STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on March 25, 2010

COMMISSIONERS PRESENT:

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

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

ORDER RESOLVING MAIN TIER ISSUES

(Issued and Effective April 2, 2010)

BY THE COMMISSION:

## INTRODUCTION

The Renewable Portfolio Standard (RPS) employs two programs as the principal means of obtaining additional renewable resources. Both programs are administered by the New York State Energy Research and Development Authority (NYSERDA). The bulk of the electricity needed is obtained from competitive procurements of renewable resources (the Main Tier). This order addresses a number of issues regarding the Main Tier arising out of the 2009 Review of the RPS program.

## BACKGROUND

The RPS has been New York's primary policy initiative to promote the development of new renewable energy resources since it was established in 2004. During 2009, the Commission undertook a planned mid-course review of the existing RPS program and its goals. In addition, in anticipation of the mid-

course review, in early 2009 NYSERDA prepared and submitted an Evaluation Report.[1] Comments were received on the Evaluation Report. A further Mid-Course Report was issued by Staff on October 26, 2009, and two technical conference sessions were held to explore the issues it raised. In January, the Commission issued an order establishing a new RPS goal and resolving several issues primarily focusing on the Main Tier of the RPS program.[2]

## 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 February 3, 2010 [03-E-0188SP24]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the notice expired on March 22, 2010. The comments received in response to the notice, and others that have been received to date that relate to the issues dealt with in this order, have been considered. The actions taken in response to the comments are addressed below.

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[1] NYSERDA, New York Renewable Portfolio Standard Evaluation Report: 2009 Review (Evaluation Report). 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.

[2] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Establishing New RPS Goal and Resolving Main Tier Issues (issued January 8, 2010).

## MAIN TIER ELIGIBILITY ISSUES

The target number of MWhs to be obtained by the RPS Program is calculated by beginning with the number of MWhs needed to satisfy the RPS goal of 30% of the projected retail electric load in New York State in the year 2015, and subtracting from that goal the number of MWhs expected to be produced by (a) the "baseline" of pre-existing renewable resource generation; (b) mandated state agency purchases pursuant to Executive Order 111; (c) expected voluntary "green" market purchases; and (d) the pro rata share of the remainder attributable to the Long Island Power Authority which has its own program and does not participate in the RPS program (45,705,584 - 35,307,730 = 10,397,854 MWhs). The Commission made such baseline calculations in 2004 and has determined not to reconsider them at this juncture. The target MWhs to be sought in Main Tier solicitations is calculated by beginning with the RPS Program target number of MWhs, and subtracting from that broader target the number of MWhs already achieved, and the number expected to be produced going forward by the Customer-Sited Tier and the new effort in regard to geographic balance (10,397,854 - 3,416,272 = 6,981,582 MWhs). The text that follows relates to eligibility for projects competing in the Main Tier to supply that resultant 6,981,582 MWhs.

When establishing the RPS program in 2004, the Commission's decision on what resources should be eligible for the RPS took several factors into consideration. It noted that in different legal contexts "renewable" may be given any one of a myriad of definitions and noted the efforts of the parties to focus on what resources should be eligible, rather than attempt to resolve the definition of renewables in the abstract.[3] It

[3] Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) p. 32.

also provided a process to establish eligibility of additional technologies and resources seeking RPS support in either the Main Tier or Customer Sited Tier.[4] During the Commission's 2009 Mid-course Review of the RPS program, several comments were received regarding eligibility of resources and technologies, which warrant attention.

