

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission
Regarding a Retail Renewable Portfolio
Standard, NYSERDA Petition for Modification
of RPS Main Tier Program

Case 03-E-0188

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND
ORANGE AND ROCKLAND UTILITIES, INC.'S COMMENTS
REGARDING NYSERDA'S PETITION
TO LIMIT THE MAIN-TIER RPS PROGRAM TO IN-STATE RESOURCES**

Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R”) (collectively the “Companies”) file this response to the Petition for Modification of the RPS Main Tier Program by the New York State Energy Research and Development Authority (“NYSERDA”) on December 14, 2012. NYSERDA requests the Public Service Commission (“PSC” or the “Commission”) to change the rules of the Renewable Portfolio Standard (“RPS”) Program Main Tier to limit eligibility to projects located in New York State. NYSERDA contends that this change will maximize meeting the objectives of the Main Tier Program and will align the RPS effort with the 2012 New York Energy Highway Blueprint’s modernization of the State’s power generation and transmission.¹

The petition asks the Commission to implement, in isolation and without sufficient supporting analysis, a significant change in the State’s RPS Program just ahead of the

¹ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, NYSERDA Petition, (“Petition”), dated December 14, 2012, at p.1.

Commission's next mid-course review in 2013. As discussed below, the Companies suggest that, in view of the important public policy implications of this change to the Program, the petition be deferred for comprehensive study and consideration within the mid-course review.

The benefits of the proposal are not as certain as the petition suggests. The Main Tier Program is one of a number of NYSERDA-administered, RPS-funded renewable energy efforts. NYSERDA's modification of the Main Tier Program will likely reduce the amount of renewable attributes purchased by the Program or will increase the price at which those attributes can be purchased. In turn, a smaller purchase of renewable attributes or higher prices for renewable attributes would negatively affect the State's ability to achieve its overall RPS goals, a result that, in turn, may affect funding available for other RPS initiatives. What is certain is that the proposal represents a fundamental change to a complex program that should be thoroughly analyzed. For these reasons, the Companies believe that the proper forum for considering this substantive change is the forthcoming RPS midcourse review.

Should the PSC be inclined to address the petition in advance of the midcourse review, the Companies urge the Commission to consider the following issues against the backdrop that the principal purpose of the RPS is to increase the amount of renewable generation of electricity consumed in New York State: participation by out-of-state resources in the RPS program that deliver energy to New York State has contributed to cleaner energy; the current selection process that measures local economic benefits already favors in-state resources over out-of-state resources; the State should avoid creation of

economic barriers to reduce the cost-effectiveness of the RPS program; and any energy security benefits of in-state renewable energy resources are likely to be modest.

Background

Although the Commission knows its own RPS Program, a brief review provides the context in which NYSERDA's petition should be considered. After a lengthy public proceeding that concluded in 2004,² the Commission established its RPS Program.³ While affirming the paramount importance of system reliability, the Commission committed to achieving broader State energy goals⁴ and to realizing the "fuel diversity, energy security, economic development, environmental and other benefits associated with increased renewable use."⁵ Thus, the Commission established goals for the amount of renewable energy to be used in New York State and adopted a two-tier program to support renewable energy: the Main Tier for large renewable resources and the Customer-Sited Tier for smaller behind-the-meter resources.⁶ Choosing a central procurement model, the PSC authorized NYERDA to develop competitive solicitations to pay a production incentive to renewable generators that deliver energy to New York State. In exchange for the incentive, the generator transfers its rights to the energy attributes (renewable energy credits or "RECs")

² The procedural history is lengthy. Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard, ("2004 RPS Order"), dated September 24, 2004, at pp. 13-18.

³ 2004 RPS Order.

⁴ The PSC specifically endorsed the goals set forth in the 2002 New York State Energy Plan. *Id.* at 12. The Plan's broad public policy goals were (1) the support of continued safe, secure, and reliable operations of the State's energy and transportation system infrastructures, (2) the stimulation of sustainable economic growth, technological innovation, and job growth in the State's energy and transportation sectors through the development of competitive markets and government support, (3) the increase of energy diversity in all sectors of the State's economy by means of more use of energy efficiency technologies and alternative energy resources, including renewable energy, (4) the promotion and achievement of a cleaner and healthier environment, and (5) ensuring fairness, equity, and consumer protections in an increasingly competitive market economy. 2002 New York State Energy Plan, at pp. 1-17 to 1-18.

⁵ 2004 RPS Order, at pp. 3, 12.

⁶ *Id.*

under an RPS agreement. The competitive scoring for projects includes a 30 percent weight for projected economic benefits in New York while the bid price is weighted at 70 percent, a feature the Commission authorized in 2006.⁷ In approving that feature, the PSC found there is “value to ratepayers in preserving the breadth of the pool of potentially eligible projects, some of which may not be located in New York, because the participation of more bidders is likely to decrease the cost of attributes and allow NYSERDA to purchase more attributes with a given amount of funds.”⁸

In 2009, the Commission conducted its first midcourse review of the Program. Thorough review of the Main Tier Program⁹ formed the basis for the public participation by stakeholders. At the conclusion of this effort, the Commission re-adopted the original Main Tier Program but increased the specific renewable goals, sought to harmonize renewable goals with energy efficiency, and began development of a geographic balancing program.¹⁰ Recognizing the critical role of this type of review to the maintenance of an effective Program, the PSC ordered that another midcourse review occur in 2013.

From the inception of the RPS Program, the Commission has sought to balance the myriad policy objectives for renewable energy. Moreover, the Commission has consistently sought to mold its policy based on careful analysis of a complete record with vigorous stakeholder participation. In seeking a cleaner environment for New York State, the

⁷ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Authorizing Solicitation Methods and Consideration of Bid Evaluation Criteria and Denying Request for Clarification, October 19, 2006, at pp. 16-18.

⁸ *Id.* at p.16.

⁹ KEMA Inc. and Economic Development Research Group, Inc., NYSERDA Main Tier RPS Economic Benefits Report, November 2008; KEMA Inc., New York Main Tier RPS Impact & Process Evaluation, March 2009.

¹⁰ 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, (“2010 RPS Order”) January 8, 2010.

Commission has recognized that supporting the higher costs of renewable energy means that the fiscal management of the funds provided by ratepayers must be prudent. Thus, the weighting factor that measures both the direct benefits to New York offered by in-state activities and the bidding price¹¹ is an example of the PSC's efforts to balance the development of renewable energy, benefits to the State, and cost-effectiveness.

The Petition

In advance of the upcoming 2013 mid-course review, NYSERDA filed the within petition to limit eligibility to in-state generators for all Main Tier projects going forward. NYSERDA contends that “only when renewable energy projects are built and operated in New York State” can the objectives of energy security and “direct” economic benefits to the State occur.¹² NYSERDA's argument relies on analysis conducted for the mid-course review in 2009 that projected that the Main Tier projects will produce approximately \$6 billion in direct economic benefits if the 30 percent target were met.¹³ Stating that it used supporting documentation to substantiate direct benefits to New York State but without actually providing its analysis, NYSERDA described “rigorous reviews” to find that the actual benefits comport with the projections.¹⁴ NYSERDA states that it measured economic reviews of wind projects coupled with extrapolation of long-term salaries, payments-in-lieu of tax and host community payments, and landowner payments to find that over a 20-year period, direct spending in the State will “likely exceed \$660 million and average

¹¹ The Companies note that they have not supported this approach to evaluating responses to solicitations. *E.g.*, SAPA No. 03-E-0188SP-25, Possible Authorization of New Solicitations and Modifications to Bid Solicitation Eligibility or Bid Evaluation Rules (I.D. No. PSC-35-10-00021-P), Letter to Secretary Jaclyn A. Brillling, from Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, dated October 18, 2010.

¹² Petition, at p.1.

¹³ *Id.* at p.2.

