

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 15, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 15-E-0302 - Proceeding on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Standard.

DECLARATORY RULING ON THE TIER 1
ELIGIBILITY OF REPOWERED GENERATORS

(Issued and Effective November 16, 2018)

BY THE COMMISSION:

INTRODUCTION

On August 1, 2016, the Public Service Commission (Commission) issued an Order Adopting a Clean Energy Standard (CES Order).¹ On October 31, 2016, Staff of the Department of Public Service (DPS Staff) and the New York State Energy Research and Development Authority (NYSERDA) filed a proposed Phase 1 Clean Energy Standard Implementation Proposal. On February 22, 2017, the Commission issued an Order Approving Phase 1 Implementation Plan (Phase 1 Order).² In the Phase 1 Order, the Commission excluded repowered facilities from

¹ Case 15-E-0302, Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016).

² Case 15-E-0302, supra, Order Approving Phase 1 Implementation Plan (issued February 22, 2017).

eligibility for Tier 1 of the Renewable Energy Standard (RES), and directed DPS Staff to address such facilities in its recommendations regarding retention of baseline resources. The Commission determined, however, that the incremental generation from upgraded facilities was eligible for Tier 1 of the RES, where the upgraded facility can demonstrate an actual increase in production from a well-documented historic baseline.³ Further, on March 16, 2018, the Commission issued an Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (Existing Renewable Order), which reaffirmed the Phase 1 Order findings and adopted a new process whereby existing facilities facing a financial hardship may receive assistance, through maintenance tier applications and contract awards, in order to remain operational or return to service.⁴

On March 24, 2017, Albany Engineering Corporation (Albany Engineering or the Company) filed a petition for a declaratory ruling (Petition) that the Company's planned repowering of the Green Island Hydroelectric Project is eligible for Tier 1 of the RES. Responses to the Petition were due within the 21-day period prescribed under the Commission's Rules of Procedure, contained in 16 NYCRR §8.2(c). No comments were received by the deadline. In this ruling, the Commission denies the Petition and reiterates that owners of facilities, such as the Green Island Hydroelectric Project, may either submit a maintenance tier application for existing generation that is facing a financial hardship, or may participate in Tier 1 of the RES to the extent an upgrade results in incremental generation.

³ Case 15-E-0302, supra, Order Approving Phase 1 Implementation Plan (issued February 22, 2017) pp. 9-14.

⁴ Case 15-E-0302, supra, Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (issued March 16, 2018).

THE PETITION

Albany Engineering indicates that the Green Island Hydroelectric Project, which is owned by the Green Island Power Authority, has been operating since 1922, and that the Company is currently operating the facility under a 50-year license issued in 2015. The Company states that it meets the definition of a repowered facility, as described in the proposed Phase 1 Implementation Plan, because its current generators are 95 years old and have exceeded their useful life, the planned new replacement turbines will increase generation production by at least 15%, and all of the tax basis from the repowered facility will have been from capital expenditures made after January 1, 2015. Albany Engineering suggests that if it is ineligible for Tier 1 of the RES, or otherwise does not have a contract in place for the sale of renewable energy credits, it will not replace the facility's generators.

Albany Engineering acknowledges that the Commission excluded repowered facilities from Tier 1 eligibility. Regardless, the Company argues that because of its particular circumstances, the exclusion should not apply to it. Albany Engineering states that the Commission excluded repowered facilities due to concerns about previous recipients of Renewable Portfolio Standard (RPS) contracts being unduly encouraged to prematurely discard existing facilities if all of the generation from a repowered facility is eligible for Tier 1, when only 15% of that generation may actually be incremental. The Company argues that because it never received an RPS contract, and that the generators it plans to replace are 95 years old and exceed their useful service life, the Commission should declare all of the generation as eligible for Tier 1.

LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; (ii) whether any action by it should be taken pursuant to a rule; (iii) and to decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute. Declaratory rulings are not "actions" within meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations (see 16 NYCRR §7.2) and, therefore, they may be issued without further SEQRA review.

DISCUSSION AND CONCLUSION

The Commission's concerns regarding repowered facilities extend beyond those that have received an RPS contract and include how best to achieve clean energy policy objectives while maximizing the value for ratepayers of all existing renewable facilities that were included in the 2014 RES baseline. As Albany Engineering's petition illustrates, the issues involving repowered facilities, and how best to encourage carbon emission reductions across the entire CES program, are complex. For this reason, the Commission directed DPS Staff to make recommendations on the cost effective retention of baseline renewables.

After reviewing DPS Staff's recommendations, the Commission concluded that "allowing an existing facility to be compensated for the entire output of a repowered facility, including generation included in the baseline, as part of a Tier 1 bid, could circumvent the financial needs test that the

Commission requires for maintenance support under Tier 2.”⁵ However, if capital improvements completed at an existing renewable facility result in an increase to production, that facility is permitted to bid any incremental generation above the baseline into a competitive Tier 1 solicitation. The Commission’s decisions ensure that both new and existing renewable resources can receive support for their development and operations.

Therefore, the Commission denies Albany Engineering’s request to declare that the entire output from repowering its Green Island Hydroelectric Project is eligible for Tier 1 of the RES. As the Commission has found, however, the facility may participate in Tier 1 of the RES to the extent an upgrade results in incremental generation.

The Commission finds and declares:

1. The Petition of Albany Engineering Corporation is denied in accordance with the discussion in the body of this ruling.

2. This proceeding is continued to the extent it involves other matters pending before the Commission.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

⁵ Case 15-E-0302, supra, Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (issued March 16, 2018) p. 31.