Comments

The majority of comments are seeking changes to the rules for technologies that are currently eligible. New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation (NYSEG/RG&E) urge the Commission to include incremental hydroelectric generation owned and operated by utilities. National Grid notes that it is undertaking an assessment of renewable gas potential within its New York service territories, that it may consider future investments in renewable gas projects, and that renewable attributes are created when renewable gas is used for power generation, but there is no comparable incentive for the direct injection of renewable gas into the natural gas distribution system, or the use of renewable gas on-site for heat. In order to encourage the most efficient use of renewable gas, National Grid recommends that the Commission consider expanding the Main Tier to include renewable gas when it is used for purposes other than power generation. The renewable attributes associated with renewable gas could be determined by assuming an appropriate heat rate to convert the fuel's energy content to MWhs. Independent Power Producers of New York (IPPNY) contends that low impact independent hydro facilities of any size should receive an exemption from the January 1, 2003 eligibility

[4] Case 03-E-0188, supra, Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program (issued April 14, 2005) p. 33 and Appendix A, pp.8-9.

"vintage" date. AES-NY, LLC (AES) recommends retaining the January 1, 2003 date, while Brookfield Renewable Power, Inc. (Brookfield) would have us eliminate it altogether to capture older facilities that may be bidding their resources into other states. New York City, Deepwater Wind and NRG Energy, Inc. (NRG) urge additional support for off-shore wind. Parties in support of farm waste anaerobic to biogas digesters recommend that these facilities receive a carve-out in the Main Tier. NRG would also allow the contract for fuel-based resources to include a "collar" for fuel price uncertainty with relief for excessive costs. Covanta Energy and IPPNY urge the Commission to recognize waste to energy as a renewable energy technology and fully include it in the RPS. AES and IPPNY urge the Commission to allow zero-emission energy storage systems to be eligible. Taylor Biomass Energy, LLC wants the use of adulterated biomass to be allowed as a source of renewable fuel subject to an intervening clean technology that is used to convert the adulterated biomass to a gas, but wants the Commission to drop its requirement that the resultant gas be tested to ensure that the emissions from burning the gas are no worse that burning gas derived from unadulterated biomass. AES wants biomass facilities to be eligible for contracts between three and ten years in length. Brookfield wants all RPS facilities to be eligible for three to 20 year contracts, and time-of-date rate differentials. IPPNY would not mandate any contract length.

Discussion

The structure we have established for the Main Tier is a series of periodic competitive solicitations where many types of technologies compete against each other on the basis of price and incremental economic development contribution to the State. We have tried to structure the rules for solicitations in a

manner that puts all the technologies on an equal footing except as to these two factors. That structure purposefully rewards technologies that are lower in cost than others. It is not intended to force contribution by, or as is done in the Customer-Sited Tier, apportion financial support to, any particular technology. Technologies and projects are reached in the Main Tier based on where their costs/bids fall on a supply curve of all the competing technologies in relation to the RPS demand. Small-scale hydropower and biogas resources have a considerable price advantage in this regard, and we sought comments on whether these Main Tier resources should instead be procured on an ongoing standard offer contract basis. We received little in reaction to that request,[5] so we shall continue to allow such resources to bid in the Main Tier but monitor their participation. So long as we continue to receive bids from these resources that continue to reflect their lower costs, there will be no need to reconsider their participation. The comments requesting set asides or greater support in the Main Tier for off-shore wind and farm waste anaerobic to biogas digesters appear to be inconsistent with the basic competitive structure of the Main Tier, and will not be accommodated. As to the use of adulterated biomass to produce biogas, we addressed

[5] Brookfield and IPPNY oppose such use of standard offer contracts. IPPNY stated it thought they would be beneficial for pre-existing hydropower plants [which are not eligible].

that issue previously in great detail and are not persuaded that a change in policy is warranted.[6]

Vintage

In its Order establishing the RPS program, the Commission determined that renewable generation facilities which commenced commercial operation prior to January 1, 2003 would not be eligible for RPS incentives.[7] In response to requests to extend eligibility to projects that started operation before that date, we stated:

> Except as otherwise indicated in this order, we will not modify [the start date proposed by Staff and also suggested in the Recommended Decision], and we hereby impose the condition that renewable generation facilities that commenced commercial operation prior to January 1, 2003 are not eligible for RPS incentives. Adherence to this requirement is consistent with and in furtherance of our stated objective that the RPS should "increase New York State's supply of renewable resources with the ultimate aim of establishing a viable, self-sustaining renewable generation market." Accordingly, those entities that have demonstrated the ability to compete in the market prior to January 1, 2003, except as otherwise indicated in this order, are not eligible for RPS incentives. [The exceptions noted relate to the concept of maintenance resources.]

