STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 18, 2009

COMMISSIONERS PRESENT:

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

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

ORDER CONCERNING FURTHER MODIFICATION OF FUNDING FOR THE CUSTOMER-SITED TIER

(Issued and Effective June 22, 2009)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission adopts changes to the Renewable Portfolio Standard (RPS) Program by reallocating and increasing funding for the solar photovoltaic (solar PV) program of the Customer-Sited Tier by $15 million in response to the continued increasing market demand for that specific renewable energy technology, and by making a corresponding $600,000 reallocation for increased evaluation. The increased funding comes from approximately $110 million of unencumbered funds in the RPS Program, primarily from projects that were chosen in previous renewable energy procurement solicitations, but never materialized. 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 currently provides support for solar PV systems, fuel cells, anaerobic digestion biogas systems, and small wind turbines.

BACKGROUND AND SUMMARY

On September 24, 2004,[1] the Commission adopted a policy of increasing to at least 25 percent by 2013 the proportion of electricity used by retail consumers in New York State derived from renewable resources. The RPS Program was created to implement that policy and the New York State Energy Research and Development Authority (NYSERDA) was designated as the administrator of the program.

In its September 24, 2004 Order, the Commission established two tiers of resource types under the RPS Program. The first, or “Main Tier”, consists primarily of medium to large-scale electric generation facilities that deliver their electrical output into the wholesale power market administered by the New York Independent System Operator. The second, or “Customer-Sited Tier,” consists of smaller, behind-the-meter resources that produce electricity for use on site.

In a subsequent June 28, 2006 Order,[2] the Commission authorized NYSERDA to conduct solicitations for Customer-Sited Tier technologies through 2009, with payments commencing at appropriate times after completion of an Operating Plan.
In an October 28, 2008 Order,[3] the Commission reallocated a cash flow balance of approximately $47 million that was available in the RPS Program to increase funding for the solar PV and

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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 on Customer-Sited Tier Implementation (issued June 28, 2006).

[3] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Concerning Modification of Funding for the Customer-Sited Tier (issued October 28, 2006).

anaerobic digester gas programs under the Customer-Sited Tier to keep pace with escalating market demand for those renewable resource technologies. Of that $47 million, the Commission authorized $20.6 million for the solar PV program and $7.6 million for the digester program bringing the total incentive amounts available for those two programs to $38.8 million and $20.1 million respectively. The Commission also authorized $15.1 million for discretionary use to maximize flexibility to meet changing demands for all the technologies under the Customer-Sited Tier. Lastly, the Commission authorized $3.7 million for evaluation, measurement and verification.

As a follow-up to the October 2008 Order, Staff provided briefings to the Commission on January 15 and March 12, 2009 on the status of funding and activity of the Customer-Sited Tier.[4] At the latter briefing, Staff reported, among other things, that by the end of February 2009, the solar PV Program greatly exceeded historic rates of activity due to an unprecedented rate of applications submitted to NYSERDA during a two week period when notice was provided by NYSERDA that it would be lowering its incentive rates for solar PV installations to reflect the increased federal tax subsidies put into place as part of the November 2008 economic stimulus bill[5]. Consequently, the total $38.8 million budgeted for the solar PV Program fell short by over $20 million. Consequently, NYSERDA transferred the $15.1 million discretionary funds and funds from other under-subscribed Customer-Sited Tier Programs to cover all the

[4] While the January 15 Briefing focused exclusively on the status of the Customer-Sited Tier, the March 12 briefing provided an update and status of the entire RPS Program, including updated funding and activity levels of the Customer-Sited Tier.