¹⁴ *Id.* at p.3. In support of its review, NYSERDA simply provides the following footnote: “Such documentation generally takes the form of third party invoices, third party confirmations, tax payment receipts, W-2s, and similar credible documentation.” *Id.* at p. 3, n.8.

approximately \$24 per MWh, for every MWh produced over the 20 year period,” without any demonstration of methodology or analysis.¹⁵

Stating that out-of-state projects provide little or no direct economic benefits to New York, NYSERDA contends that any program cost savings from lower bid prices from out-of-state projects are limited to the ten years of the RPS contract and that no amount of reduction in the bid price for a ten-year out-of-state contract could offset the loss of 20 years of economic benefits of a New York project.¹⁶ NYSERDA writes that when the out-of-state contracts expire, the RECs will have to be replaced and that the out-of-state facilities “will be free to sell their energy and RECs as they please.”¹⁷ When the RECs from New York projects expire at the end of their NYSERDA contracts, NYSERDA offers the unsupported assertion that “it is much more likely that the energy and RECs will remain in New York.”¹⁸

With respect to economic benefits, NYSERDA points to the current overall competitive scoring for projects that provide 30 percent weight for projected economic benefits in New York while the price alone is weighted at 70 percent. NYSERDA suggests that this weighting remain place but, if the Commission limits eligibility to New York State projects, this economic benefits criterion should be explored in the 2013 midcourse review.¹⁹

Turning to environmental and energy security benefits,²⁰ NYSERDA states that the extent to which New York will gain these benefits from an out of-state facility is “questionable.”²¹ NYSERDA observes that the energy delivered to the State itself need not

¹⁵ *Id.* at p.3.

¹⁶ *Id.*

¹⁷ *Id.* at p.4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Interestingly, the Commission’s understanding of “energy security” is based on reducing reliance on the volatile pricing of natural gas and oil. 2004 RPS Order, at pp. 4-5.

²¹ *Id.* at p.5.

be renewable and there is no method to verify delivery.²² Because delivery from out-of-state projects is vulnerable to system disruptions in neighboring areas, NYSERDA claims that New York should not expect any energy security from out-of-state projects.

NYSERDA further notes that the RPS Program, and this in-state requirement, is an element of the New York Energy Highway Blueprint. The Blueprint's expansion of the State's transmission to allow Northwestern and Western renewable projects to serve downstate will reduce air emissions in the New York City Area, lower wholesale energy prices in the downstate area, and promote the construction of renewable energy projects and economic development upstate.²³ Finally, NYSERDA contends that because RPS in New York is secured through a central procurement mechanism, an in-state limitation will not violate the Commerce Clause of the federal constitution.²⁴

The Companies' Positions

The Companies support the underlying public policy of encouraging renewable energy and other forward-looking clean energy initiatives. The Companies reiterate their continued commitment to and support of the State's clean energy goals, including the NY-Sun Initiative and the Renewable Portfolio Standard. In addition to supporting these statewide initiatives, the Companies have long urged the State to refine the State's clean energy programs to deliver their benefits more effectively.²⁵ The Companies recognize, as does the Commission, the inherent complexity of these initiatives and the challenge of

²² *Id.*

²³ *Id.* at p.6.

²⁴ The Companies are less certain than NYSERDA that an in-state requirement would readily withstand judicial challenge. Even if sustained, there are costs and delays inherent to a novel, constitutional dispute.

²⁵ *E.g.*, Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., dated January 29, 2010.

establishing programs that meet both broad policy goals balanced with appropriate customer impacts.

Consider the Role of Out-of-State Resources in the 2013 Midcourse RPS Review

From the beginning of the RPS Program, the Commission has required program review, including midcourse review, to adjust the Program. Thus, at the conclusion of the last mid-course review in 2010, the Commission expressly directed another review in 2013 so that 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.”²⁶

The Companies respectfully suggest the upcoming midcourse review is the proper forum for consideration of this fundamental change to the RPS in order to thoroughly review and analyze the implications of such a significant modification of the Program. Barring out-of-state resources from participation in the RPS Program will affect a number of factors which contributed to the PSC’s conclusion that the goal of 30 percent renewable energy could be achieved in a certain time frame (2015) with a certain budget (about \$3 billion statewide). These factors include: the cost of resources, the availability of renewable energy resources, and the amount of time required to develop sufficient renewable energy projects to meet the RPS goal, all of which were considered during the last midcourse review.²⁷ The Companies respectfully suggest that consideration of the change proposed by NYSEDA can only be done effectively in the context of an overall review of the program, such as that ordered for 2013.

²⁶ 2010 RPS Order, at p. 27.

²⁷ NY RPS Main Tier Cost Study 2008/2009 Updates, October 28, 2009, NY PSC Commissioner’s RPS Workshop.

Provide Pre-Competitive Support to Develop Renewable Energy in the State

Should the Commission determine to address this petition on the merits before the established midcourse review, the Companies note that the current participation by out-of-state resources has led to the delivery of cost-effective (and cleaner) electricity to New York. The Companies believe that the purpose of the RPS Program is to encourage the production of cost-effective electricity from renewable sources that can be supplied to consumers in the State. If NYSERDA's petition seeks to enhance the cost competitiveness of in-state renewable resources, the Companies respectfully suggest that rather than developing barriers to out-of-state resources' ability to compete in RPS solicitations, a better course is to focus on other ways to provide pre-competitive support to in-state renewable energy or to take actions that reduce the costs of in-state construction of renewable resources. For example, the State could address improving the speed of the local permitting process to lower costs and reduce uncertainty for developers. The State could fund pre-competitive activities to encourage in-state construction of renewable energy, such as local job training programs. Such activities should be funded using economic development resources rather than funds collected from electric utility customers. The State and NYSERDA may choose to fund enhanced resource characterization studies that document locations for in-state renewable energy where the input renewable energy (*e.g.*, wind speeds or solar insolation) is most plentiful. The State could also consider use of the tax code to encourage renewable resources.

Competitive Markets for Renewable Energy Provide Value to Customers

As previously noted, the PSC has already recognized that competition between out-of-state renewable resources and in-state renewable resources is likely to reduce the costs of

the RPS program overall. The Companies believe that continuing participation by out-of-state renewable resources also improves the competitive capabilities of in-state developers. Without competition, in-state developers will have fewer incentives to lower their own costs through more effective project management, the use of new technology, or locating renewable resources in areas with better renewable energy availability. Moreover, out-of-state resources are already at a considerable disadvantage in the competitive process due to the weighting of local economic benefits in the NYSERDA process, described above. This approach effectively accords an out-of-state resource a “zero” in local economic benefits. Any out-of-state resource that continues to win a NYSERDA solicitation by definition has offered its environmental attributes at a cost-effective price.

To support its claim that barring out-of-state renewable energy will have a net positive effect on the economic benefits of the RPS Program, NYSERDA offers the example that a \$10 reduction per MWh of renewable energy achieved by a 100 MW out-of-state wind farm would yield \$24.5 million in direct RPS Program cost savings, but would be outweighed by the loss of \$117.7 million in economic benefits to the State. The Companies suggest that eliminating out-of-state resources from participation in the RPS Program would have a much larger impact on the cost of the RPS Program because in-state resources would likely change their bidding behavior in Main Tier solicitations in response to this change. For example, assume NYSERDA conducts a solicitation and selects 300 MW in renewable energy resources. If barring out-of-state resources results in NYSERDA selecting one 100 MW in-state project with \$10/MWh higher costs which otherwise would not have been selected, then RPS Program costs would increase by \$24.5 million. If all other bidders raise their bids by \$10/MWh because they are no longer concerned about their competitiveness in

relation to out-of-state resources, then RPS Program costs would increase the costs for the remaining 200 MW procured by NYSERDA by \$49 million. Moreover, it should be recognized that to date only a small number of out-of-state resources have actually been selected in Main Tier solicitations. For the first seven solicitations for which complete data is available, only 69 MW of out-of-state resources have been selected, out of a total of 1,862 MW of resources selected.²⁸ It would require only a slight increase of in-state resource bid prices to occur for the economic benefits of barring out-of-state resources to be overwhelmed by the increase in overall program costs.

Lowered costs of renewable energy for New York State customers will have positive economic benefits by allowing electric customers to invest funds that were not spent on higher-cost renewable energy in other economic opportunities. NYSERDA's economic analysis focuses solely on the direct economic benefits that may accrue to the State by investing funds solely in in-state resources, but does not acknowledge that such an approach has an opportunity cost for electric customers, who have their own opportunities to invest in productive, job-creating projects within the State. For example, if a factory in New York State pays \$100,000 more for renewable energy in the State as a result of the elimination of out-of-state resources from the RPS Program, the factory cannot invest that money in expanding its own operations. If that factory's internal investment opportunities are more economically productive than the economic activity created by investment in a high-cost in-state renewable energy project, any increase in the State's gross state product as a result of awarding a contract to an in-state renewable resource is offset by the lost opportunity of the factory to more profitably invest in its own productive capacity.

²⁸ The New York State Renewable Portfolio Standard Performance Report Through December 31, 2011, Appendix A, New York State Energy and Research Development Authority.

Keeping energy costs affordable is itself an important aspect of economic development in New York, particularly in terms of the goal of retaining existing industry and attracting new job-creating companies, and this fact should also be considered when balancing the higher cost of a “New York only” RPS Program with its economic benefits.

Mandating In-State Resources Will Not Make Achieving the RPS Goal More Likely

In response to NYSERDA’s claim that the benefit of lower costs from an out-of-state resource lasts only for the ten-year term of the RPS contract and therefore such resources will not enable the State to reach its goal for renewable energy consumption, the Companies note that on expiration of the RPS contract, the out-of-state resources are just as likely as in-state resources to continue to offer renewable attributes to New York State, thereby extending the value of lower cost renewable energy to the life of the project, if it is in the project’s best economic interest to do so. Conversely, in-state resources that are no longer under NYSERDA contract are free to offer their renewable energy in neighboring states, and may choose to do so based on the relative pricing of renewable energy in New York and neighboring states.

Barring Out-of-State Renewable Resources Has Limited Benefit to Energy Security

NYSERDA’s petition equates energy independence with energy security. Raising barriers to out-of-state renewable resources may increase the ability of the State to rely solely on in-state resources for production of electricity, but such increase in independence is not synonymous with an increase in energy security. New York State electric customers’ energy security is enhanced by an increased diversity of fuels (which is achieved regardless of whether a renewable resource is located inside or outside New York’s borders), and

increased diversity in the location of renewable resources (which NYSEDA is supporting through its Regional Program that funds renewable energy projects in downstate New York).

Finally, NYSEDA's claims with respect to energy security²⁹ are overstated. Renewable resources are for the most part intermittent, thereby reducing their contribution to reliability. Out-of-state resources that deliver their energy to New York State may mitigate the risk of intermittent loss of power from renewable resources through geographic diversity because they may not be subject to a temporary diminution of a renewable "fuel" that in-state resources might experience. Diversity of location is likely to enhance reliability overall.

NYSEDA's Current Procedures Provide Assurance of Renewable Energy Creation

NYSEDA claims that it cannot verify that any incremental energy is delivered to New York by an out-of-state renewable resource because the owner of the resource may already be providing a greater amount of conventional electricity to New York. NYSEDA's logic appears to be if the electrons delivered to New York's border are from conventional resources, that therefore conventional generation has been displaced in New York by conventional generation elsewhere and there is no net environmental benefit. But an out-of-state renewable resource must prove that it generated electricity in the same hour as the delivery of energy is being made to the New York border, so at a minimum conventional generation is being displaced in a neighboring control areas, some of which will be closer to the downstate New York areas in EPA non-attainment zones than are in-state wind generation resources located hundreds of miles further away. Indeed, most of the out-of-state renewable resources that have been successful in past NYSEDA Main Tier solicitations have been located in eastern Pennsylvania, upwind of the New York City metropolitan area.

²⁹ NYSEDA has altered the PSC's determination that "energy security" means protection from the price volatility of natural gas and oil. 2004 RPS Order, at pp. 4-5.

Summary

The Companies urge the Commission to direct this issue to the upcoming midcourse review of the RPS Program. If the Commission elects to address the petition on the merits, for the reasons set forth above, the Companies urge the Commission to deny the petition.

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Respectfully submitted,

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