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[6] Case 03-E-0188, supra, Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program (issued April 14, 2005) pp. 57-60. On June 10, 2005, the New York State Department of Public Service and NYSERDA hosted a workshop to discuss certification and verification procedures for biomass. Results of the workshop helped inform the development of the May 2006 Biomass Guidebook (later modified August 21, 2009). A copy can be found at the following link: http://www.nyserda.org/rps/RPS_Biomass_Guide.pdf.

[7] Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) pp. 31-32.

The first three Main Tier procurements used this January 1, 2003 vintage date as an eligibility requirement for projects to be certified. The fourth Main Tier solicitation used a revised vintage date of August 21, 2009, the date of the order authorizing that solicitation, to maximize the leverage of federal stimulus money that would only be available to projects of more immediate vintage. The fifth Main Tier procurement returned to using the January 1, 2003 vintage date as an eligibility requirement subject to NYSERDA clarifying the economic development bid evaluation criterion to explicitly require for scoring purposes a showing of incremental economic benefits associated with a given bid, in that way making clear that the Commission remains favorably disposed toward new projects.

We have determined that it is appropriate to leave the January 1, 2003 vintage date in place at this time but also note that large-scale investment in a renewable energy project is a matter that requires financial sophistication. As such, investors should understand that RPS incentives will likely continually evolve and are, therefore, subject to changing policies as we further refine our objectives in response to changing circumstances. Thus, we must reserve the right to revise the vintage date in the future based upon our objectives as well as the facts and circumstances at that time.

IPPNY's request that low impact independent hydro facilities of any size should receive an exemption from the January 1, 2003 eligibility "vintage" date goes in the other direction. But IPPNY has not made any arguments that were not already considered and has not persuaded us that its proposal has merit.

Length of Contract Terms

We expressed a preference for ten-year contracts to assure that renewable energy attributes acquired in a solicitation are available to meet the program goal in 2015. Contracts of a uniform fixed duration will also elapse in a staggered fashion thereby spreading out procurement solicitations and staggering contract expiration dates over time. This staggering is purposeful so as to not flood the market in the future and to maximize the ability of the voluntary market to absorb additional resources as they become available by contract expiration.

In the early solicitations, four hydropower and biomass contracts were entered into with terms less than ten years for the output of facilities that were generally eligible to participate in Main Tier solicitations.[8] We allow only a maximum of ten years for contracts for the specific output of a facility, and now require new contracts to be for a set term of ten years. As a clarification, we note that these two requirements should be read together such that a holder of one of these legacy contracts may bid for a new contract with a term equal to ten years less the length of the prior contract. For example, if the legacy contract is three years in length, the contractor can bid for a new seven year contract (10 - 3 = 7), but only for a seven year contract. No other length of contract term is permitted for such a bidder.

[8] Eire Boulevard Hydropower LP (two contracts at one-year term each); PPL Energy Plus LLC (four-year term); and AES Greenridge LLC (three-year term).

Fuel-Based Contracts

In making special provision to accommodate the needs of fuel-based renewable energy generators, we stated:

> [W]e have and continue to recognize that facilities that have to procure fuel (e.g., biomass facilities) have had difficulties securing long-term supply contracts for their fuel, thereby making it difficult for them to commit to fixed-price long-term contracts for their attributes. We want to continue to provide an opportunity for such resources. We will require all generators to commit to ten-year contracts to further the policies discussed above, but we will allow the fuel-based renewable energy generators to enter into ten-year contracts that have an escape clause every two and one-half years so that the generator may drop out of the program if it is unable to secure a continuous fuel supply at a price that supports its fixed-price long-term contract with NYSERDA for renewable attributes. We considered but reject an alternative approach that would allow fuel-based renewable energy generators to enter into shorter term contracts with the ability to bid in subsequent RPS solicitations subject to a ten-year cap on overall contract length. We are concerned that approach may run afoul of potential future vintage requirements, and we believe that the approach we are approving may promote a beneficial reduction in volatility in the price of the fuel to be supplied and will provide greater certainty to fuel-based renewable energy generators.

