

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

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Case 03-E-0188

**PETITION FOR AN  
ORDER MODIFYING MAIN TIER SOLICITATION PROCESS  
AND RESOLVING MAIN TIER ISSUES**

Pace Energy and Climate Center, Alliance for Clean Energy New York, Sierra Club, Natural Resources Defense Council, Renewable Energy Long Island, New York League of Conservation Voters, New York Public Interest Research Group, Vote Solar Initiative, Citizens Campaign for the Environment, and Environmental Advocates of New York (“Main Tier Petitioners”) respectfully submit this Petition for an Order Modifying Main Tier Solicitation Process and Resolving Main Tier Issues. Since its inception in 2004, the New York State Renewable Portfolio Standard (“RPS”) has been a driver of clean energy investment in the state. The RPS has helped to create jobs and promote economic development, lower harmful air emissions, and create energy security and independence for New York residents. While the Customer-Sited Tier has undergone frequent changes in its incentive structure to capture significant shifts in the markets for solar PV and other distributed renewable technologies, the Main Tier program has not kept pace with the evolving wholesale renewable energy market. NYSERDA remains limited to offering 10-year Renewable Energy Credit (“REC”)-only contracts that fail to incentivize meaningful participation in NYSERDA’s Main Tier solicitations. As a result, New Yorkers are now in jeopardy of missing out on the potential for billions of dollars of additional clean energy investment in the State as developers take their projects elsewhere.

In furtherance of the enormous economic and environmental benefits which flow from Main Tier solicitations, and to achieve the 2015 Main Tier target, Main Tier Petitioners respectfully request that the Commission issue an Order to: (1) immediately renew and fast track its 2010 contracting analysis to remove the 10-year cap on Main Tier contracts and allow NYSERDA to utilize alternative incentive structures such as REC contract returns longer than ten years, standard offers, and/or contracts-for-differences in future solicitations; and (2) require NYSERDA to immediately issue a 2014-2015 Main Tier solicitation schedule to include a minimum of three solicitations consistent with the new incentive structure agreed to by Staff and NYSERDA.

**Background**

New York's 2002 State Energy Plan ("Plan") warned that the state's primary energy sources are "imported from abroad, have significant and long-term effects on the environment, and ultimately face depletion" and predicted that "[u]ntil new and sustainable sources of energy are developed, the U.S. and New York will continue to experience the economic and social challenges of fossil fuel dependency."<sup>1</sup> Motivated by these concerns, the Plan recommended a study to determine the feasibility of establishing a statewide RPS.<sup>2</sup> In February 2003, the New York Public Service Commission ("Commission"), citing concerns about the "finite supply of natural gas and other fossil fuels,"<sup>3</sup> instituted a process to develop a "renewable portfolio standard for electric energy retailed in New York State."<sup>4</sup> That process was finalized in September 2004 with the formal adoption of a goal to "increase the proportion of electricity attributable to renewable resources to at least 25 percent of electric energy used in New York State by the end of 2013."<sup>5</sup> In January 2010, the Commission modified the RPS by increasing the renewable goal from 25% to 30%, establishing a renewable generation target of 9.8 million MWh/yr from Main Tier solicitations, and extending the deadline to 2015.<sup>6</sup>

Main Tier progress through December 31, 2012 was approximately 4.49 million MWh/yr in 2015, representing about 47%, or less than half, of NYSERDA's portion of the 2015 annual RPS target.<sup>7</sup> This figure is approximately 2.5 million MWh/yr lower than NYSERDA's 2012 target.<sup>8</sup> Even more troubling is the fact that 2011-2012 represented the first time period where there was a decline in MWh, due primarily to the fact that there was no Main Tier solicitation in 2012. In its September 2013 Review, NYSERDA admitted that even in a best-case scenario, total progress by the end of 2015 with currently authorized funding would only equal 8.2 million MWh/yr, or 86% of the 9.8 million MWh/yr 2015 Main Tier target.<sup>9</sup>

Despite procuring fewer megawatt-hours than expected, NYSERDA concluded in its September 2013 Review that current projects under the RPS generated a 1:3 cost-benefit ratio, meaning that every \$1 spent on the RPS generated \$3 of direct investment in New York.<sup>10</sup> Factoring in carbon emissions savings from the 50 million tons of CO<sub>2</sub> eliminated by current Main Tier projects, a lower bound (\$15/ton) increases direct investment to \$4.6 for every RPS dollar, while the upper bound (\$85/ton) shows that for every \$1 spent on the RPS produces \$9 in direct investment to New York.<sup>11</sup> **Total direct investment over the lifetime of these projects is estimated at \$2.7 billion.**<sup>12</sup> In addition to direct investment, there are a number of ancillary

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

<sup>2</sup> *Id.* at 1-3.

<sup>3</sup> Case No. 03-E-0188, Order Instituting Proceeding, at 1 (Feb. 19, 2003).

<sup>4</sup> *Id.*, 2.

<sup>5</sup> Case 03-E-0188, Order Regarding Retail Renewable Portfolio Standard, at 3 (Sept. 24, 2004).

<sup>6</sup> Commission, Case 03-E-0188, Order Establishing New RPS Goal and Resolving Main Tier Issues, at 7 (Jan. 8, 2010).

<sup>7</sup> NYSERDA, "Renewable Portfolio Standard Main Tier 2013 Program Review, Volume 1- Program Review Introduction", at 12 (Sept. 5, 2013).

<sup>8</sup> Data taken from NYSERDA's 2010-2012 annual RPS Performance Reports.

<sup>9</sup> NYSERDA, "Renewable Portfolio Standard Main Tier 2013 Program Review, Volume 3- Projected Impacts from Using Available Uncommitted Funds", at 4 (Sept. 5, 2013).

<sup>10</sup> *Id.*, 6.

<sup>11</sup> *Id.*, 27.

<sup>12</sup> *Id.*, 6.

benefits not included in NYSERDA's direct investment analysis, including diversifying New York's fuel portfolio, enhancing grid security, improving renewable technology, and providing a myriad of public health and environmental benefits.<sup>13</sup> Furthermore, NYSERDA concluded that while it has achieved 47% of its 2015 target of 9.8 million MWh, the agency has only expended 39% of its total allocated budget, making the RPS program highly cost-effective.<sup>14</sup>

### **Requested Actions**

#### **1. Remove the 10-Year Cap on Main Tier Contracts and Allow NYSERDA to Utilize Alternative Incentive Structures Such as REC Contracts Longer Than Ten Years, Standard Offers, and/or Contracts-for-Differences in Future Solicitations**

Despite the fact that "RPS procurement/contracting mechanisms in other deregulated markets have migrated to address initial program structural deficiencies,"<sup>15</sup> New York's RPS contracting program remains stuck in the past, unchanged since its inception in 2004. Under current wholesale electricity market conditions, New York's continued reliance on 10-year maximum, REC-only contracts has stifled renewable generation and forced developers to take valuable projects elsewhere. Ironically, the Commission's fixed 10-year contract term was originally instituted as a minimum term "to assure that renewable energy attributes acquired in a solicitation are available to meet the program goal in 2013."<sup>16</sup> However, rather than helping to meet the 2013/2015 RPS targets, limiting contracts to 10-year terms has had the opposite effect, discouraging new project bids from developers who prefer stable, longer-term contracts to hedge risk. Since the 10-year maximum contract cap is now obsolete in light of the 2013 target being extended to 2015 and the need for additional renewable contracts to meet that target and future targets, the Commission should remove the cap and extend contract terms to 20 years.

Furthermore, as NYSERDA readily acknowledges, "[e]volution in other states has included combinations of long-term contracting policies under which both energy and RPS Attributes may be sold, thus hedging commodity market risk, which New York's current RPS design does not offer, and longer periods of support."<sup>17</sup> Thus, while other states are utilizing long-term bundled contracts and contracts-for-differences, New York persists in offering only shorter term, REC-only contracts. Responding to developer interest in creative contracting options, the Commission actually considered utilizing a broader array of contracting options in April 2010 but tabled them, finding that "the recently concluded fourth RPS solicitation attracted a substantial number of bids at reasonable prices and we have every reason to believe that the currently in-progress fifth solicitation will be robust and has attracted the interest of a sizeable

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<sup>13</sup> *Id.*, 29.

<sup>14</sup> *Id.*, 39.

<sup>15</sup> NYSERDA, "Renewable Portfolio Standard Main Tier 2013 Program Review, Volume 3- Projected Impacts from Using Available Uncommitted Funds", at 15 (Sept. 5, 2013).

<sup>16</sup> Case 03-E-0188, Order Authorizing Additional Main Tier Solicitation and Setting Future Solicitation Guidelines, at 6 (Aug. 21, 2009).

<sup>17</sup> NYSERDA, "Renewable Portfolio Standard Main Tier 2013 Program Review, Volume 3- Projected Impacts from Using Available Uncommitted Funds", at 15 (Sept. 5, 2013).

number of bidders.”<sup>18</sup> However, it is important to note that the fourth and fifth RPS solicitations produced the lowest volume of MWh out of any of the solicitations.<sup>19</sup>

In recent comments to the Commission, several developers again recommended new contracting mechanisms to maximize renewable potential and minimize developer risk. Iberdrola Renewables performed a study which found that “shifting RPS main tier procurement to a contract for differences model can reduce the cost of adding an additional 1,500 MWs of utility-scale wind by \$476 to \$660 million compared to the current NYSERDA REC model (a 36% to 50% savings respectively over the 10-year REC product business as usual approach).”<sup>20</sup> Similarly, EDP Renewables (“EDPR”) argued that a revised Main Tier contracting structure with 15-20 year contracts-for-differences would give “more predictable revenues to the developer, allowing for cheaper financing (and thus lower pricing to ratepayers) and a locked in electricity price hedge.”<sup>21</sup>

Authorizing contracts for differences (CfDs) would not create unmanageable risk for NYSERDA. While offering CfDs may create some uncertainty on NYSERDA's total long term exposure should gas prices remain low, NYSERDA can work with the New York Green Bank and other market participants to hedge the extreme outcomes in manner that provides NYSERDA with sufficient certainty while ensuring additional renewable energy deployment and ratepayer value for money.

Though the Commission’s 2010 order tabled use of new contracting policies to hedge developer risk, it did concede that “[i]f circumstances change and/or the results of future solicitations indicate an increased need for a hedge to be provided by the program, we can consider it at that time.”<sup>22</sup> Due to the poor results from recent solicitations, including the fourth and fifth solicitations on which its initial decision relied, as well as the recent recommendations of potential developers, the Commission should immediately renew and fast track its 2010 analysis of new contracting mechanisms and remove the 10-year cap for Main Tier contracts while allowing NYSERDA to utilize alternative incentive structures including but not limited to contracts-for-differences in future solicitations. An updated incentive structure will empower developers to finance, build and interconnect new projects, thereby moving New York closer to meeting its RPS targets while delivering the marked economic, environmental, and job creation benefits the program has delivered to date. Notably, the Commission’s 2010 contracting analysis was completed in only four months. Based on NYSERDA and DPS Staff’s subsequent work, any update to this review should take considerably less time and new solicitations with improved contracting structures should be offered no later than spring 2014.

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<sup>18</sup> Case 03-E-0188, Order Resolving Main Tier Issues, at 21 (Apr. 2, 2010).

<sup>19</sup> NYSERDA, “Renewable Portfolio Standard Main Tier 2013 Program Review, Volume 2- Main Tier Current Portfolio Analysis”, at 2 (Sept. 5, 2013).

<sup>20</sup> Iberdrola Comments, 5.

<sup>21</sup> EDRP Comments, 2.

<sup>22</sup> Case 03-E-0188, Order Resolving Main Tier Issues, at 21 (Apr. 2, 2010).

## **2. Require NYSERDA to Issue a 2014-2015 Solicitation Schedule to Utilize the Remaining Main Tier Budget to Achieve the 2015 MWh Target**

In its 2009 RPS Evaluation Report, NYSERDA argued 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>23</sup> The 2009 RPS Mid-Course Report, prepared by DPS, argued that “[r]egularly scheduled RPS solicitations should lead to greater developer and generator certainty, which can in turn lead to better planning and lower overall costs.”<sup>24</sup>

Responding to these recommendations in its January 2010 order modifying the RPS goal to the current 2015 target, the Commission authorized NYSERDA to conduct at least one solicitation per year and as many as necessary to achieve the 2015 target. Furthermore, in its December 2010 order authorizing additional solicitations, the Commission noted that all commenters, including Iberdrola, Invenergy, and EverPower, argued that “more regularly scheduled solicitations will provide the regulatory certainty that developers need to help create a more robust renewable energy market in New York State.”<sup>25</sup> The Commission itself noted that “greater predictability has value to developers that make long-term investment decisions about whether or not to invest and locate projects in New York State.”<sup>26</sup>

Despite the overwhelming unanimous support for frequent, regularly scheduled solicitations, only four Main Tier Solicitations have been offered since 2010, and were offered in an unpredictable and unevenly spaced manner (February 2010, February 2011, October 2011, and January 2013) which did not afford developers the opportunity to achieve the proper financing and preparation necessary to offer adequate proposals.

In recent comments to the Commission, developers again stressed the need for regularly scheduled solicitations. ClearEdge Power stated that “customers need to have a clear understanding of when bids will be selected and the timing of their next opportunity to participate if they are unsuccessful initially.”<sup>27</sup> Similarly, EDPR argued that “[h]aving regularly scheduled NYSERDA solicitations, such as every year in the spring in a specific month, would greatly help us in our planning and development of our wind farms.”<sup>28</sup> Iberdrola Renewables (“Iberdrola”) requested “an annual RPS procurement schedule with dates for RFPs and announcements published well in advance so that main tier developers can properly plan their project development in order to meet NYSERDA’s procurement schedule.”<sup>29</sup>

Ironically, in its NY-Sun Petition, NYSERDA expressed its concern “that a delay in the designation of the source of funds for 2014-2015 will cause uncertainty and disruption that will

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<sup>23</sup> NYSERDA, “New York RPS Evaluation Report”, at 8 (March 31, 2009).

<sup>24</sup> New York Department of Public Service, “The Renewable Portfolio Standard: Mid Course Report”, at 39, (Oct. 26, 2009).

<sup>25</sup> Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Authorizing Additional Main Tier Solicitation and Setting Future Solicitation Guidelines, at 5 (Dec. 3, 2010).

<sup>26</sup> *Id.*, 6.

<sup>27</sup> ClearEdge Comments, 3.

<sup>28</sup> EDPR Comments, 4.

<sup>29</sup> Iberdrola Comments, 5.

retard market confidence and program success.”<sup>30</sup> Regarding the Main Tier, NYSERDA’s failure to regularly schedule frequent solicitations has caused the very same uncertainty and disruption, which has not only impaired achievement of the 2015 target, but more importantly has deterred renewable investment in New York, costing New Yorkers billions of dollars in valuable economic and environmental benefits. Therefore, the Commission should require NYSERDA to immediately issue a 2014-2015 solicitation schedule, consistent with completion of the Commission’s renewed contracting analysis, to utilize the remaining Main Tier budget to improve attainment toward the 2015 target.

### **Conclusion**

As emphasized in December 2010, the Commission believes “that by allowing NYSERDA the flexibility to act more quickly, we will be better positioned to take advantage of favorable market conditions that will help us attain renewable resources in the most cost effective manner.”<sup>31</sup> Accordingly, Main Tier Petitioners respectfully requests that the Commission issue an Order to: (1) immediately renew and fast track its 2010 contracting analysis to allow NYSERDA to utilize alternative incentive structures such as REC contract returns longer than ten years, standard offers, and/or contracts-for-differences in future solicitations; and (2) require NYSERDA to immediately issue a 2014-2015 Main Tier solicitation schedule to include a minimum of three solicitations consistent with the new incentive structure agreed to by Staff and NYSERDA.

Granting these requests would vastly improve the Main Tier program, affording NYSERDA the necessary flexibility to react quickly to changing market conditions while also providing developers with the requisite certainty and predictability for submitting qualifying proposals. If the Commission acts quickly to revise the Main Tier contracting structure and requires a 2014-2015 solicitation schedule from NYSERDA to utilize the remaining Main Tier budget, it is conceivable that improved solicitations over the next two years would allow New York to meet its 2015 Main Tier target.

Respectfully submitted on the 16<sup>th</sup> day of December, 2013.

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<sup>30</sup> Case 03-E-0188, Renewable Portfolio Standard (RPS), Petition Regarding NY-Sun 2014-2015 Funding Considerations and Other Program Modifications, at 2 (Sept. 5, 2013).

<sup>31</sup> Case 03-E-0188, Order Authorizing Additional Main Tier Solicitation and Setting Future Solicitation Guidelines, at 6 (Dec. 3, 2010).

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