[5] During the notification period between January 16 and February 2, 2009, NYSERDA received 348 PV applications totaling approximately $24 million. By way of reference, historic monthly activity levels (burn rates) for the PV program had been between $1.5-2 million.

solar PV applications received to date and to keep the solar PV program from closing (see Table 1A below).[6]

Table 1A

Customer-Sited Tier Status as of February 28, 2009

	Budget ($M)	Transfers	New Budget	Committed	Available
Solar PV	$38.80	$21.50	$60.30	$58.04	$2.26
Digesters	20.11	0.00	20.11	15.63	4.48
Fuel Cells	11.19	(5.40)	5.79	2.06	3.73
Small Wind	3.10	(1.00)	2.10	0.57	1.53
Discretionary	15.10	(15.10)	0.00	0.00	0.00
Evaluation	3.70	0.00	3.70	1.25	2.45
TOTAL	**$92.00**	**$0.00**	**$92.00**	**$77.55**	**$14.45**

Table 1B

Burn Rate Projection as of February 28, 2009

	Available Budget ($M)	Monthly Burn Rate ($M)	Months Remaining
Solar PV	2.26	2.0	1.1
Digesters	4.48	1.0	4.5
Fuel Cells	3.73	0.3	12.4
Small Wind	1.53	0.05	30.6

Although the monthly activity rates for the Solar PV Program decreased sharply following the lower incentive levels, Staff reported that given historic monthly activity rates of about $2 million, the solar PV Program would likely be depleted of funds before the summer of 2009.

[6] At the March 12 briefing to the Commission, it was reported that NYSERDA transferred $20.5 million to the solar PV Program when in fact the transfer amount was $21.5 million. The $1 million unaccounted for was reallocated from the Fuel Cell Program leaving an available balance of $2.26 million in the solar PV Program and $3.73 in the fuel cell Program. Table 1 above shows the corrected budgets.

RPS CASH FLOW BALANCE

NYSERDA reports a current cash-flow balance of approximately $110 million in the overall RPS program. This balance represents the difference between the amount of funds collected from ratepayers to support the overall RPS Program to date and the amount of such funds currently needed to pay invoices (contract commitments). Much of the cash flow balance is due to disencumbered funds from cancelled wind power projects that contracted to sell renewable attributes to NYSERDA through the RPS Main Tier competitive bid process. Available Main Tier funds not yet encumbered, or disencumbered because of cancelled contracts, total approximately $104 million. In addition, letter of credit proceeds from those cancelled contracts total approximately $1.9 million and, lastly, NYSERDA reports cumulative interest earnings at about $3.6 million.

STATUS OF CUSTOMER-SITED TIER

NYSERDA has been providing staff with periodic updates on demand rates and program progress for each technology in the Customer-Sited Tier. The tables below summarize the Customer-Sited Tier progress and activity through April 30, 2009 and provide a projection of how long current funding will last, given historic activity levels.

Table 2A

Customer-Sited Tier Status as of April 30, 2009 (MW)

	Operating Plan: 2009 Target (MW)	Number of Applications	Pending Contracts (MW)	Actual Installed Capacity (MW)	Total Pending and Installed Capacity (MW)
Solar PV	3.5	1462	12.01	2.98	14.99
Digesters	3.7	25	7.16	0.10	7.26
Fuel Cells	2.7	4	0.61	0.00	0.61
Small Wind	1.8	26	0.24	0.04	0.28
Program Total	**11.7**	**1517**	**20.03**	**3.12**	**23.15**

Table 2B

Customer-Sited Tier Status as of April 30, 2009 ($M)

	Budget	**Encumbered**	**Pending Funding Commitments**	**Available Funding**
Solar PV	$60.30	$28.20	$31.00	$1.10
Digesters	20.11	8.90	7.50	3.71
Fuel Cells	5.79	0.03	2.10	3.66
Small Wind	2.10	0.50	0.06	1.54
Evaluation	$3.70	$0.00	$1.50	$2.20
TOTAL	**$92.01**	**$37.60**	**$42.20**	**$12.21**

Table 2C

Burn Rate Projection as of April 30, 2009

	Available Budget ($M)	**Monthly Burn Rate ($M)**	**Months Remaining**
Solar PV	$1.10	2	0.5
Digesters	$3.71	1	3.7
Fuel Cells	$3.66	0.3	12.2
Small Wind	$1.54	0.05	30.8

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking was published in the State Register on December 10, 2008. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) expired on January 26, 2009.[7] The comments received are summarized below.