In addition to the reasoning set forth above, we note that our cost estimates (expressed on a "supply curve") are based on entities entering into ten-year contracts and that contracts that expire prior to 2015 will not be counted toward the overall program MWh target unless they are renewed or extended. Shorter contracts are also likely to make it more difficult and/or more expensive to finance renewable assets. Finally, shorter contracts could allow bidders to pursue a

strategy that increases the cost of the program above what is expected.[9]

Our current approach, ten-year contracts with an escape clause, has been successful in attracting new biomass bids in the recent solicitations. Developers of new biomass-only facilities will likely need both ten-year RPS contracts and a stable ten-year supply of fuel to attract the capital investment necessary to build the facility. We would not expect that these facilities will exercise the termination clause. Facilities that substitute biomass for coal may not have the same imperative to secure a long-term stable fuel source if they have the ability to switch back to coal. But the escape clause allows these entities to terminate their RPS contracts at two and one half year intervals throughout the term of the contracts if they are unable to secure a continuous fuel supply at a price that supports their fixed-price long-term contract with NYSERDA for renewable attributes. That is a one-sided (non-symmetrical) beneficial provision for these developers that other states do not provide that is a very favorable contract term for them. Yet, we understand that there is a downside in that contract termination would result in loss of the biomass resource from the RPS program.

Allowing entities that exercised early termination right in their contracts to bid in future solicitations is not a

[9] Short-term contracts would be entered into in early solicitations when the prices that clear are expected to be low, and then the same facilities at the end of their short contracts would bid in at a higher price when the prices that clear are expected to be higher, to the detriment of ratepayers. Similarly, if we were to allow fuel-based renewable energy generators to terminate their contracts and then re-bid in future solicitations, our attempt to hold these entities harmless from a loss caused by an unstable fuel supply market could be turned against us into an opportunity for these entities to extract extra and unnecessary profits.

reasonable solution. In addition to the concerns discussed above, it is possible that no solicitations may be available by the time such clauses are executed. The RPS program is currently targeted to achieve its objectives in 2015. Given the lag time between solicitations and commercial operation, it is possible that there may be no solicitations after 2014. A generator signing a contract in 2010 and commencing commercial operation at the end of 2012 will not be in a position to exercise the escape clause until part way into 2014. The second opportunity to exercise the escape clause would not be until the end of 2017. Given these considerations, we are unable to assure any party of the ability to bid in a solicitation commencing any later than 2015.

To preserve these resources and in addition to affording generators the opportunity to terminate, we shall allow them to open their books at that time and make a showing that their fixed-price long-term contract with NYSERDA for renewable attributes, along with other commodity sales proceeds and the effects of reasonable risk management strategies will produce overall revenues that are insufficient to secure a continuous fuel supply and make a reasonable profit. We will then in our discretion make a determination as to whether we want to adjust the contract price upwards for the next two and one half year period in an amount deemed sufficient to maintain the contract, or allow it to terminate. If we allow a higher price, the price will revert to the original price after two and one half years unless an additional showing and decision is made to maintain the contract at a higher price for another two and one half year period.

Utility-Owned Hydropower Upgrades

While adding incremental hydroelectric generation at existing utility-owned facilities would likely be beneficial to

the State, NYSEG/RG&E fail to address in their comments the anticompetitive effect utility bids would have in the Main Tier. A utility could unfairly undercut other bidders because its bid would not necessarily have to reflect its costs since it has another "captive" source of revenues, utility customers, not available to non-utility generators. A standing offer price approach to such small hydropower procurements would eliminate such competitive concerns, but as we noted above, that approach generated little interest and is not being pursued at this time.

