

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 19, 2010

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris, recused
Robert E. Curry, Jr., dissenting
James L. Larocca

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

ORDER PROVIDING INTERIM FUNDING FOR THE CUSTOMER-SITED TIER

(Issued and Effective February 16, 2010)

BY THE COMMISSION:

INTRODUCTION

The Renewable Portfolio Standard (RPS) has been New York's primary policy initiative to promote the development of new renewable energy resources since it was established in 2004. The Commission is currently in the process of completing a mid-course review of the RPS program, which it expects to complete shortly after it receives certain reports it has requested. This order establishes an interim program to fund incentives for solar photovoltaic, anaerobic digester, fuel cell and small wind installations prior to the New York State Energy Research and Development Authority (NYSERDA) implementing the Commission's final determinations regarding the future of the Customer-Sited Tier. It also addresses significant concerns regarding the level of solar photovoltaic incentives and the pace at which

ratepayer moneys are employed to fund the solar photovoltaic program.

BACKGROUND

In December 2009, the Commission established a new RPS goal and MWh target, authorized an additional Main Tier solicitation and resolved several issues related to the RPS program, with a primary focus on the Main Tier. The Commission also directed Staff to consult with the interested parties and report back on a potential program to encourage larger-scale downstate (NYISO Zones G, H, I and J) solar photovoltaic, anaerobic digester and fuel cell projects.¹ The Commission stated that its decision on the funding budget and scope of the program will be linked to its decision on the Customer-Sited Tier in order to optimize program expenditures and deployment across these technologies, and that it expected to make the decision on both of these matters in the next few months.²

Customer-Sited resources include only self-generation, "behind-the-meter" facilities located in New York that are placed into service on or after January 1, 2003. The Customer-Sited Tier as established provided support for solar photovoltaic systems, fuel cells, anaerobic digestion biogas systems, and small wind turbines. Under its current authorization by the Commission, the New York State Energy Research and Development Authority (NYSERDA) may not solicit new applications for funding from Customer-Sited Tier applicants. That authorization expired on December 31, 2009.³ NYSEDA may process applications received on or before December 31, 2009 to

¹ Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Establishing New RPS Goal and Resolving Main Tier Issues (issued January 8, 2010).

² Ibid., p. 17.

³ Case 03-E-0188, supra, Order on Customer-Sited Tier Implementation (issued June 28, 2006) p. 20.

the degree that it has funds available within its 2009 Customer-Sited Tier budget, but it may not solicit new applications for RPS funding and it has no Customer-Sited Tier budget for 2010 and beyond. Until the Commission has an opportunity to establish a future course and budget for the Customer-Sited Tier, there is no opportunity for customers to seek RPS funding for their solar photovoltaic, anaerobic digester, fuel cell and small wind projects.⁴

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the RPS program including the Customer-Sited Tier was published in the State Register on October 7, 2009 [SAPA 03-E-0188SP22]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the notice expired on November 23, 2009. Numerous comments were received and all such comments have been considered. Certain comments that relate particularly to the issue of continued or interim funding of the Customer-Sited Tier are summarized below.

SUMMARY OF COMMENTS

A substantial number of comments were submitted in favor of continued and substantially increased funding in the Customer-Sited Tier. The comments generally support the development of solar and other renewable resource industries in New York for the job creation (including assistance to farmers), reliability, environmental and health benefits such technologies

⁴ NYSERDA has used its discretionary authority to transfer all unencumbered 2009 funds for anaerobic digesters, fuels cells and small wind into the solar photovoltaic fund, and has supplemented the fund with such Regional Greenhouse Gas Initiative (RGGI) funds as are available for that purpose, but such transfers are insufficient to continue the solar photovoltaic program for more than a few weeks in 2010.

can provide. The groups providing comments can be characterized as primarily advocacy groups for renewable resource technologies and installers that would be participating in the RPS programs. The groups generally urge swift action and warn against the dampening effect funding discontinuity has on these emerging markets. The utility companies that provided comments generally supported the expansion of the eligibility rules in the Customer-Sited Tier to allow utility-owned projects.

Expressing a different perspective, Multiple Intervenors (MI) suggests that the RPS program should be moderated because of the high cost of doing business and electric prices in New York. MI believes that the Customer-Sited Tier is uneconomic, that solar photovoltaic installations should be ineligible for RPS subsidies, and that the funding for the Customer-Sited Tier should be closely examined to determine whether the funds should be transferred to the Main Tier or, its preference, returned to customers. MI suggests that efforts be increased to develop a voluntary market. Innovative Energy Systems argues that the Customer-Sited Tier resources are very expensive and should not be increased to the detriment of funding for the Main Tier.

DISCUSSION

Interim Funding

Given the demand for project funding and concerns expressed as to the need for continuity, it is in the public interest to provide funding for these programs on an interim basis until such time as we formally decide issues related to the Customer-Sited Tier. We approve approximately \$20.9 million in interim funding for the RPS Customer-Sited Tier and re-authorize NYSERDA to solicit new applications for RPS funding, to be allocated as follows:

INTERIM 2010 CUSTOMER-SITED TIER FUNDING BUDGET

	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>Total</u>
Solar PV	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$12,000,000
Anaerobic Digesters	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$6,000,000
Fuel Cells	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$1,800,000
Small Wind	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$300,000
<u>Administration & Evaluation</u>	<u>\$139,583</u>	<u>\$139,583</u>	<u>\$139,583</u>	<u>\$139,583</u>	<u>\$139,583</u>	<u>\$139,583</u>	<u>\$837,500</u>
TOTAL	\$3,489,583	\$3,489,583	\$3,489,583	\$3,489,583	\$3,489,583	\$3,489,583	\$20,937,500

The allocations are based on continuing funding at the monthly demand rates we established in 2009.⁵ The allocations are specific to each technology and funds allocated to a technology may not be transferred to another technology during the interim period. The effects of the various periods of accelerated applications are purposefully not reflected in these demand rates. The interim period will continue on a monthly basis from January through June unless we change it as a result of our pending resolution of issues related to the Customer-Sited Tier. The June 30, 2010 end date reflects NYSERDA's estimate of when it could complete the implementation of the Commission's final Customer-Sited Tier determinations assuming they occur in March 2010, including the development of an Operating Plan for the Customer-Sited Tier program. As to the collection of these costs from customers, our intention is to include these costs with other RPS costs to determine what adjustments are necessary to the RPS collection rates, and to make those adjustments comprehensively in the Spring of 2010.

⁵ Case 03-E-0188, supra, Order Concerning Further Modification of Funding for the Customer-Sited Tier (issued June 22, 2009) p. 6.

Special Conditions on Interim
Solar Photovoltaic Funding

The solar photovoltaic program poses some unique challenges which need to be addressed as part of any additional commitment for funding, even on an interim basis. The economics of solar photovoltaic are less favorable than Main Tier technologies and the other Customer-Sited Tier technologies. Despite this fact, \$81 million of the total \$103 million outlay for Customer-Sited Tier programs since 2006 has gone to solar photovoltaic due to the benign environmental characteristics and unique promise this technology holds for the future, but also due to the way the program solicitations were managed. Moreover, while NYSERDA has reduced the level of solar photovoltaic incentives three times in 2009, developers were able to submit a large number of proposals immediately prior to each incentive reduction. These "runs on the bank" likely explain why expenditures for solar photovoltaic incentives in 2009 totaled an amount far greater than the planned \$24 million final annual rate of funds budgeted for solar photovoltaic.

Absent a clearer showing of improved economics or a significantly more definitive demonstration of qualitative benefits there is no basis for continuing spending or incentives at the actual 2009 level. Indeed, the large difference between what was originally budgeted for solar photovoltaic and what was spent on solar photovoltaic suggests that the solar photovoltaic incentive is higher than necessary to support new projects. Moreover, the concentration of applications immediately prior to changes in the incentive level indicates that modifications are needed in existing processes in order to gain better control over the outflow of ratepayer moneys. In short, the per-watt solar photovoltaic incentives should be reduced further and specific monthly limits should be established for the funding.

