alone, and when combined with the System Benefit Charge and the recently approved increases to that charge related to the Energy Efficiency Portfolio Standard, the total bill burden is significant: over 2.75% (or \$561 million in 2010 in direct costs). Each of these programs seek to accomplish laudable goals, but it is highly likely efficiencies can be achieved by their integration. While there may be an indirect offset to this in the form of "price suppression" on the energy portion of the bill, there is no consensus as to what price suppression is -- and the Commission has yet to adequately debate this topic and the potential costs associated with improvements to the bulk

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<sup>1</sup> Case 08-E-0188, Supra, Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program (issued April 14, 2005).

and local transmission systems necessitated by the addition of renewable resources. The Order proposes to wait until 2013 to review these programs simultaneously; they can and should be evaluated now. At a time when the Commission is asking utilities to consider austerity in their rate submissions and when the impact of the changes in Public Service Law Section 18-a that increases costs collected on customer bills is still being digested, it is the responsibility of the Commission to do all in its power to achieve the most cost-efficient programs for its ratepayers.

The Order authorizes the collection from ratepayers of about \$2 billion over the next 15 years and, within that, the immediate procurement of renewable resources with a cost of \$200 million. There is adoption of new, more aggressive goals for RPS and related MWh targets. Yet, to date, RPS costs have exceeded original projections, MWh targets have not been met, and the program's administration remains unchanged. With this history, it is difficult to see how the expansion of the RPS will achieve the results desired.

The Order also attempts to deal with the geographic inequities in the RPS by noting a possible annual carve out of up to \$30 million in the Customer-Sited Tier for downstate, a small sum when New York City asserts that its ratepayers have supplied \$300 million in RPS contributions while obtaining \$5-10 million in return. This inequity can be seen through the lens of the \$55 billion more 2008 New York State tax dollars sent to the Federal treasury than were returned in Federal spending. Accordingly, New Yorkers already subsidize some portion of the Federal tax incentives for renewable generation. We should appropriately redress the inequity we have some control over before committing to the expansion of the program.

Other aspects of the program should also be evaluated before any solicitation goes forward:

- We should receive and evaluate the information to be supplied by Staff on the use of hedging and contracts for differences.
- The bidding process should be critically evaluated, including a review of how to move more quickly and how to enable developers to invest in these technologies while still obtaining the least cost generation.
- Transmission and substations additions and improvements should be quantified and included in the costing of RPS projects.

Finally, in ordering the immediate spending of roughly 10% of the \$2 billion -- when combined with the recent \$95 million procurement -- the Commission will have authorized the spending of almost \$300 million before considering whether there should be changes to the definition of "renewable" to include waste-to-energy, solar thermal, and storage technologies (like pumped storage) that enable more effective utilization of wind generation. Serious questions about these definitions were raised over a year ago and not addressed. The Commission should complete its review of all the issues that it is deferring before authorizing another solicitation.

For all these reasons, I respectfully dissent from the Commission's decision.