Counting Renewable Gas as Electricity

We are pleased that National Grid has taken the initiative and agree that gas utilities should assess the renewable gas potential within their service territories and consider future investments in renewable gas projects. However, National Grid's recommendation that the Commission consider expanding the Main Tier to include renewable gas when it is used for purposes other than electric power generation does not appear to be the optimal way to encourage these resources. The RPS charge is paid by all electric customers, many of whom are not and do not have the option to be gas customers. We strongly prefer a program where electric customers do not subsidize the gas system or other fuel sources for that matter. In addition, the RPS program is primarily structured to achieve MWh targets calculated as a percentage of electricity usage. Counting renewable gas additions as if they were electricity on a large scale in the Main Tier would serve to undermine the electricity goal.[10] We look forward to such renewable gas investments by

[10] We acknowledge that this is inconsistent with our addition of solar thermal technologies to the Customer-Sited Tier, but the small and limited scale of that component and the lack of another place to pursue such a beneficial technology make it a worthy exception.

National Grid and urge the other gas utilities to consider making similar investments.

Waste-to-Energy

New York currently has ten operating facilities that burn general municipal solid waste to generate electricity. During the proceedings leading to the establishment of the RPS program, some parties suggested that the Commission allow waste-to-energy facilities to qualify as an eligible technology. Many other parties opposed that approach because of concerns about air emissions and potential adverse impacts on recycling programs. In the order establishing the RPS program, we stated:

> The current practice of mass incineration of MSW [municipal solid waste] that typifies New York's existing WTE [waste-to-energy] facilities, results in air emission levels of mercury and other heavy metals that the Commission finds troubling. We concur with the ALJ [Administrative Law Judge] that WTE facilities employing mass burn technology should not be considered an eligible resource in the New York RPS at this time. While there is no dispute that the WTE plants have improved their emission control technology and that they are in compliance with applicable standards and limits, there is also no dispute that their remaining emissions of mercury and NOx exceed those of the dirtiest coal-type fossil fuel generation facilities. At this time, WTE facilities will not serve an RPS that, among other things, aims to improve air quality, public health and the environmental performance of the electricity supply system serving New York State. We further note the ALJ's observation that, "...WTE has a source of funding in addition to electric sales: municipalities' tipping fees for waste" [footnote omitted] and her conclusion that "on this record the MSW proponents have not made a strong claim that their industry needs the financial support from ratepayers in an RPS."[11]
>
> We also note the concern the ALJ reported from the opposition voices on this issue, namely that WTE technology is not one New Yorkers are likely to want

[11] Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) p. 39.

> to subsidize with additions to their monthly electric bills, along with the more generalized concern that the credibility of the RPS hinges in large part on public acceptance that this program will deliver environmental benefits.[12]

Waste-to-energy continues to be a controversial technology. Air emissions and truck traffic have made it a difficult technology to site. Public opposition to expanded use of this technology has been vociferous. In any of these instances, the reaction of the environmental community has been very negative and forceful. The potential for these reactions needs to be weighed carefully when using ratepayer dollars to provide financial incentives.

Up-to-date solid waste management planning at the local level is a necessary and essential element in maintaining an environmentally-sound integrated solid waste management program for New York State.[13] According to the Legislature, "[a] state-local partnership, in which the basic responsibility for the planning and operation of solid waste management facilities remains with local governments and the state provides necessary guidance and assistance, must be forged" [N.Y. Envtl. Conserv. Law § 27-0106(2)]. To that end, during the 1990's a statewide network of local Solid Waste Management Plans was developed under the supervision of the New York State Department of Environmental Conservation (DEC) into a planned system of integrated solid waste management that considers waste as a resource with value to be recovered. There are 65 planning units in New York State (primarily counties) that DEC has identified as being capable of developing and implementing a local Solid Waste Management Plan. All local Solid Waste

[12] Ibid., p. 39-40.
[13] The Solid Waste Management Act of 1988 [1988 N.Y. Laws 70].