[7] A more recent Notice of Proposed Rulemaking was published in the State Register on June 3, 2009, seeking comment on whether to authorize a 2009 RPS Main Tier procurement solicitation by NYSERDA utilizing up to $95 million of RPS program funds – the remaining cash flow balance.

COMMENTS OF THE PARTIES

Substantive comments were submitted by 11 individuals and organizations. Also, many e-mails were generated and sent to the Commission and Staff prompted by a January 9, 2009 Times Union article on issues raised in the December 10 Notice. Most of the comments support the Customer-Sited Tier and RPS Program in general but condition such support with recommendations that there be further modifications to the RPS Program itself. Only one comment directly favors reducing the funding for the Customer-Sited Tier.

Parties Opposing Proposal

One party, Multiple Intervenors,[8] opposed any consideration of increasing customer collections for the RPS Program, particularly the Customer-Sited Tier. It notes that the severe economic recession warrants measures to reduce electricity rates and the fact that the Customer-Sited Tier represents only a very small portion of the overall RPS Program (but utilizes a disproportionate amount of the funds) is a compelling reason for not increasing, and reducing materially, the amount of customer collections used to fund the Customer-Sited Tier. It further notes any consideration for future funding for the Customer-Sited Tier should await completion of the scheduled comprehensive RPS review in 2009.

Parties Supporting Customer-Sited Solar PV

Substantive Comments in support of the Customer-Sited Tier and specifically, the solar PV program, were received from Alliance for Clean Energy New York (ACE NY), Vote Solar, Hudson

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[8] Multiple Intervenors is an unincorporated association of over 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

Valley Clean Energy and two individuals. In addition, 22 letters from owners of solar PV systems were submitted generally supporting the continuation of Customer-Sited Tier funding for the residential and commercial solar PV program. Lastly, over 200 individual e-mails were received supporting Governor Patterson's State of the State address regarding solar initiatives throughout New York State.

ACE NY comments that the Commission should immediately adopt Governor Patterson's Renewable Energy Task Force recommendation of installing 100 MWs of photovoltaics within three years and to appropriate the necessary funds to accomplish that goal. Also, it contends that the 50kw size limit in the solar PV program should be raised to 2 MWs, consistent with the recently passed net-metering law and the Commission's own standardized interconnection requirements.

Hudson Valley Clean Energy commented that the repeated stopping and starting of PV funding is very disruptive for companies like itself (sellers, designers and installers of renewable energy systems) and that the Commission must quickly reallocate additional funds to the solar PV program and authorize additional collections to prevent the boom and bust cycles that occur in the photovoltaic system industry. It further comments that the Commission should give NYSERDA the freedom to react to changes in the market and more quickly adjust PV funding levels, without going to the Commission or its staff for permission or approval.

Vote Solar[9] proclaims that development of a working-class solar market in New York will provide great value to

[9] Vote Solar is a web-based initiative founded after the successful effort to pass a ballot for a $100 million revenue bond in San Francisco in November, 2001. With the goal of building the economies of scale necessary to bring down solar technology costs, Vote Solar has worked to replicate this model in cities and states around the country, including New York.

ratepayers in the form of reduced delivery costs, increased reliability, reduction in peak load, energy security, and environmental sustainability. It remarks that the current Customer-Sited Tier program is not large enough in scope or duration to deliver the sustained, orderly growth necessary to build a sustainable solar industry. It offers several principles to guide the development of a well constructed customer-sited solar energy market including: a 2,000 MW statewide goal by 2020 with a build-out schedule; broad geographic diversity while encouraging solar development in areas where it as the highest value to the host, the utility, customers and citizens of the state; support of a wide diversity of business models, developers, system sizes and technologies that have access to the program; program rules that are easily understood; and incentives based on system performance and phased out over time.

Several individuals commented that the Commission should maintain the incentives in the solar PV program because of all the advantages solar energy offers as an alternative energy choice.

Parties Supporting Other
Technologies in the Customer-Sited

Comments supporting other technologies in the Customer-sited Tier include the New York Farm Bureau, Earthkind, Fuel Cell Energy and Sustainable Energy Development.

The Farm Bureau comments that the Commission should allocate at least 25% of total funding in the Customer-Sited Tier to the Anaerobic Digester Biogas Program, which will provide incentives for farmers at a steady rate and help build a sustainable digester infrastructure. It also recommends updating each program in the Customer-Sited Tier to reflect the new allowable net-metering thresholds. The Farm Bureau further comments that NYSERDA and the Commission should evaluate the customer-sited small wind program to identify and address barriers that have stalled adoption and implementation of that technology. ACE NY makes similar comments and recommends programmatic changes to help facilitate the growth of the wind market, primarily to allow for larger caps for larger-scale wind turbines located behind the meter, particularly given NY's expanded law that allows turbines up to 2 MWs to take advantage of net-metering.

Sustainable Energy Development comments that the 1.8 MW capacity goal for the small wind program will never be reached unless the funding caps are raised to provide assistance for larger wind turbine installations. It suggests introducing a separate program for customer-sited wind that allows turbines larger than 100 kW to be eligible. It further comments that the current funding cap of $150,000 for the wind program clearly limits the financial benefit of installing larger wind turbines, as prices for turbines and installation have greatly increased since the Operating Plan was approved in 2007. It also cites the programs offered by the state of Massachusetts as an example of how to develop a thriving customer-sited wind market. It notes that the Massachusetts Technology Collaborative, which administers the program, has allocated nearly $15 million for wind energy projects resulting in the installation of 3.5 MWs to date and more than 100 MW in development.

Fuel Cell Energy calls for an increase in funding for the fuel cell program from its current level to $22.4 million because fuel cells provide advantages over the other eligible technologies in the customer-sited Tier. It further remarks that the slow progress for fuel cell development is actually a direct result of a design flaw in the RPS fuel cell program, i.e., the $1 million per unit cap on funding in the program is insufficient incentive to make projects in dense urban environments, such as New York City, economically viable. ACE NY also comments that the fuel cell program needs to have a larger incentive available for larger fuel cell installations and that the Commission should ensure that sufficient funds are available to promote both small and large fuel cell applications.

Earthkind remarks that solar thermal is an underutilized technology in New York, primarily because of the lack of government emphasis that has not enabled solar thermal technology to thrive as it has in other markets with similar solar resources. It recommends allocating a portion of the discretionary funds – approximately $3 million of the revised $15.01 million – to be specifically designated to building a New York solar thermal industry. It believes that allocating a small portion of the overall RPS Customer-Sited Tier specifically to solar thermal would quickly create a self-sustaining solar thermal market that can reduce energy consumption, and provide a powerful stimulus to the state’s economy.

Parties Supporting Programmatic
Changes to the Customer-Sited Tier

Ace NY comments that the Customer-Sited Tier could use some programmatic changes to help ensure the success of all four technologies. It offers similar principles for sustaining a viable renewable market noted above by Vote Solar, which include: the establishment of meaningful and enforceable deployment targets over a period of 5 years to a decade; support for broad geographic diversity while encouraging development in highest value areas; provisions for upfront payments or a stable, certain long-term revenue stream; and easily understood program rules. ACE NY remarks that technology-specific programs must have adequate funding to meet demand and should be formulated to work in concert with the state's net metering law, interconnection requirements and state and federal tax credits. It also states that a rapid Commission decision in favor of increased funding for the RPS is essential; without such a decision, NY based installers will see their nascent and growing industry falter and potentially fail.

Great Brook Enterprises remarks that the approval of projects by NYSERDA under each Program in the Customer-Sited Tier must be held to within certain time limits just as the installer is held to time limits to insure a profitable climate for the industry and fair pricing for the customer. It further states that NYSERDA and the Commission makes future demand difficult to forecast because customers often wait to see what incentives are created and then scramble to compete for limited funds at the last minute when faced with diminishing incentives or the end of a program, noting that steady demand makes for much more stable employment opportunities. It recommends that NYSERDA announce their intentions for program changes in detail several months in advance so that installers selling a system can accurately inform the customer on what to expect by the time the system is completed six to nine months in the future. In addition, it comments, customer contracts and installations in progress must be allowed to be grandfathered.

