STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

PETITION FOR MODIFICATION OF RPS MAIN TIER PROGRAM

Introduction

The New York State Energy Research and Development Authority (NYSERDA) respectfully requests that the Commission issue an order revising the rules of the Renewable Portfolio Standard (RPS) Program Main Tier to limit eligibility to projects located in New York State.[1] Limiting eligibility to projects within the State will maximize the achievement of the objectives of the program. Focusing the Program on the development of infrastructure in New York will also bring the RPS effort more closely into alignment with the overall strategic initiative of modernizing the State's power generation and transmission system, as set forth in the 2012 New York Energy Highway Blueprint.[2]

Background

On September 24, 2004, following an extensive stakeholder process, the Commission issued an Order adopting the RPS program in order to promote three principal objectives: (1) environmental improvement; (2) energy security; and (3) economic benefits to New York.[3] Environmental improvement is realized when incremental renewable energy displaces fossil-fueled energy and is consumed in New York State. Energy security and direct economic benefits are realized by the State only when renewable energy projects are built and operated in New York State.

[1] NYSERDA recommends that offshore projects directly interconnected to the New York grid should be considered in-state and therefore eligible.

[2] New York Energy Highway Blueprint, 2012. http://www.nyenergyhighway.com/Content/pdf/Blueprint_FINAL.pdf

[3] Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, "Order Regarding Retail Renewable Portfolio Standard," issued and effective September 24, 2004, p. 22.

The current RPS goal is to increase the proportion of renewable energy used in New York to 30% by 2015.[4] The program is funded entirely through a surcharge on the delivery customers of the State's investor-owned utilities.[5] The Program does not currently employ any geographic limitations. Out-of-state projects are required to deliver energy to New York under an hourly matching requirement.

As the Central Procurement Administrator of the RPS Program, NYSERDA pays a production incentive to renewable electricity generators selected through competitive solicitations in exchange for all rights and claims to the energy attributes, also called renewable energy credits or "RECs," associated with each megawatt-hour (MWh) of renewable electricity generated under an RPS agreement.[6] The acquisition of RECs facilitates the transactions and provides a unit increment, in this case one REC per MWh, by which progress toward the environmental goal can be measured. While useful for measuring progress toward the 30% goal, the number of RECs purchased does not provide a measurement of progress toward meeting the remaining objectives of the program, which are to improve the State's economy and its energy security.

Economic Benefits

Economic benefits are realized in New York from the planning, development, construction, and operation of renewable energy facilities in the State. These economic benefits materialize in the form of long and short term jobs, property tax or payment-in-lieu of tax (PILOT) benefits to local governments and school districts, biomass fuel purchases, in-state purchases of goods and services, and lease and royalty payments to landowners.

Independent evaluations indicate that the potential economic benefits associated with renewable energy development are substantial. An analysis conducted as part of a comprehensive RPS Program mid-course evaluation in 2009 concluded that Main Tier projects will produce approximately $6 billion in direct economic benefits if the 30% target is met.[7] These expected

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[4] "Order Establishing New RPS Goal and Resolving Main Tier Issues," issued and effective January 8, 2010.

[5] "Order Regarding Retail Renewable Portfolio Standard;" issued and effective September 24, 2004, p. 65.

[6] The energy attributes, defined under the program as "RPS Attributes" include any and all reductions in harmful pollutants and emissions, such as carbon dioxide and oxides of sulfur and nitrogen. RPS Attributes are similar to Renewable Energy Certificates that are commonly used in other RPS programs to catalog and recognize the environmental attributes of generation.

[7] New York Main Tier, Impact and Process Evaluation, KEMA, Inc. March 2009, Table 8 on pp. 5-5. This figure is aggregated from bid information provided by the facilities during the bid evaluation and award selection process. Contract terms require that facilities demonstrate actual investment of no less than 85% of the bid-based amount, or they will be penalized through a lowering of their contract prices.

direct economic benefit figures do not include any estimate of additional economic activity or multiplier effects that typically accompany direct economic activity, which the RPS program evaluation found have the potential to double the direct economic benefits.