Management Plans are guided by the State Solid Waste Management Policy established by the Legislature, as follows:

> (a) first, to reduce the amount of solid waste generated;
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> (b) second, to reuse material for the purpose for which it was originally intended or to recycle material that cannot be reused;
>
> (c) third, to recover, in an environmentally acceptable manner, energy from solid waste that can not be economically and technically reused or recycled; and
>
> (d) fourth, to dispose of solid waste that is not being reused, recycled or from which energy is not being recovered, by land burial or other methods approved by the DEC.
> [See, N.Y. Envtl. Conserv. Law § 27-0106(1)]

The demand for general waste-to-energy facilities is driven primarily by the need to part with solid waste; energy production just mitigates the cost. As described above, it is State policy that solid waste management decisions are primarily a matter of local concern. Statewide ratepayers should not subsidize the general municipal solid waste management solutions of individual municipalities. As we have in the past, we decline to adopt a policy that uses statewide ratepayer funds to promote the burning of general municipal solid waste to produce electricity. But in making that determination, we will reiterate what we said in 2004, which still holds true today:

> The Commission recognizes municipal waste as a potentially important energy resource and encourages the industry to implement processes such as source separation, gasification, or other practices that would advance the state-of-the-art for waste-to energy technology to mitigate concerns expressed on the

> record and make access to RPS incentives more appropriate.[14]
>
> WTE [waste-to energy] generators may participate in the RPS to the extent their facilities comply with the requirements for renewable biomass. For example, source-separated refuse-derived fuel (RDF) is an eligible biomass resource feedstock. Some parties note that new WTE technologies are under development and should have the opportunity to participate in the RPS. We, therefore, will establish a mechanism to consider and add appropriate resources to the eligibility list.[15]

Storage Technologies

Additional innovation and deployment of energy storage technologies (batteries, capacitors, flywheels, pumped storage) could benefit the electric system, particularly in New York by helping bridge the large gap between average capacity needs and peak capacity needs. But from the point of view of the RPS program, energy storage is only as good as the electric generation technology used to create the energy that is stored. Storage facilities do not generate electricity; they must be charged by another source. The nature of that source generation determines whether the energy source is renewable or not.[16] A storage facility can be a component of an RPS eligible facility, but by itself it offers no value to the RPS program and is therefore not an eligible technology.

Some renewable energy technologies, primarily types of biomass generation, integrate easily with the electric system. They can be dispatched, scaling their generation up or down as

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[14] Ibid., p. 8

[15] Ibid., p. 40.

[16] This treatment is consistent with the treatment of pumped storage hydropower for environmental disclosure purposes. Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Opinion 98-19 (issued December 15, 1998) Appendix at pp. 5&6.

needed. Others, such as wind and solar photovoltaic, are available only when the resources that power them are available (when the wind is blowing or the sun is shining). Additionally, the output of these resources at any given moment is not yet easily and reliably predictable. They cannot be dispatched when needed.

The process of storing and regenerating electricity actually consumes more energy than it releases. Thus, using renewable energy to charge storage reduces the total amount of renewable energy a generating facility creates that can be sold to retail customers, but increases the market value of the regenerated electricity by controlling the time at which it is released from storage. Storage built into an individual renewable energy project might make the integration of large-scale intermittent renewable energy projects more feasible, enhancing the project's economic viability by improving the project's dispatchability and shifting release of electricity to the grid to higher value times of day. This enhanced value should be reflected in the revenues the renewable generator receives for its energy and in its ability to offer competitive bids in the Main Tier.

## HEDGING

In January, the Commission requested more information on potential use of alternative contractual arrangements for the RPS program:

> 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.[17]

[17] Case 03-E-0188, supra, Order Establishing New RPS Goal and Resolving Main Tier Issues (issued January 8, 2010) pp. 25-26.

