

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre

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

ORDER APPROVING REQUEST FOR FUNDING AS A MAINTENANCE RESOURCE

(Issued and Effective June 20, 2013)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission authorizes the New York State Energy Research and Development Authority (NYSERDA) to enter into a 10-year "maintenance" resource contract with Azure Mountain Power Company (Azure) at an incentive rate of \$20.00 per MWh delivered, for a term of 10 years, for renewable energy attributes associated with electricity generated at its hydroelectric facility located in St. Regis Falls, New York. Maintenance support is provided to certain renewable energy facilities which, under certain financial circumstances, might cease operations or be abandoned altogether. Maintenance support is provided as a component of the Main Tier of the Renewable Portfolio Standard (RPS) program administered by NYSERDA.

BACKGROUND

The availability of financial support, or "maintenance," to certain eligible renewable generating

facilities was established in the Commission's September 24, 2004 RPS Order.¹ Two subsequent orders, issued April 14, 2005 and October 31, 2005, provided guidance and a process for a case-by-case review and analysis to determine the level of funding that should be afforded to an eligible renewable energy facility.² This approach was intended to ensure that the amount of support provided is sufficiently tailored to each facility to enable it to stay in operation, while reserving the largest possible portion of RPS program funds to encourage the development of new renewable resources. Eligibility criteria includes consideration of operating costs, financial performance, effect of market rules, potential for capital improvements, and relationship with a parent company.³

On February 20, 2012, Azure submitted an application to the Director of the Office of Energy Efficiency and the Environment (OEEE), per RPS program rules, for a determination that its hydroelectric generation facility is eligible for RPS maintenance funding. The facility has a nameplate capacity of 0.8 MW, commenced commercial operations in 1993 and generates approximately 2,500 MWh annually. Azure requested a maintenance contract for \$30 per MWh, citing falling energy prices and the

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) and Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Approving Modifications to Maintenance Resource Category (issued October 31, 2005).

³ April 14, 2005 Order, Appendix A pp.10-12

expense of required repairs to its timber crib dam⁴, as its rationale.

After extensive staff review, the Director of OEEE responded to Azure by letter dated February 6, 2013 that its facility was eligible for maintenance support and that staff would make a recommendation, for such financial support, to the Commission.⁵

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning the Azure application and the Commission's consideration for funding the eligible facility, was published in the State Register on March 20, 2013 [SAPA 03-E-0188SP38]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act regarding the Notice expired on May 6, 2013. No comments were received.

STAFF'S ANALYSIS

Application review

Staff's analysis included extensive review of Azure's February 20, 2012 application, supporting records/documentation and updated work papers. Staff learned that Azure is affiliated with a second hydroelectric generating facility, owned and operated by Riverat Glass & Electric, Inc. (Riverat) in Wadhams, NY. One of the two shareholders of Riverat is also a principal

⁴ A timber crib dam is constructed using heavy timbers stacked in a manner similar to a log house and filled in with earth or rubble.

⁵ See February 6, 2013 letter to Mr. Matthew Foley from Floyd E. Barwig re: Application for Determination of RPS Eligibility and Funding of Certain Resources that were in Commercial Operations Prior to January 31, 2003 (Maintenance Tier).

partner of Azure. After untangling the ownership and finances for the two facilities, Staff made reallocations and adjustments of costs that were appropriate to each facility and distributed common costs evenly between the two.

Consistent with the Commission's October 31, 2005 Order, Staff further adjusted Azure's operating expenses to provide for a level of support that would "be adequate to allow the facility to cover its future operating costs and any necessary future capital costs (together sometimes referred to as "to go" costs), but need not cover all sunk costs." ⁶

To that end, Staff reduced Azure's operating expenses to eliminate the sunk costs that included interest costs and depreciation expenses relating to existing equipment. Staff increased Azure's labor expenses to reflect payments made to the general partner for work performed at the site that was initially reported as a "partner withdrawal", a below-the-line charge. Additionally, Staff increased the depreciation expense to reflect future capital additions, which include significant repairs to its crib dam.

Based on Staff's total adjustments, it is estimated that Azure would need to receive payment for its delivered energy at an average annual location-based marginal price (LBMP) of \$60.00 per MWh in order to breakeven for the projected 2013 year. To date, the average 2013 LBMP to the NYISO's North Zone (the zone in which Azure's facility is located) is approximately \$37.00 per MWh, significantly below the breakeven point.

Dam Reconstruction

While Azure's facility began commercial operation in 1993, the dam upon which the facility relies was constructed in

⁶ October 31, 2005 Order, page 3.

1947 by the local volunteer fire department to provide a source of water to fight fires in the town. The dam forms a reservoir approximately six miles long. When the site was acquired by Azure and developed for hydroelectric generation in 1993, the top two log layers of the crib dam were replaced; the upstream face of the dam was planked; the top of the dam was decked over; and new flash boards were installed. Azure reports that the top course of the timbers is rotting and must be replaced.

In the fall of 2012, the Federal Energy Regulatory Commission (FERC) expressed concern about the deteriorating condition of the dam. An analysis of the dam was made by the NYS Department of Environmental Conservation's Regional Dam Safety Engineer and FERC representatives. It was determined that the dam was in need of substantial repairs, but was permitted to continue to operate on a temporary basis. However, without substantial repairs, or complete replacement, the flash board on top of the dam would have to be removed. With the flash boards removed, the resulting drop in head height would make the site unsuitable for hydroelectric generation and result in the abandonment of the generating facility. As a result of its existing condition, the dam leaks as much as 50 cubic feet of water per second, resulting in an estimated loss of 350 MWh of generation per year.

Azure reports that it would like to make the necessary repairs to the dam to eliminate this leakage and maintain the required head height. Azure estimated, and DEC confirmed, that the cost of this reconstruction could range between \$500,000, for a reconstructed crib dam, and \$1 million, for a concrete dam. Based on Staff's discussions with Azure, and its engineer, it was determined that the reconstruction of the dam could be completed at cost of approximately \$500,000.

Production Quantity

A review of Azure's facility's historic generating level from 2005 through 2011 indicates that the plant has produced energy in the range of 2,385 MWh to 2,648 MWh annually, with an average production of approximately 2,500 MWh.

DISCUSSION AND CONCLUSION

Upon Staff's detailed review, we find that Azure is in need of financial support in order to complete the reconstruction of the timber dam, and that such reconstruction is required for Azure's facility to remain in operation. Without support, it is unlikely that Azure could complete the dam repairs and would therefore be required to remove the flash boards that are critical to the continued operation of the facility. After considerable analysis, we believe an incentive level of \$20 per MWh will provide the necessary financial support to reconstruct the dam and allow the facility to remain in operation. We assume that the cost of this repair will be supported by the contract over a 10-year period, or \$50,000 per year incremental annual costs. We believe a 10 year contract term is reasonable and consistent with the contract terms for other renewable energy facilities participating in the RPS program. We will also authorize NYSERDA to begin the contract year for actual production beginning January 1, 2013. We will, however, put Azure on notice that staff reserves the right to review the financial books and records of the facility going forward to determine if the level of support is still prudent.

We, therefore, authorize NYSERDA to enter into a maintenance resource contract with Azure in the amount of \$20 per MWh, up to 2,500 MWh per year. This will result in a maximum annual RPS incentive payment of \$50,000. We note that this incentive amount is less than the weighted average price

awarded in the most recent Main Tier solicitation held in the final quarter of 2011.⁷ This funding level is designed to keep the facility in operation. In addition, we will require Azure to complete dam reconstruction by the end of 2014 and provide staff with all documentation to support the completion of the dam reconstruction effort. We will also require NYSERDA to include, in its contract with Azure, a mechanism to ensure that if the dam reconstruction is not completed in accordance with this order, that Azure would be required to refund payments made under the terms of the contract. The details of this condition, and others discussed above, are provided in an Appendix attached to this order.

The Commission orders:

1. Azure Mountain Power Company (Azure) is offered a maintenance resource contract under the Renewable Portfolio Standard Program (RPS) for its St. Regis Falls facility with a production incentive of \$20.00 per Mwh for a term of 10-years for actual electricity production beginning January 1, 2013, as described in the body of this order.

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

⁷ 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 eighth competitive Main Tier solicitation (RFP 2554) was re-issued in January 2013. Awards from that solicitation have not yet been made.

3. The New York State Energy Research and Development Authority (NYSERDA) is authorized to enter into an RPS maintenance resource contract, as described in the body of this order and the Appendix.

4. NYSERDA is authorized to begin making payments for actual electricity produced on or after January 1, 2013, upon Azure's submission of a written notice of its acceptance of this decision and execution of the contract.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary

Azure Mountain Power Company
Terms of Maintenance Resource Contract

RPS-eligible Attributes:

In order to enter into an RPS Maintenance Resource 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.

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, 2022.

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.

Contract Revocation:

This contract is offered in anticipation of the reconstruction of the existing timber crib dam at the St. Regis Falls facility. If the reconstruction of the dam at this facility is not completed by the end of 2014, this contract may be terminated and all funds paid under this contract will be subject to refund.

Upon completion of the reconstruction of the dam, the Azure shall provide NYSERDA and 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 reconstruction.