The economic benefits conclusions of the 2009 Program Review, which were based largely on projections, have been verified and substantiated through recent RPS program compliance reviews. The RPS contracts provide that, after three years of operation, each contractor is required to provide supporting documentation to substantiate the direct New York state economic benefits that were included in their proposals.

NYSERDA has completed rigorous reviews of the economic benefits documentation reports of 18 contracted facilities.[8] Those review indicate that the actual economic benefits of the program are substantial, and that they are in line with the findings of the 2009 RPS evaluation. For example, the economic reviews for 8 wind projects have verified that spending in New York through the first three years of operation totaled more than $350 million and on average each wind farm impacted over 200 in-state businesses. Extrapolation of the anticipated long-term salaries, PILOT and Host Community Payments, and landowner payments over the 20-year useful life of these facilities indicates that direct spending in New York will likely exceed $660 million and average approximately $24 per MWh, for every MWh produced over the 20 year period.

While out-of-state projects provide little or no direct economic benefits to New York, it has been recognized that the lower bid prices expected from out-of-state projects have an economic value to New York in the form of lower program costs. However, any program cost savings through a lower bid from an out-of-state project are limited to the 10 year term of the RPS contract. The verified economic benefits of a project located in New York last for the life of the project – typically 20 years or more and, as discussed above, the average benefit per MWh for a wind project over the 20 year period is $24.

It appears that no amount of reduction in the bid price for a ten-year NYSERDA contract from an out-of-state project can offset the loss of 20 years of economic benefits from a project built in New York. As an illustration, a $10 per MWh bid price savings for a 100 MW out-of-state wind

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[8] Such documentation generally takes the form of third party invoices, third party confirmations, tax payment receipts, W-2s, and similar credible documentation.

farm would yield approximately $24.5 million in program savings, but would forgo $117.7 million in economic benefits to New York.[9] From a financial viewpoint, the enormous economic benefits that renewable energy development can provide will only accrue to New York if the projects are built and operated in New York. The potential program cost savings of lower out-of-state bid prices are far outweighed by the economic benefits that in-state projects provide.

Further, if the renewable percentage goal is to be sustained, all of the out-of-state RECs will eventually have to be replaced. The out-of-state electricity delivery requirement expires upon the expiration of the contract, as does New York's right to claim the environmental benefits that result from an out-of-state facility's operation (the RECs). Once the contracts expire, out-of-state facilities will be free to sell their energy and RECs as they please.

While New York's rights to the RECs from New York projects will expire at the end of in-state contracts, it is much more likely that the energy and RECs will remain in New York and will be available to New York's voluntary market. According to the Orders, the goal is to increase the renewable percentage of energy consumed by New Yorkers to 30% by 2015. If the goal of the program is to sustain the 30% level into the future, all of the energy from out-of-state projects will have to be replaced, upon the expiration of the out-of-state contracts, by energy from new projects at additional expense to New York ratepayers.

The selection of projects for award is currently based on an overall competitive score consisting of projected economic benefits to New York, weighted at 30%, and price, weighted at 70%. NYSERDA believes that these criteria should stay in place. NYSERDA's experience is that including the economic benefits criterion promotes resource diversity within the State. In addition, because it applies to all projects, the 30% weighting factor encourages purchases and expenditures in New York, whether the project is located in New York or elsewhere. NYSERDA suggests that, if the Commission grants this Petition limiting eligibility to projects located within New York, the economic benefits criterion should remain in place and should be further explored as a part of the scheduled 2013 RPS Program Review.

[9] A 100 MW wind project, at a 28% capacity factor, will produce 245,280 MWhs annually. Cost savings calculated as 245,280 X $10 X 10 (contract years). Lost economic benefits calculated as 245,280 X $24 X 20 (# of years of useful life of the project).

Environmental and Energy Security Benefits

The extent to which New York will gain any environmental or energy security benefits from an out-of-state facility is questionable. The environmental[10] benefits are in part dependent on the delivery of incremental energy to New York, which is difficult if not impossible to verify. Out-of-state projects are required to deliver energy to New York on an hourly basis.[11] However, to be compliant the energy need not be renewable, but merely equivalent in quantity, and no method has been identified that will verify with certainty that energy delivered by out-of-state projects would not have been delivered if there been no RPS contract. Even where the delivery requirement is adhered to, it cannot be verified with any certainty that any *incremental* electricity is being exported to New York because of the RPS contract, because the project contractor may already be exporting many times the required amount of "matching" energy into the New York control area.

Out-of-state projects are unlikely to provide any energy security benefits to New York, and these projects are least likely to be of any benefit under circumstances where our energy security is most threatened. Energy security is enhanced by resource diversification and the development of indigenous infrastructure. The contribution of an out-of-state project to resource diversification is dependent on the delivery to New York of incremental energy. Delivery from out-of-state projects is vulnerable to system failures and or disruptions that occur in neighboring control areas. Thus, New York should not expect any energy security benefit from out-of-state projects. If disruptions occur, system operators in other states are unlikely to deliver energy to New York to the detriment of their own reliability.

Simply stated, if the RPS projects are built in New York, the State will have greater assurance that the renewable output of the projects is available to serve the State's electricity requirements and benefit the State's environment.

The New York Energy Highway Blueprint

The RPS Program is a key element of the New York Energy Highway Blueprint, which specifically recommends and depends upon the development of in-state renewable resources. Prepared in response the Governor Cuomo's 2012 State-of-the-State, the Blueprint recommends

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[10] The environmental benefits are based on displacement of generation in New York, which of course will not occur absent actual delivery.

[11] *See* "Order on Delivery Requirements for Imports from Intermittent Generators," issued June 28, 2006, at p. 2.

a comprehensive short, mid, and long-term strategic initiative to modernize the State's power generation and transmission system. Among its recommendations are a series of interrelated actions designed to maximize the value of renewable energy infrastructure in New York. The Blueprint recommends that New York should conduct an RPS competitive solicitation for in-state renewable generation resources by the end of 2012.[12] Recognizing that practical siting issues do not allow the development of large-scale renewable projects in high-load areas, the Blueprint proposes an expansion of the State's transmission system to allow the energy produced by renewable projects in Northern and Western New York to serve the Downstate area. These actions will serve to reduce air emissions in the New York City area, lower wholesale energy prices in the downstate area, and promote the construction of renewable energy projects and economic development upstate.[13] Removal of the transmission constraints will also mitigate the contraction of the supply market that may result from the in-state limitation on RPS support.

Constitutional Issues

The application of the "dormant" commerce clause of the U.S. Constitution to geographic restrictions in state RPS programs has received attention in recent years.[14] New York's RPS Program is somewhat unique, in that it is operates by central procurement rather than by imposing compliance requirements on private entities. Through central procurement, the State directly participates in the market, using funds collected exclusively from New York ratepayers to purchase RECs for the benefit of the State's environment, energy security and economic health. The terms of the competitively-awarded contracts with suppliers relate directly and only to the delivery and purchase obligations of the parties during the duration of the contract. The Program imposes no post-contract restrictions on any party, and does not prohibit or restrict the entry of renewable energy or RECs into New York or otherwise regulate the marketplace. New York's RPS program operates through direct participation in the market, not regulation of the market, and therefore it does not violate the dormant commerce clause.

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[12] Blueprint at p. 63.

[13] Blueprint at p. 39, 67.

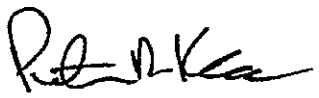
[14] See generally CESA Report at http://lawofficesofcarolynelefant.com/renewablesoffshore/wp-content/uploads/2011/04/cegcommerceclause.pdf .

Conclusion

Limiting eligibility to projects within the State will maximize achievement of the objectives of the program and will bring the RPS effort into alignment with the overall strategic initiative of modernizing the State's power generation and transmission system, as set forth in the New York Energy Highway Blueprint. NYSERDA respectfully requests that the Commission issue an order revising the rules of the Renewable Portfolio Standard Program Main Tier to limit eligibility to projects located in New York State, and making such rules applicable to all awards issued subsequent to the issuance of the order.

Dated: December 14, 2012

Respectfully submitted,



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