To further its inquiry into the uses of renewable energy hedging, Staff circulated a Contract for Differences (CFDs) straw proposal on January 8, 2010; held a Consultative Workshop on Variable-Priced RPS Contracts on January 14, 2010; received written comments from 11 parties on January 29, 2010; and interviewed renewable generation developers and members of the financial industry.

The Staff straw proposal called for the option of renewable generators to obtain attribute payments in the form of a ten-year, monthly CFD payment tied to Zone C (Central New York) market prices. In designing the mechanism, Staff sought to balance the goal of stabilizing the revenue stream of renewable generators with the goal of maintaining the transparency and relative simplicity of the solicitation process used by NYSERDA in its central procurement program.

Comments

While there was support for the use of hedges, it was limited. The majority of the parties either opposed the proposal or asserted that incorporating a hedge into the RPS program was premature. Concerns expressed included the following: the RPS selection process would become too complex; it would become unduly dependent on a highly uncertain forecast of long-term market prices; a CFD would require NYSERDA to obtain security and enforcement provisions applicable when the CFD yielded payments by generators to NYSERDA; the proposal would create budgetary uncertainty for the RPS program; it would add administrative costs to both NYSERDA and the renewable generators; CFD's would tend to reduce the sensitivity of renewable generators to NYISO wholesale prices, leading to system dispatch distortion; the hedge created for ratepayers would be counterproductive for those ratepayers, especially non-residential ratepayers, whose supply is already hedged and is

obtained from Energy Service Companies; hedges for credit worthy wind developers are available in the market so do not need to be offered by the RPS program; and there is no evidence that the current RPS construct has a problem of insufficient responses. Parties that favored the incorporation of a CFD approach into the RPS program asserted: the Staff proposal would be beneficial for renewable developers and should continue to be investigated; ratemaking mechanisms should be implemented to encourage load serving entities to contract for the energy output associated with an RPS project to provide further support for the financing of RPS projects; the CFD approach will increase the chances of RPS being implemented successfully because it will provide a stable all-in revenue stream to developers of renewable generation projects; and the CFD approach is a good way to avoid a scenario where energy projects will get built only if they bid a high REC price.

Regarding displacement, some parties comment that renewable production that displaces other renewable generation adds no value to the system and should not be subsidized. Some went so far as to say such displacement should not be allowed. Others believe that the issue should not be addressed until further study has been conducted.

Discussion

Staff informed us that while the availability of renewable energy hedges from financial entities in the marketplace is not as robust as it was prior to the peak of the financial crisis in late 2008, it has since improved to the point where hedges are available, albeit at higher costs than in the past and rarely for a duration in excess of 5 years. Furthermore, 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 number of bidders. These results have been obtained without offering developers any help in hedging the risk of the future market price of electricity. The parties are correct in noting that the virtues of simplicity and transparency inherent in the current RPS fixed price process is valuable, and that an approach that uses a hedge would undoubtedly be more complex, and perhaps less transparent, despite Staff's and NYSERDA's best efforts. We are also mindful that substantial administrative effort would be needed by NYSERDA just to perform a test of a CFD-style procurement in an RPS solicitation. Moreover, little support for the concept was forthcoming from the parties, with only a few parties being in favor of it.

We conclude that an attempt to introduce a hedge into the RPS program should be tabled at this time. If 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. As for the desirability of obtaining long-term energy hedges for ratepayers, this is an issue that need not be decided at this time, and can be pursued outside of the RPS program at any rate.

One aspect of the Straw Proposal warrants further exploration. It is the proposal to withhold RPS payments to renewable generators for hours in which the NYISO real-time price is zero or negative. During such hours, renewable generation at one site may well be displacing renewable generation at some other nearby site, yielding no net contribution to the State's renewable generation goals. Several parties appear to be correct in noting that this rule could be applied just as readily to the existing fixed-price RPS program as to a CFD-based approach. We direct Staff to evaluate the

proposed rule further and determine whether it should be recommended for future implementation.

The Commission orders:

1. The rules for Main Tier procurements in the Renewable Portfolio Standard (RPS) program will be modified as discussed in the body of this order.

2. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary