STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 19, 2012

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 Retail Renewable Portfolio Standard.

CASE 11-E-0706 – Petition of Boralex New York LP for Modification of an RPS Maintenance Tier Contract.

ORDER APPROVING REQUEST FOR MODIFICATION OF FUNDING AS A MAINTENANCE RESOURCE

(Issued and Effective April 20, 2012)

BY THE COMMISSION:

INTRODUCTION

Maintenance support is provided to certain renewable resource electric generating facilities which, under certain financial circumstances, might cease operations or be abandoned altogether. The maintenance support is provided as a component of the Main Tier of the Renewable Portfolio Standard (RPS) program administered by the New York State Energy Research and Development Authority (NYSERDA). In this order, the Commission offers ReEnergy Holdings LLC (ReEnergy) an incremental RPS production incentive of $11.00 per MWh and a modification of its existing RPS maintenance resource contract for its wood/biomass generating facility located in Chateaugay, New York.

BACKGROUND

The availability of maintenance support to certain renewable resource generating facilities was established in the September 24, 2004 RPS Order.[1] A process for a case-by-case review and analysis to determine the level of funding for a maintenance resource was established in the April 14, 2005 RPS Order.[2] The case-by-case approach was intended to ensure that the amount of support provided is sufficiently tailored to meet the needs of each project to maintain financial solvency of the facility, while reserving the largest possible portion of RPS program funds to encourage the development of additional renewable resources. Eligibility criteria includes consideration of operating costs, financial records, effect of market rules, potential for capital improvements, and relationship with a parent company.

The Chateaugay facility is an 18 MW wood biomass-fired facility located in Chateaugay, New York. It commenced commercial operations in 1993. In the February 16, 2006 RPS Order,[3] Boralex New York LP, the then-owner of the Chateaugay facility, was granted a ten-year maintenance support contract for the facility, capped at $15 per MWh, on up to 128,000 MWh per year delivered to the New York energy market in conformance with RPS program requirements.

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[1] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004).

[2] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Approving Implementation Plan Adopting Clarifications, and Modifying the Environmental Disclosure Program (issued April 14, 2005).

[3] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Approving Request for RPS Program Funding as a Maintenance Resource (issued February 16, 2006).

On November 15, 2011, Boralex submitted a petition seeking modification to its maintenance resource contract. In its petition, Boralex stated that due to increased fuel costs and falling energy prices, it requested that the Commission increase the RPS production incentive authorized in the February 16, 2006 RPS Order, from $15/MWh to $35/MWh, as well as an increase in the contract quantity on which that incentive would be paid from 128,000 MWh to 140,000 MWh annually.

On or about December 20, 2011, Boralex sold the Chateaugay facility to ReEnergy, an Albany, New York based renewable energy company. Thereafter, ReEnergy submitted a letter to the Secretary confirming that ReEnergy concurred with all of the information set forth in the petition and as the new owner was continuing to seek the relief originally sought by Boralex.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning the Boralex petition was published in the State Register on January 11, 2012 [SAPA 11-E-0706SP1]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act regarding the Notice expired on February 27, 2012. Comments were received from 15 parties. A list of commenting parties is attached as Appendix A.

COMMENTS OF PARTIES

Of the parties submitting comments, 11 parties submitted comments supporting the petition.[4] These parties note that the Chateaugay facility, as with the biomass industry in general, has a significant economic impact in the region and throughout upstate New York. The parties also note that job retention, in the current economic climate, is critically important.

Franklin IDA urges further, that a periodic review and adjustment to a material contract that has costs driven by the market would make sense in the biomass industry. ESFPA states that six of the eight woody biomass facilities in the state have shut down and urges the Commission to work with the petitioners. ESFPA also notes that according to The Nature Conservancy and NY Audubon, biomass harvesting provides significant habitat improvements for wildlife.

NYBEA notes that the entire biomass industry in New York is struggling to remain commercially viable. NYBEA submits that the Commission should approve the Boralex petition for a new RPS contract price and allow for a similar RPS contract augmentation for the three other legacy biomass power producing plants[5] at the same time, or allow for a formal RPS contract

[4] These parties include the County of Franklin Industrial Development Agency (Franklin IDA); The Honorable Janet L. Duprey, Member of the New York Assembly; Empire State Forest Products Association (ESFPA); The Honorable D. Billy Jones, as Franklin County Legislator and as Mayor of the Village of Chateaugay, NY; The Honorable Elizabeth O’C. Little, Member of the New York Senate; New York Biomass Energy Alliance (NYBEA); The Honorable William L. Owens, Member of Congress; ReEnergy Holding ; Town of Chateaugay, NY; The Honorable Catherine M. Young, Member of the New York Senate.

[5] NYBEA identifies these plants as Niagara Generation, ReEnergy Lyonsdale, and AES Greenidge. At this time, only ReEnergy Lyonsdale is currently operating under an RPS Contract.

review process to be opened up to all four plants as is already afforded to post-October 2009 biomass RPS contract holders.

Four parties[6] submitted comments in opposition to the petition. In their comments, the parties identify the cost impacts, unjustified subsidization of existing, uneconomic facilities, and the precedent of renegotiating an existing RPS contract as reasons for denying the petition. In addition, the parties opine that the issues raised in the petition have been considered in The Commission's rejection of a similar application from Niagara Generation, L.L.C. (“NiGen”).

Cost

Each of the parties noted, based on the requested increase in the production incentive cap and increase in the eligible generation on which the incentive cap would be applied, approval of the petition could cost an additional $3 million annually.

Joint Utilities claim that granting the petition will undermine the cost-effectiveness of the RPS program. They further state that Boralex willingly entered into a ten-year contract and assumed the risk of future changes in energy prices and fuel. According to Joint Utilities, Boralex had the option to hedge its electricity prices to manage the volatility and risk associated with the wholesale electric competitive market, but apparently choose not to do so, and is now seeking RPS funds to compensate for its own inaction. Joint Utilities also notes

[6] Consumer Power Advocates (CPA), Joint comments of Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation (collectively, Joint Utilities), Innovative Energy Systems, LLC (IES) and Multiple Intervenors (MI).

that the RPS premium of $35 per MWh requested by Boralex is higher than the average price in any of the Main Tier resource solicitations previously administered by NYSERDA to procure new renewable energy resources.

In its comments, IES (saying it is the largest privately held developer of landfill gas to energy projects in the country), based on its own analysis of the New York Independent System Operator's (NYISO) Day-Ahead-Market prices, questions Boralex's claims that energy prices were sufficiently below the levels forecasted in the February 2006 Order to warrant modifying the existing contract. Further, IES asks, if the Commission does not reject the petition, that the Commission should direct NYSERDA, or another applicable agency, to develop a comparable incentive program that would compensate other renewable energy developers, such as IES, for their decreased revenues (and/or losses) during periods of low NYISO market prices.

In its comments, MI claims that modifying the contract will be making the RPS program even more expensive for captive customers and use limited RPS funds on contract modifications with long-existing facilities when the output of new renewable generation facilities can be purchased more economically.

Subsidization of Uneconomic Facilities

CPA notes that, while it is a worthwhile attribute of the RPS program to support existing renewable facilities, the maintenance tier should not be construed to be a blank check to guarantee continued profits for inefficient and/or uneconomic operations. CPA claims that regulatory intervention, to prevent the failure of Boralex, is an unjustified interference in the market, one that prevents more efficient operators from entering the market.

Joint Utilities states that granting this petition will make the RPS program more costly for electric customers, and will increasingly shift the RPS program toward subsidization of existing, uneconomic facilities and away from development of new, more cost-effective facilities

IES states that Boralex has experienced the type of fluctuation in earnings that is part of the cycle of businesses in a retail market that is driven by supply and demand. Boralex is asking the Commission to authorize NYSERDA to increase the subsidy that will allow an apparently otherwise economically nonviable facility to continue operating. In addition to artificially increasing electricity prices, this puts other generators at a competitive disadvantage.

MI states that it is unfair to shield developers from volatility and risk associated with the competitive market. The Commission should not undertake desperate efforts to subsidize maintenance resources that consistently remain uneconomic, particularly when the subsidy purportedly necessary to sustain such facilities could support the procurement of a greater amount of renewable generation through a competitive process.

Renegotiating Existing RPS Contracts

The parties opposing the petition all indicated their belief that approval of the request would be an invitation to all other RPS contract holders to seek modification of their existing contract. Joint Utilities states that allowing RPS resources already under contract to renegotiate those contracts when market prices are lower than original expectations will result in spending much more money for fewer renewable resources.

MI states that if the Commission grants the petition and allows Chateaugay to modify its existing contract, this would undermine the sanctity of long-term contracts executed under the RPS program and foster an environment where renewable facilities with existing RPS contracts are encouraged to seek large subsidies whenever economic circumstances are not what they expect or desire. MI also states that when the RPS contract with NYSERDA was executed, Chateaugay assumed the risk of future changes in energy prices and fuel costs – both of which are well-known to be volatile and, to varying degrees, could have been hedged. MI notes that it is unfair to allow contract holders to seek increased premiums during times of low energy prices because, as they put it, they are unaware of any developer who has sought to reduce its share of customer-funded subsidies during favorable economic circumstances.

NiGen Decision

Joint Utilities claim that the Commission has already considered the issues raised by Chateaugay in its rejection of the NiGen petition.[7] Joint Utilities claim that in that petition, NiGen described the impact of decreased energy prices and increased fuel supply prices on its operating income. Joint Utilities state that all of the reasons underlying the Commission’s decision in NiGen Order apply here and require the denial of this petition. Joint Utilities state that, in the NiGen Order, the Commission recognized the implications of changing a contract negotiated as a result of a competitive bidding process. It also expressly rejected the notion of “stepping in and breaking the price terms of an executed contract.”

MI also links the Chateaugay petition with the NiGen case. It states the Commission correctly rejected NiGen's request to use an "escape clause" to seek increasing its RPS

[7] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Denying Request to Adjust Contract Price, (issued November 19, 2010).

premium price in that case because the NiGen contract was executed before the escape clause was established. MI states, the fact that Chateaugay received its existing RPS contract in response to a prior petition and not a competitive solicitation process is irrelevant because the RPS money used for that contract was not available to subsequent competitive bids.

In reply comments, ReEnergy suggests that any reliance on the NiGen case is misplaced because the NiGen contract resulted from a bidding process. ReEnergy suggests that the Commission gave Chateaugay the ability to modify its contract. ReEnergy notes that, in the February 16, 2006 RPS Order, the Commission stated:

> NYSERDA should include provisions in the contract requiring Boralex to report if facility ownership changes occur, or other operational changes arise, that result in a substantial change in the financial support needed. The contract should provide, under such circumstances, for the Commission to revisit the level of payment authorized herein.

DISCUSSION AND CONCLUSION

Threshold Issues

We note at the outset that the questions presented in this matter are extremely difficult as there are many competing interests and policies to be balanced. A threshold question raised by the comments is whether the precedent of our determination in the NiGen case discussed above is a bar to any consideration of a modification of the Chateaugay contract. It is not. NiGen was awarded an RPS Main Tier contract as a result of a competitive solicitation process. The incentive level in the NiGen contract was set at the price NiGen itself bid before it was awarded the contract. Other bidders in the competitive solicitation that NiGen participated in were subject to the same rules and it would be unfair to those bidders that were underbid by NiGen and were not awarded contracts to later allow an upward price adjustment for NiGen that the others might have beaten. The NiGen decision remains a controlling precedent against all future requests for price modifications to RPS Main Tier contracts.

In contrast, the production incentive in the Chateaugay contract was set administratively in the February 16, 2006 RPS Order, not by a bid in a competitive solicitation where there were winners and losers. Additionally, the February 16, 2006 RPS Order specifically provided Chateaugay with an opportunity to seek an adjustment to its incentive level if changes in its ownership or operational condition warranted. It was our intent that a substantial change in the financial condition, positively or negatively, of a maintenance facility would be subject to a review to determine if a modification, or the termination, of the contract award is warranted. Whether it is warranted or wise to make such a modification is a different matter, but making changes to an administratively determined price is not intrinsically unacceptable as something that would undermine the competitive process established for the RPS program because the original price was not determined in a competitive process. MI's argument that the RPS money used for maintenance contracts is not available to subsequent competitive bids is misplaced. The award of maintenance contracts does not reduce the level of the targets in the Main Tier, so the use of Main Tier funds to service maintenance contracts creates more of an issue as to whether collection levels need to be reset than it does to whether there are sufficient funds available to allow subsequent competitive bids to be accepted. In any event, the level of maintenance costs has not impacted the level or rate of Main Tier solicitations in any manner.

A second threshold question we must address is whether the Chateaugay facility has undergone a change in operational conditions or ownership since we granted the maintenance contract such that the contract terms should be reviewed. We purposefully structured our review of requests for maintenance support to address operational issues on a case-by-case basis with a detailed review of the financial condition of the applicant. It is claimed that the Chateaugay facility has faced significantly increased fuel costs for the wood/biomass fuel procured for the plant, and significantly decreased revenues for the electric output generated by the facility. Also, while the petition before us has been pending, on December 20, 2011, Boralex sold the Chateaugay facility to ReEnergy.

Staff advises that the costs actually paid to procure the fuel have risen from what had been recently paid due to competition from two paper manufacturing facilities and the McNeil Generating Station[8] for wood residue. While ReEnergy has increased the amount it is offering to pay for fuel, its current higher costs do not reflect a change in circumstances since the original maintenance contract was granted. The incentive prices in the current Chateaugay maintenance contract already reflect projected costs for biomass fuel for 2012 through 2015 that are similar or higher than what is currently being paid or projected to be paid to suppliers of the Chateaugay facility. Accordingly, the increased fuel costs for the wood/biomass fuel procured for the plant do not amount to an operation change and do not justify the requested modification to the maintenance contract price.

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[8] The McNeil Generating Station is a 50 MW biomass-fired facility located in Burlington, Vt. It is jointly owned by the City of Burlington Electric Department, Central Vermont Public Service, Vermont Public Power Supply Authority, and Green Mountain Power.

Staff advises that there has been a substantial change since the maintenance contract price was set, however, in the revenues that are forecast to be paid to the Chateaugay facility for the electric output generated by the facility. The Chateaugay facility, like many other generation facilities in the NYISO market, has faced dramatically fallen energy prices.

While IES challenges such an assertion, we find its choice of data to be incorrect. IES bases its arguments on NYISO data showing the statewide average monthly Day-Ahead Locational Based Marginal Pricing (LBMP) for 2005 through 2008. It is IES's position that the NYISO prices presented should be sufficient to allow for Chateaugay's ongoing operation without additional RPS support. IES states, "the [NYISO Day-Ahead LBMP] energy price averages between the filing date of the Initial Application (July 13, 2005) and the beginning of the most recent period of declining revenues cited in the Petition (2009) would still, presumably, have resulted in revenues far above those projected by Boralex relative to said period." That is an incorrect comparison. The comparison should be more accurately made to the average bus price for the bus that represents the Chateaugay facility. That bus' average prices are consistently lower than the statewide average. In its comments, IES notes that the statewide average prices for September 2005 were $115.47/MWh, while the Chateaugay bus price was $95.72/MWh. IES further notes, in only five months did the average price drop below $60/MWh between September 2005 and August 2008. Again, this is a statewide average. The average monthly price at the Chateaugay bus dropped below $60/MWh on 20 of those 36 months. In fact, in the following 36-month period - through August 2011, the average bus price dropped below $60/MWh in 34 of those 36 months, with an average monthly price as low as $23.85/MWh.

The February 16, 2006 RPS Order reflects a forecast of average annual energy revenues to the Chateaugay facility of $61.50/MWh in 2008, $62.73/MWh in 2009, $63.98/MWh in 2010, and $65.26/MWh in 2011. According to data available on the NYISO website, the average annual energy price in the Day-Ahead-Market for the NYISO bus which represents the Chateaugay facility was $65.38/MWh in 2008, $33.62/MWh in 2009, $40.40/MWh in 2010, and $39.32/MWh in 2011. On average, that is a 29.5% reduction in revenues for the four-year period. For 2011 alone, the reduction is close to 40%. We find that this significant drop in energy revenues is a substantial change in operating conditions for the Chateaugay facility such that the terms of the maintenance contract should be reviewed.

As to the change in ownership, we do not find that the change creates any operational differences that would warrant a review of the terms of the maintenance contract. The sale by Boralex to ReEnergy included a package of five biomass plants, including the Chateaugay facility in New York, and four facilities in Maine. ReEnergy owns ten facilities in four states, including three in New York.[9] Given the lack of geographic proximity among the plants and the fact that most of them were already grouped under single ownership, there does not appear to be a significant opportunity for additional operational synergies as a result of the sale. Staff advises that it met with representatives of ReEnergy to review ReEnergy’s operating plans for the Chateaugay facility, and that thereafter ReEnergy submitted a letter to the Secretary confirming that ReEnergy was continuing to seek the relief sought by Boralex for the same reasons.

[9] ReEnery owns ReEnergy Lyonsdale, located in Lyons Falls, NY; ReEnergy Black River, at Fort Drum, near Watertown, NY; and ReEnergy Chateaugay.

Staff’s Review

Staff has reviewed the information contained in the November 14, 2011 petition and has obtained additional detailed information and updated workpapers from ReEnergy. Staff advises that adjustments should be made to remove incentive compensation payments from the forecasted labor expense and to remove an intercompany management fee. Given that the company is struggling to remain financially viable, Staff did not believe that incentive compensation was appropriate to consider as an ongoing cost. Regarding the intercompany management fee, Staff has found that the fee had increased dramatically with the change of ownership from Boralex to ReEnergy, with no services attached to the fee. Staff considers these expenses to be discretionary and, in keeping with the provisions of the April 14, 2005 RPS Order, not necessary for a set payment award amount at a minimum level to assure the project solvency. We agree with Staff's recommendations and will not reflect such costs in any award.

Production Quantity

ReEnergy seeks Commission authorization to increase the eligible generation on which the production incentive is paid from 128,000 MWh to 140,000 MWh annually. Neither the contribution of the Chateaugay facility to the original RPS Baseline, or the actual production from the facility in recent years, indicate such a capability. As we noted in the February 16, 2006 RPS Order, any such additional production could be offered in the voluntary green market or for Executive Order 111 solicitations. We are sensitive that our granting of any modification to the maintenance contract is an extraordinary occurrence and are not satisfied that a sufficient demonstration has been made that such an additional modification of the essential terms of the contract is warranted.

Incentive Price Level

ReEnergy seeks Commission authorization to increase its approved RPS production incentive from $15/MWh to $35/MWh. We have reviewed the material submitted, as well as Staff's analyses, to determine if additional RPS support is appropriate and justified. A review of the information demonstrates that the financial operation of the Chateaugay facility has been negatively impacted by the dramatic decline in the average annual price in the NYISO Day-Ahead-Market. We find that the Chateaugay facility is in need of financial support to remain in operation as well as to meet its operating and capital requirements. In particular, without support, the Chateaugay facility would likely continue to have negative cash flows and ultimately cease operation permanently.

However, in considering what to do we are troubled by several factors. First, Boralex failed to safeguard against the risk of dropping energy revenues for the Chateaugay facility in the manner that was done for the similar Lyonsdale facility by a different owner. If Boralex had hedged its energy revenues, there would be no need for a price adjustment. We do not have enough information to know whether Boralex had a reasonable opportunity to hedge the Chateaugay facility or to determine whether such a course of action would have been obviously beneficial at the time. The issue is made murkier by the fact that ReEnergy is now the owner, and had no control over the actions of Boralex at the time.

Second, we generally agree with many of the opinions expressed that the RPS program should not foster an environment where facilities with existing RPS contracts are encouraged to seek larger subsidies whenever economic circumstances are not what they expect or desire, and that it is unfair to allow contract holders to seek increased premiums during times of low energy prices without being required to reduce their support payments during favorable economic circumstances.[10] The RPS program, including the provisions allowing for maintenance support, is not a guarantor of profits or continued operation for any generator. Maintenance support was established to preserve existing renewable electric generation that was in service prior to the RPS program which, under certain financial circumstances, might cease operations or be abandoned altogether. If we are to reach our goal of satisfying 30% of projected retail electric load in 2015 with renewable resources, it is critical that we maintain our existing resources while at the same time encouraging the construction of new ones. That does not mean, however, that we will maintain all existing resources regardless of the cost or that we will provide permanent financial support for any generator.

In that regard we are also troubled that ReEnergy does not appear to have a plan that would eventually provide for the Chateaugay facility to operate economically without RPS support. When the RPS program invests in Main Tier resources, its support generally pays down initial capital costs to the point where when the RPS payments end, the generating facility can continue to operate economically for many, many more years without subsidies. When such a leveraging effect is considered, the Main Tier program provides excellent investments. While a

[10] The current RPS maintenance resource contract for the Chateaugay facility does contain a provision which curtails, and potentially eliminates, RPS payments when the zonal energy price approaches, or equals, the forecasted energy price plus contract incentive price. In fact, if the zonal energy price exceeds the forecast, this contract provision provides for a negative carrying forward balance which will suspend future RPS payments (when zonal energy prices are below the forecasted price) until such a time as the negative carry forward balance has been eliminated. The level at which RPS payments will be curtailed remains unchanged.

maintenance support investment may be justified if it preserves an existing renewable resource at no greater cost to the RPS program than if a new resource was needed to replace the lost generation, as the level of support required approaches the cost of new resources, it becomes undesirable. But without the leveraging effect, and if the maintenance investment does not result in long-term sustainability of the resource, the whole maintenance approach becomes questionable.

On the other hand, there has been an extensive recession and the Chateaugay facility is an important contributor to the economy of the North Country in New York and its continued operations is critical to its employees, its fuel suppliers and its community for its direct and indirect economic contributions. There are only a few years remaining on the maintenance contract and we must also balance the needs of the local economy, which is in an area of the State with limited opportunities, with the needs of the RPS program and the statewide body of ratepayers that support that program.

As a result, we will authorize NYSERDA to modify the existing contract as it relates to the maximum production incentive, but not for the full amount requested. The amount to be allowed will be the minimum necessary to have a likely chance of keeping the facility solvent. We are not guaranteeing that this additional support will be sufficient to keep the plant operating. All other terms of the existing contract will remain unchanged. The expiration date for the contract will remain March 31, 2016. ReEnergy (or any future owner) will be prohibited from seeking additional RPS maintenance tier support after March 31, 2016. Our hope is that ReEnergy will use the time between now and 2016 to implement a plan for the future viability of the plant.

We are directing NYSERDA to offer ReEnergy an incremental production incentive of $11.00/MWh, or a total incentive cap of $26.00/MWh, on up to 128,000 MWh per year, for energy delivered to the New York energy market in conformance with RPS Program requirements, prorated based on the percentage of generation fueled by RPS Program eligible (unadulterated) wood compared to total generation. This incremental production incentive will be paid using the same procedure as provided for in the current RPS Maintenance Tier Contract Agreement continuing to use the forecast of prices set forth in Appendix B. This will increase the potential annual payment from $1,920,000 to $3,328,000 for the remainder of the contract. As a result, the modification will increase the total contract value by $5,632,000. The expiration date for the contract will remain March 31, 2016. We note that the total incentive amount is less that the weighted average price awarded in the most recent Main Tier solicitation held in the final quarter of 2011.[11] ReEnergy will be prohibited from seeking additional RPS maintenance tier support after March 31, 2016.

The Commission orders:

1. ReEnergy Holdings LLC (ReEnergy) is offered an incremental RPS production incentive of $11.00 per MWh and a modification of its existing RPS maintenance resource contract for its Chateaugay facility, as described in the body of this order.

2. ReEnergy shall provide written notice of its decision whether or not to accept the offer to the Secretary to

[11] The seventh competitive Main Tier solicitation (RFP 2389) awards were made in December 2011, resulting in a weighted-average price of $28.70 per RPS Attribute (MWh).

the Commission within 30 days after the date of issuance of this order. Failure to timely file the notice shall be deemed a decision by ReEnergy to decline this offer of modified RPS program support.

3. The New York State Energy Research and Development Authority (NYSERDA) is authorized to modify the April 1, 2006, RPS Maintenance Tier Contract Agreement by and between the NYSERDA and ReEnergy (as successor to Boralex New York LP), as described in the body of this order.

4. NYSERDA is authorized to begin making payments subject to the modifications for electricity produced on or after April 1, 2012, upon ReEnergy's submission of a written notice of its acceptance of this decision and execution of the modification to the contract.

5. Case 03-E-0188 is continued; Case 11-E-0706 is closed.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED) JACLYN A. BRILLING
Secretary

APPENDIX A

List of Commenting Parties

Consumer Power Advocates (CPA)

County of Franklin Industrial Development Agency (Franklin IDA)

The Honorable Janet L. Duprey, Member of the New York Assembly

Empire State Forest Products Association (ESFPA)

Innovative Energy Systems, LLC (IES)

Joint comments of Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation (Joint Utilities)

The Honorable D. Billy Jones, Franklin County Legislature

The Honorable Elizabeth O'C. Little, Member of the New York Senate

Multiple Intervenors (MI)

New York Biomass Energy Alliance (NYBEA)

The Honorable William L. Owens, Member of Congress

ReEnergy Holdings LLC (ReEnergy)

Town of Chateaugay, NY

Village of Chateaugay, NY

The Honorable Catherine M. Young, Member of the New York Senate

Annual Forecast Price

The following electric price forecast will be used to determine the calendar year Benchmark Price, as defined in the April 1, 2006, RPS Maintenance Tier Contract Agreement by and between the New York State Energy Research and Development Authority and Boralex New York.

Calendar Year	Forecast Price
2012	$42.41
2013	$44.11
2014	$47.17
2015	$50.64
2016	$56.04