Given these concerns we shall impose the following conditions on the administration of the solar photovoltaic program:

1. Interim monthly funding is provided for solar photovoltaic of \$2.0 million per month, January through June, 2010. No new applications shall be accepted for funding in a month when applications for that month already equal or exceed the available funds.

2. The per-watt incentive for solar photovoltaic shall be adjusted, as follows:

- (a) The incentive level shall begin at \$1.75 per watt for the first month (January 2010), a reduction of \$.75 from the previous \$2.50 per watt incentive level;
- (b) Each month, NYSERDA shall re-establish the incentive level;
- (c) If applications in the prior month fully use the available funds, NYSERDA shall reduce the incentive by 10% for the subsequent month; and
- (d) If applications in the prior month did not fully use the available funds, NYSERDA may increase the incentive by 10% for the subsequent month.

The prior incentive is reduced by 30% under this proposal. While it is expected that this will directly reduce the number of applications, its precise effect is unclear. Thus, NYSERDA is required to further reduce the incentive by 10% after any month in which applications exceed the available funds. This mechanism assures that the incentive will ratchet down based on the level of demand from applications. NYSERDA is also provided the flexibility to increase the incentive, but is not required to, if it goes too low to attract sufficient applications.

Finally, NYSERDA may impose its own cap on how much each installer can take of the available funds in any given month to ensure that multiple installers have an opportunity to participate.

CONCLUSION

Overall adoption of these interim provisions is in the public interest. They assure that the Customer-Sited Tier program is not discontinued prior to the Commission's final determination regarding this matter later in 2010. They also address significant concerns regarding the size of solar photovoltaic incentives and the pace at which ratepayer moneys are employed to fund the solar photovoltaic program.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to continue the Renewable Portfolio Standard (RPS) Customer-Sited Tier programs for the period January 2010 through June 2010 in the same manner as the program was conducted previously, except as modified in the body of this order regarding administration of the solar photovoltaic solicitations.

2. Use of \$20,937,500 in RPS funds is authorized for Customer-Sited Tier purposes and shall be allocated as described in the body of this order (\$12 million for the solar photovoltaic category, \$6 million for the anaerobic digester biogas systems category, \$1.8 million for the fuel cells category, \$0.3 million for the small wind category, and \$837,500 for administration, evaluation, measurement and verification).

3. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

Robert E. Curry, Commissioner, dissenting:

I dissented from the January 8, 2010 order in this case because the Commission's decision was based on an inadequately developed record. There was no reason to approve, in haste, over \$2 billion in new collections from ratepayers without carefully addressing, integrating and deciding all the issues involved in expanding the existing RPS program. Since it began in 2005, the RPS program has failed to meet its goals - in spite of the \$741 million authorized to be collected from ratepayers. This approach can be contrasted with the Commission's painstaking, thorough and deliberate approach in considering and approving, at 14 separate Sessions, energy efficiency collections aggregating \$950 million. Today the Commission authorizes funding for the program over and above the more than \$2 billion with not much more analysis than it had before it at the December session. I dissent from that decision.

The RPS program is sorely in need of the study and review that the Commission contemplated would be completed in 2009. Issues have been raised and problems identified over the last several years, and Staff is working to bring its analysis of those issues to us. As I explained in my dissent to the January 8 order, many of those pressing issues need to be decided before, not after, ordering the spending of \$200 million of the over \$2 billion authorized.¹ There are also many issues related to the Customer-Sited Tier and its relationship to the Commission's decision to consider addressing the geographic

¹ Case 03-E-0188, Retail Renewable Portfolio Standard, Order Establishing New RPS Goal and Resolving Main Tier Issues, (issued January 8, 2010) dissent, pp. 2-3.

balance of the RPS program² that have yet to come to the Commission.

The RPS program may well be an important part of the state's energy policy, but it is our obligation to ensure that all ratepayer money is spent effectively. We should decide all the issues before us before expanding the program piecemeal.

I respectfully dissent from the Commission's decision.

² See, Case 03-E-0188, supra, Order Establishing New RPS Goal and Resolving Main Tier Issues, (issued January 8, 2010) pp. 14-17.