

SUBSTANCE OF PROPOSED RULE FOR 03-E-0188SP38

The Commission is considering whether to adopt, modify, or reject, in whole or in part, Staff's recommendation to provide financial support, under the Renewable Portfolio Standard (RPS) Maintenance Tier, to Azure Mountain Power Company for its 800 kW hydroelectric facility located in St. Regis Falls, NY.

On February 20, 2012, Azure Mountain Power Company submitted a filing to the Department of Public Service seeking a 10-year Maintenance Tier contract in the amount of \$30/MWh for a total of \$75,000 annually (based on an average annual generation level of 2,500 MWh) for its hydroelectric facility located in St. Regis Falls.

By Order issued September 24, 2004, the Commission established a maintenance resource category eligible for support as a subset of the Main Tier of the RPS program to assist certain existing renewable resource energy facilities to remain financially viable. A later Order, issued April 14, 2005, established a process for a case-by-case review and analysis to determine the level of funding for a maintenance resource. A further Order, issued October 31, 2005, clarified that the level of support offered through the Maintenance Tier would at least be adequate to allow the facility to cover its future operating costs and any necessary future capital costs, but need not cover all sunk costs.

Department of Public Service Staff reviewed the filing of Azure Mountain Power Company and recommended a level of support at \$20/MWh for the first 2,500 MWh of annual generation up to \$50,000 annually. It also recommended the following conditions if the company were to accept the terms of support:

RPS-eligible Attributes:

In order to enter into an RPS Maintenance Tier contract with New York State Energy Research and Development Authority (NYSERDA), Azure Mountain Power Company (Azure) must possess, for the entire contract term, the rights to assign the RPS-eligible attributes to NYSERDA. The RPS-eligible attributes associated with the energy delivered under a PURPA contract, or purchase power agreement, and claimed by the party to that contract, are not eligible for RPS support. The definition of an RPS-eligible attributes will be subject to the contract executed with NYSERDA, but generally refers to any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation of the facility. One RPS-eligible attribute shall be created upon the generation of one MWh of production. RPS-eligible attributes generally include, but are not limited to any avoided emissions of pollutants to the air, soil or water and any set-aside allowances from emissions trading programs.

Contract Term

The award will be offered for a term of 10-years. The contract term will become effective January 1, 2013 and expire on December 31, 2023.

Energy Deliverability:

Energy must be deliverable into a market controlled by the New York Independent Systems Operator.

RPS Production Incentive:

Azure will be paid a fixed RPS production incentive of \$20.00/MWh, on up to 2,500 MWh per year, for energy actually delivered to the New York energy market in conformance with RPS Program requirements. Generation, in any year, in excess of 2,500 MWh will not be subject to a production incentive.

Award Revocation:

This award is presented in anticipation of the repair/reconstruction of the existing timber crib dam at the St. Regis Falls facility. If the repair/reconstruction of the dam at this facility is not completed by October 15, 2014, this offer may be rescinded and all funds paid under a Maintenance Tier contract executed as a result of this offer will be subject to refund.

Upon completion of the repair/reconstruction of the dam, the Azure shall provide staff of the Department of Public Service all documentation, including but not limited to, invoices, engineer's reports, dam re-certification (from either Federal or state regulatory agency), necessary to support the completion of the dam project.

Suspension of Contract:

Subject to the terms of the contract to be executed with the NYSEERDA, Azure may, at its discretion, and upon sufficient notice to NYSEERDA, suspend its obligation to deliver RPS-eligible attributes to NYSEERDA, if such RPS-eligible attributes are sold into the New York State voluntary market or pursuant to a New York State Executive Order 111 procurement (energy and attributes may not be export outside of New York State).

The New York Public Service Commission reserves the right to revise the term of this award, including the production incentive amount, if a review of the books and records of Azure indicate that the level of support provided here is no longer necessary for the continued operation of the project.