As an alternative to the current buy-down incentive, Great Brooks Enterprises strongly supports a feed-in tariff program for all forms of renewable energy. It goes further by stating that in lieu of the government funding renewable energy system up front, systems can be funded gradually over time resulting in some rate-payer relief while allowing for more effective and rapid deployment of distributed renewable energy generation systems. In conjunction with such a feed-in tariff, it notes, a financing loan program could be offered such that the customer can obtain an immediate positive cash flow.

Other individuals offered suggestion for improving the Customer-Sited Tier Program noting that program uncertainty causes erratic purchasing decisions by customers who often make purchases based on deadlines for incentives instead of on personal needs. One individual suggested a state-wide registration system for PV installation (similar to the Department of Motor Vehicle registration system) to facilitate a more rapid approval process by NYSERDA.

DISCUSSION

As noted above, the available budget for the solar PV program is likely to be exhausted in the very near term. Given the historic monthly burn rate of about $2 million for that program, we will allocate an additional $15 million of the approximate $110 million cash flow balance to the solar PV program to ensure sufficient program funds are available through the end of 2009. We expect to make a broader decision on the RPS Program before those funds are exhausted. We will also allocate an additional $0.6 million to fund evaluation of the added Customer-Sited Tier dollars. We believe that use of the current cash flow balance as an interim mechanism to ensure orderly funding for the solar PV program in the Customer-Sited Tier is an appropriate action to take now to maintain momentum for the solar PV program until we are able to address the broader RPS Program issues. At such time, we expect to be presented with sufficient data so that we can assess whether the program parameters imposed by each technology in the Customer-Sited Tier are yielding the most cost-effective applications of the technologies or are otherwise justified to encourage the development of particular niche markets for the technologies.

The data should also include updates to the monthly demand rates, the amount of funds spent and sufficient cost per kilowatt hour information to compare the costs of residential and other small installations to potentially larger commercially-sized applications.

We should clearly note that the reallocation undertaken here does not represent an increase in budget or ratepayer collections for the RPS Program as a whole, and does not use excess or surplus cash, as Multiple Intervenors suggests. It is merely in the nature of a transfer of funds which have become unencumbered due to non-executed contracts. All recommendations we have received in the comments to increase the overall RPS Program budget, make program changes, provide funding to the other technologies in the Customer-Sited Tier and include new technologies will be considered in the near future. While we understand the concerns raised by several parties about the program design and funding caps of the small wind and fuel cell programs, and the desire to include new technologies such as solar thermal, we note that these issues are currently being evaluated by Staff and NYSERDA as part of the comprehensive review of the entire RPS Program to assist us in determining what program changes may be necessary to better serve these technology sectors. With respect to the anaerobic digester biogas program, the available funding in that program remains sufficient through 2009.

SEQRA FINDINGS

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order we find that the funding reallocations adopted here are within the overall action previously examined by us and will not result in any different environmental impact than that previously examined. In addition, the SEQRA findings of the September 24, 2004 Order are incorporated herein by reference and we certify that: (1) the requirements of SEQRA, as implemented by 6 NYCRR Part 617, have been met; and (2) consistent with social, economic, and other essential considerations, from among the reasonable alternatives available, the action being undertaken is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

CONCLUSION

For the reasons given in the discussion above and to maximize flexibility to meet changing demands, we will authorize use of the approximately $15.6 million as part of the current cash balance in the RPS Program for additional Customer-Sited Tier commitment purposes for the Solar Photovoltaic Program and for evaluation. Based on the monthly demand rates for solar photovoltaic systems noted above, this specific allocation should satisfy that demand at least through 2009. We will continue to evaluate this allocation and all aspects of the performance of all programs as we further review the RPS.

The Commission orders:

1. Use of $15.6 million in recently unencumbered funds in the Renewable Portfolio Standard Program is authorized for Customer-Sited Tier purposes. $15 million shall be allocated to the solar PV program and $600,000 shall be allocated to evaluation.

2. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary