STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on January 17, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

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

ORDER AUTHORIZING THE INCREASE OF MAXIMUM PROJECT INCENTIVE FOR THE ANAEROBIC DIGESTER GAS-TO-ELECTRICITY PROGRAM

(Issued and Effective January 23, 2013)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission authorizes the New York State Energy Research and Development Authority (NYSERDA), to increase the maximum incentive available under the Anaerobic Digester Gas-to-Electricity Program (ADG Program) in the Customer-Sited Tier of the Renewable Portfolio Standard (RPS) from $1 million up to $2 million per installation. This incentive increase will be accomplished within the existing ADG Program budget previously authorized by the Commission.[1]

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[1] Case 03-E-0188, Retail Renewable Portfolio Standard (RPS), Order Authorizing Customer-sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining the RPS Program (issued April 2, 2010).

BACKGROUND

In 2010 the Commission established budgets and targets through 2015 for the Customer-Sited Tier of the RPS program to encourage certain self-generation "behind the meter" technologies in the State.[2] For the ADG Program, an annual budget was allocated for standard-offer incentives that provide a combination of capacity and performance payments for ADG-to-electricity systems installed at farms treating manure and other agricultural waste products, wastewater treatment plants, and businesses that treat organic wastes. In total, these installations were expected to yield approximately 24 MWs of new capacity between 2010 and 2015.[3] These estimates were predicated on a maximum limit of $1 million in incentives, depending on size, for each installation.[4]

On December 14, 2012, NYSERDA submitted a petition to increase the maximum incentive cap for the ADG Program as described below.

SUMMARY OF NYSERDA'S PETITION

NYSERDA recommends doubling the current maximum incentive for the RPS Customer-Sited Tier ADG Program from $1 million to $2 million per installation. To date, NYSERDA reports that the ADG Program has supported the development of 18 projects that are now in operation. NYSERDA states that due to the expiration of certain federal incentive programs and the significantly lower wholesale energy prices, the overall financing outlook for new projects has deteriorated significantly. It notes that no progress, beyond the design stage, has been made for an additional 17 projects that have

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[2] Ibid., p. 20.
[3] Ibid., p. 25.
[4] Ibid., p. 22.

applied for incentives under the ADG Program. In addition, NYSERDA has received only two new applications for ADG projects since the end of 2010.

NYSERDA notes that construction costs for ADG-to-electricity systems ranging in size from 200-600 kW range from $1.4 million to $4 million for host farms and municipal wastewater treatment plants, and more for industrial food and beverage processors. Further, it states that operation and maintenance of those systems over their presumed 15-year life adds an additional cost of approximately 50 percent. Thus, a typical 450 kW system will incur overall lifetime installation, operating and maintenance costs of approximately $4 million. NYSERDA states that in the past, the U.S. Treasury Department Section 1603 grant program equaled approximately 30 percent of the installed cost. For NYSERDA-supported projects, the value of the federal grant ranged from $1,200 to $2,000 per kW or an average of $650,000 for typical project sizes. In addition, NYSERDA notes that the value of electricity that would be displaced by the ADG system has dropped by more than a third, or approximately $62,000 per year for a 400 kW system. Therefore, NYSERDA asserts that the $1 million maximum allowable incentive in the ADG Program is no longer sufficient to move proposed projects forward or to attract new ADG Program participants.

NYSERDA also recognizes that an increase in the maximum incentive will have an impact on the projected cumulative capacity and energy targets for the ADG Program. It cites the ADG Program’s targeted achievements in its current Customer-Sited Tier Operating Plan, which provides an expected cumulative capacity of nearly 32 MWs and an annual generation of about 225,000 MWhs from ADG-to-electricity systems in operation or development by 2015. NYSERDA estimates that if the maximum incentive award is increased up to $2 million in the ADG

Program, the expected annual cumulative generation would decline by about five percent than originally estimated and the capacity would decrease by 19 percent. Further, it notes that these reductions represent one percent erosion in the overall Customer-Sited Tier capacity goal and a six percent decline in the energy production target. NYSERDA asserts that the ADG Program would still contribute a substantial portion (21 percent) of the annual energy production goal for the overall Customer-Sited Tier Program.

NYSERDA states that it does not seek to increase the overall ADG Program budget at this time. Currently, there remains $44 million in unencumbered funds through 2015. NYSERDA anticipates that if the requested increase in the incentive cap is granted, a large fraction of the 17 stalled projects will move forward. Those that do not, it states, will forfeit any initial contract award and those allocated funds will then become available to support new projects entering the ADG Program in 2013 and beyond. Finally, NYSERDA expects to prepare and submit a revised Customer-Sited Tier Operating Plan that would set forth the specific rules under which the new awards would be offered.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning the increase in the maximum allowable incentive for the ADG Program was published in the State Register on November 21, 2012 [SAPA 03-E-0188SP35]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on January 7, 2013. The comments received are summarized below.

SUMMARY OF COMMENTS

Comments were received from the New York State Farm Bureau and Multiple Intervenors (MI). The Farm Bureau supports the petition and states that an increase in the incentive cap is needed to move projects forward in the ADG Program.

MI opposes the requested increase in subsidy payments. It states that the petition lacks comprehensive quantitative analysis and that more information is needed on the costs and benefits associated with doubling the subsidy per project. MI also contends that a shortfall in the overall Customer-Sited Tier goal would have to be offset elsewhere, which will likely lead to future increases in RPS collections and an increase in the overall cost of the program.

Finally, MI believes that increasing the incentives for the ADG Program to compensate, in part, for loss of the federal cash grant program would open the floodgates for similar requests for relief.

DISCUSSION AND CONCLUSION

Since the inception of the RPS Program, the Customer-Sited Tier has been an important component in encouraging customers to install their own “behind-the-meter” renewable energy production systems. As noted by NYSERDA in its petition, we have recognized the environmental, economic and energy benefits of ADG–to-electricity projects as part of our RPS Program. Governor Cuomo has recognized these benefits in his initiative to increase the use of anaerobic digesters in the State’s dairy and yogurt industries for the management of organic waste and reduction in energy costs.[5]

We believe NYSERDA’s proposal is reasonable given the current economic conditions. Since the expiration of the federal grant programs, it makes sense to allow NYSERDA to adjust State program incentives within the confines of current program budgets to maintain momentum in the deployment of

[5] See http://www.governor.ny.gov/press/08152012-nys-yogurt-summit

renewable energy projects. As we experienced in the early years of the solar PV program, incentive levels are difficult to determine. NYSERDA, in consultation with staff of the Department of Public Service (Staff), rely on current market factors and best available information to determine the appropriate incentive levels taking into account available market potential by technology and location; design of, and experience with, similar programs deployed regionally and nationally; current and expected technology performance; commercial limitations; economic “break-even cycle” for the host customer and the applicability and availability of non-RPS program incentives.

If a program remains significantly undersubscribed and its budget under spent for an extended period of time, we believe it is reasonable to revisit the incentive structure and determine the factors that are limiting program progress. In this instance, NYSERDA asserts, based on its experience to date in administering the ADG Program, that the expiration of the federal incentives that were previously offered have stalled the program, in addition to the difficulty in securing project financing in the aftermath of the fiscal crises, and the erosion of market revenues. With respect to the doubling of the incentive, we believe increasing the upper limit up to $2 million is reasonable given the importance of the benefits that could be achieved and the typical installation and operating costs noted by NYSERDA in its petition for medium to larger sized systems. We will require that NYSERDA continue to divide the incentives between upfront capacity payments and longer-term production payments to help ensure that systems remain operational. NYSERDA, in consultation with Staff, should be prudent in formulating these new incentives so that the maximum incentive offered for each size installation is the minimum necessary to get projects deployed and remain operational.

While we recognize that an increase in the maximum incentive cap will erode the overall capacity and production achievements originally estimated for the ADG Program, we concur with NYSERDA that the overall Customer-Sited Tier goal will not be diminished by a significant amount. We also agree that none of the ADG-to-electricity projects currently in the design phase will likely proceed, and no new projects are likely to emerge if the incentives are not revised, further compromising any achievable targets set for the ADG Program.

We will, however, require NYSERDA, in consultation with Staff, to reduce incentive levels for installations that take advantage of non-RPS incentives that may become available. We will also require NYSERDA to work with Staff on the ADG Program details, which will be reflected in an updated ADG-to-electricity Program Opportunity Notice and in a revised Customer-Sited Tier Operating Plan.

Finally, we note that entire RPS Program will be undergoing a public review starting later this year. We will be considering budgets and program goals for both the Main Tier and the Customer-Site Tier as part of that review.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to increase the maximum incentive available in the Customer-Sited Tier Anaerobic Digester Biogas–to-Electricity Program from $1 million up to $2 million per installation subject to the directions and limitations described in the body of this order.

2. This proceeding is continued.

By the Commission,

(SIGNED) JEFFREY C. COHEN
Acting Secretary