STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on July 16, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

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

ORDER APPROVING REQUEST FOR FUNDING OF REENERGY CHATEAUGAY AS MAINTENANCE RESOURCE

(Issued and Effective July 22, 2015)

BY THE COMMISSION:

INTRODUCTION

ReEnergy Chateaugay, LLC (ReEnergy) owns a 21 MW biomass-fired facility (the Facility) located in the Town of Chateaugay in Franklin County, New York. Pursuant to Commission order, NYSERDA entered into a Renewable Portfolio Standard (RPS) Maintenance Tier contract with the Facility's previous owner in 2006. In April 2012, the Commission approved additional maintenance resource funding after ReEnergy's purchase of the facility, but did not extend the contract term. Because the Facility became idle in September 2012, ReEnergy has not collected funds under the expanded contract for the last several years. On November 26, 2014, ReEnergy submitted a petition seeking further financial relief for its Facility as a Maintenance Tier resource under the RPS program, including an extension of its contract based on the amount of time that the Facility was idle.

In this order, the Commission authorizes the New York State Energy and Research Development Authority (NYSERDA) to enter into a four year and seven month Maintenance Tier contract with ReEnergy to receive additional financial support. The contract shall commence upon the Facility's return to commercial operation, but no later than July 1, 2016, and upon a demonstration by ReEnergy that it has executed a long term power purchase agreement (PPA) or some other long term arrangement with an independent third party, as described in the body of this order, that will keep the plant in operation beyond the term of its Maintenance Tier contract. If those conditions are met, ReEnergy shall receive an incentive payment of $33.49/MWh on up to 128,000 MWh of energy generated annually at its 21 MW biomass-fired facility.

BACKGROUND

The Commission created a Maintenance Tier financial support program for certain eligible renewable generating facilities in the September 24, 2004 order establishing the RPS program.[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 for the maintenance of an existing eligible renewable energy facility.[2] The Commission stated the level of financial support

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[1] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Regarding a 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) (April 2005 Order); Order Approving Modification to Maintenance Resource Category (issued October 31, 2005) (October 2005 Order).

for existing facilities should meet the needs of each project to maintain the financial solvency of the facility. The case-by-case approach is intended to ensure that the amount of financial support offered is adequate to fund each project, while preserving the largest portion of the RPS program funds to encourage development of new renewable sources. The April 2005 Order directed the Director of the Office of Energy Efficiency and the Environment (OEE)[3] to recommend a set payment to the Commission at an “amount at the minimum level to assure project solvency.”[4]

The Facility commenced operation in 1993. In a February 16, 2006 RPS Order, Boralex New York LP (Boralex), the then-owner of the Facility, was granted a ten-year maintenance support contract for the Facility.[5] The contract was capped at $15 per MWh, on up to 128,000 MWh per year delivered to the New York energy market in conformance with the RPS program requirements. On November 11, 2011, Boralex submitted a petition seeking modification to its Maintenance Tier contract. In December 2011, Boralex sold the Facility to ReEnergy. Subsequently, ReEnergy filed a letter with the Secretary confirming that it agreed with all the information set forth in the November 11, 2011 petition and, as the new owner, continued to seek the relief originally sought by Boralex.

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[3] As a result of subsequent organizational changes, this responsibility currently rests with the Director of the Office of Clean Energy.

[4] April 2005 Order at 32.

[5] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Approving Request for RPS Program Funding as a Maintenance Resource (issued February 16, 2006) (February 2006 Order).

By Order dated April 20, 2012, the Commission approved, with some modification, ReEnergy's request for additional maintenance resource funding.[6] The April 2012 Order directed NYSERDA to offer ReEnergy an incremental RPS production incentive of $11/MWh, or a total incentive of $26/MWh, on up to 128,000 MWh per year. The expiration date of the contract remained March 31, 2016. Further, the Commission prohibited ReEnergy from seeking additional RPS maintenance tier support after March 31, 2016.

PETITION

On November 26, 2014, ReEnergy submitted a petition seeking financial relief for its Facility as a Maintenance Tier resource under the RPS program. ReEnergy requested the Commission extend its Maintenance Tier award for a period of four years and seven months and increase that award. According to the petition, the new Maintenance Tier contract term represents the remaining term of the Facility's existing contract with NYSERDA plus the length of time that the Facility has been idle and not performing during the term of the existing contract, such that the total of the four years and seven months plus the time the Facility was operational under the existing contract will equal ten years in total.

The Company asserts that the Facility became idle in September 2012 because the wholesale energy prices and the renewable energy credit price under the current contract were insufficient to cover operating expenses. According to the ReEnergy petition, the closure of the Facility has severely

[6] Case 03-E-0188, Renewable Portfolio Standard, Order Approving Request for Modification of Funding as a Maintenance Resource (issued April 20, 2012) (April 2012 Order).

affected employees, their families, and businesses that have relied on the Facility’s operation for many years. The Company claims the closure also impacts the health of the forests, and increases the state’s reliance on fossil fuels. ReEnergy states that the relief sought, if granted, would allow the Facility to operate for nearly five more years “during which time ReEnergy is optimistic that changes in energy markets and other factors will allow the Facility to be financially sustainable.”[7]

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the petition was published in the State Register on December 24, 2014 (SAPA 03-E-0188SP52). The minimum time period for the receipt of comments pursuant to the State Administrative Procedure Act (SAPA) regarding the notice expired on February 9, 2015. Seventy-six parties and members of the public representing Facility employees; Facility suppliers; local citizens; community, trade, and consumer groups; and state and local officials submitted comments, which are summarized below. A list of commenting parties is included in Appendix A.

SUMMARY OF COMMENTS

All but one of the comments submitted were in support of ReEnergy’s petition. These comments primarily note the adverse impact the plant’s closure has had on regional employment and businesses. Comments also state that the Facility has had positive impacts on the health and sustainability of local forests. Multiple Intervenors submitted comments opposing the relief sought by ReEnergy.

[7] Case 03-E-0188, supra, Petition of ReEnergy Chateaugay LLC for Maintenance Tier Support at 3 (filed November 26, 2014).

Comments in Support

The overwhelming majority of comments state that the closure of the Facility has had an adverse economic impact on the region. Employees, suppliers, area businesses, and local officials explain that the closure of the Facility has added to the economic challenges throughout the region. In addition, some of parties mention the recent closure of the Chateaugay Correctional Facility, which resulted in the loss of over 100 jobs, as an added stress on the local economy.

Senator Elizabeth Little, who represents the region, states in her comments that “if the Facility received a long term contract to sell renewable energy credits at a sufficient price under RPS, Franklin County would enjoy a much-needed boost in economic activity.” Many residents of the region detail the hardship the closure of the Facility has caused for their businesses, including logging companies, wood chippers, and area storeowners. The Supervisor of the Town of Chateaugay and the Franklin County Board of Legislators also comment on the hardship on the residents and state that the area economy has relied on the Facility for many years. The Biomass Alliance asserts that the Facility purchases $6.5 million in fuel from logging companies and supports more than 100 direct and indirect jobs. Moreover, the Biomass Power Association notes an industry statistic that purports that one MW for biomass power supports an estimated five jobs.

Assemblywoman Janet Duprey, who represents the Chateaugay area, echoes the comments of other parties regarding the importance of the Facility to economic vitality of the region. Senator Catherine Young of the Senate Legislative Commission on Rural Resources also strongly supports the petition, stating that the abundant renewable resources in the North Country region, which advance energy independence in a sustainable manner, remain underutilized as evident by the idled Facility.

Commenters also stress the importance of forest sustainability. Loggers and land management companies state that the removal of the low-grade forest residue is important to the sustainability of healthy forests, explaining that the biomass facility provides a market for the low-grade forest residue, while encouraging sustainability practices needed for good forest management. Biomass Power notes in its comments that ReEnergy received the Sustainable Forestry Initiative Certification, which verifies that the company's biomass procurement program promotes land stewardship and responsible forestry practices.

Agri-Mark, owner of McCadam Cheese Company in Franklin County notes the Facility's potential value as a distributed generator, describing it as consistent with the Commission's Reforming the Energy Vision initiative.[8]

Comment in Opposition

Multiple Intervenors (MI) is an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. While MI states that it has no objection to the continued operation of the Facility and generally supports the eligibility of biomass energy resources in the RPS program, it opposes ReEnergy's request for relief for many of the same reasons it did when the Facility requested additional RPS incentive support in 2011.

[8] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015).

Primarily, MI contends that modifying the existing Maintenance Tier contract would: 1) establish detrimental precedents; 2) violate the sanctity of the contracts executed under the RPS program; and 3) force ratepayers to absorb the market risk that ReEnergy knowingly and willingly accepted when it acquired the Facility.

In addition, MI stresses that the Commission stated in the April 2012 Order that the Facility's RPS contract was not to extend beyond March 31, 2016 and prohibited ReEnergy from seeking additional Maintenance Tier support after that date. MI states that ReEnergy does not provide a compelling reason for increasing RPS program costs to support a Facility that remains uneconomic despite generous subsidies. MI also claims that the Commission appeared to be more concerned with the potential local economic impact that might result from the Facility retirement than with potentially losing a negligible portion of the State's renewable energy supply. MI notes the Commission's stated hope, articulated in its April 2012 Order, that ReEnergy implement a plan for the future viability of the plant before its maintenance contract expires on March 31, 2016. MI states that the petition does not indicate that a plan was developed or whether ReEnergy executed any energy hedges, a concern also expressed by the Commission in the April 2012 order.

Lastly, MI disagrees with ReEnergy's argument that the RPS contract should be modified to avoid local economic impact from the Facility's retirement. MI asserts that because the Facility has been idle for two years and it did not operate consistently from 2009 through 2011, the majority of the economic impact may already have been absorbed by the community.

STAFF ANALYSIS

Staff’s analysis included an extensive review of ReEnergy’s November 26, 2014 petition, supporting records and documentation, and updated financial work papers. ReEnergy incorporated, in its Chateaugay filing, recommended financial adjustments made by the Commission in its November 19, 2014 Order approving additional maintenance resource funding for the Lyonsdale facility.[9] As a result, Staff proposes limited adjustments to the filed request.

Based on its analysis, Staff recommends three adjustments to ReEnergy’s forecasted operating revenues and expenses for the Facility. These recommended adjustments are similar to adjustments made in other Maintenance Tier award calculations.

Plant Operating Revenues

In its filing, ReEnergy forecasted its energy revenues using energy prices obtained from a national energy trading firm. Instead, consistent with its recent recommendations, Staff recommends the use of the energy price forecast developed by the NYISO for its 2013 Congestions Assessment and Resource Integration Study (CARIS) Report because it is a public, independent report prepared by the entity that has authority over the energy markets in New York State.[10] The CARIS Report forecast provides a summary of future zonal energy prices, statewide, through 2022. Each zonal energy price forecast is

[9] 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 November 19, 2014) (November 2014 Order.)

[10] Table E-24: Projected Zonal LBMP $/MWh (2013-2022) by Zone (page E-19 of the Appendix) (November 19, 2013).

the average of all generator-level bus price forecasts (the price the electric generator is paid) within the respective NYISO zone. A review of the North Zone (the zone in which the Facility is located) historic zonal prices and the Facility's historic bus prices for the last three years shows that its average bus price was slightly higher than the average zonal price. Staff recommends adjusting the NYISO CARIS Report forecasted price by the percent difference between the historic North Zone zonal price and the Facility's historic bus price. Staff's adjustment to the forecasted energy prices results in an increase in total energy revenues of $233,860, approximately a 1% increase for the four years and seven month contract.

Staff also recommends adjusting the Company's forecasted NYISO capacity payments. ReEnergy's application forecasted a ramp up in capacity payments from the NYISO over the course of the four years and seven month contract. Based on NYISO rules, the Facility should be entitled to maximum capacity payments as soon as it commences operations. Therefore, Staff increased the total NYISO capacity payments by $1,509,374, or 75%, for the four years and seven month contract.

Plant Operating Expenses

Consistent with the Commission's October 31, 2005 Order, Staff recommends adjusting ReEnergy's forecasted operating expenses. The adjustment will ensure that the facility's future operating costs and necessary future capital costs (together referred to as "to go" costs") are covered, without necessarily paying all the facility's "sunk costs." Staff recommends eliminating the forecasted management fees from the RPS eligible incentive payment. This expense item represents an allocation of costs from ReEnergy, Chateaugay's parent company, and is the responsibility of the Facility's owner.

Staff notes that the costs to obtain fuel account for at least 60% of the Facility's operational expenses. Also noted is the fact that the Commission's last award to ReEnergy was based on energy prices increasing to $56.04/MWh, while the average 2015 NYISO Real-Time price at the Facility's bus is only $30.70/MWh.[11] Staff finds that to again be financially solvent, ReEnergy is in need of RPS support for a Maintenance Tier incentive of up to $39.74/MWh for the renewable energy attributes (RECs) associated with the operation of the Facility.

DISCUSSION

Biomass energy resources continue to be economically challenged as fuel prices increase and wholesale energy prices decline. The Commission has noted this dilemma and the struggles faced by the State's biomass plants in previous orders referenced above. While these resources contribute to the objectives of the RPS program, which include local economic development benefits, MI is correct that, as part of the RPS program, there should be no expectation on the part of any owner or developer of a renewable energy facility that the RPS program will eliminate their operational risk. There should also be no expectation of continued ratepayer support at the conclusion of an RPS contract and the Commission has indicated such in recent

[11] The average 2015 NYISO Real-Time price is through June 23, 2015, based on information available on the NYISO website, at http://www.nyiso.com/public/markets_operations/market_data/pricing_data/index.jsp.

decisions regarding Main Tier contracts.[12] However, the award proffered with this decision is a Maintenance Tier contract, and as such, is subject to different treatment than a Main Tier award.[13]

Unlike a Main Tier contract, the price and contract term of the Maintenance Tier contract offered to ReEnergy Chateaugay are determined administratively by the Commission. The Commission has long maintained the discretion to modify such contracts, as future market conditions dictate, and may either increase or decrease the support offered. The Commission may choose to do so even if such action is contrary to a decision reached by an earlier Commission or Commission order. The modifications offered here are based on a thorough examination of the financial records of the Facility. As a Maintenance Tier contract facility, a decision on this Facility's petition does not create any precedent.

While there is value in having this Facility operate to support the objectives of the RPS program, as articulated by the many supportive comments, MI's concerns about the long term viability of the Facility are valid and the risk that the

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[12] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Authorizing NYSERDA to Increase the Maximum Length of RPS Main Tier Contracts to a Term Not to Exceed 20 Years (issued July 2, 2014) (July 2, 2014 Order).

[13] Because Main Tier contracts are the result of a competitive bidding process, granting contract modifications or other financial support to the recipients of Main Tier contracts would be unfair to other bidders. In contrast to its treatment of Maintenance Tier contracts, the Commission has consistently denied requests to modify or extend Main Tier contracts or otherwise offer additional financial support to generators that received Main Tier contracts. See, e.g., Case 03-E-0188, supra, Order Denying Request for Restructuring Main Tier Contract (issued May 20, 2015).

Facility could cease operations at the end of the four year and seven month contract contemplated here is troubling. ReEnergy's stated optimism that changes in energy markets and other factors will allow the Facility to be financially sustainable beyond the RPS contract period does not adequately address this concern. To that end, we direct NYSERDA to only enter into an extended contract with the Facility upon a demonstration by ReEnergy that it has executed a long term power purchase agreement (PPA), or some other long term arrangement, with an independent third party sufficient to keep the plant in operation beyond the term of its Maintenance Tier contract. Such agreement must be structured to fully replace the financial support provided through the Maintenance Tier contract, as well as any additional need, upon the expiration of the Maintenance Tier contract. The end date of any such third-party agreement must be 10 years from the start date of the contract with NYSERDA, thereby ensuring the financial viability of the Facility and associated benefits to the community for at least a decade and providing good reason for the continued investment by ratepayers in the Facility.

Finally, in its comments, MI noted the Commission's earlier statement that the level of support offered to a maintenance resource should not equal the cost of a new resource. To highlight its position, MI compared the maintenance support currently authorized for the Facility to the results of the ninth Main Tier solicitation, \$26/MWh and \$22.96/MWh respectively.[14] MI suggested that the level of support currently authorized for the Facility is in excess of the current cost of a new entrant and the petition should

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[14] The ninth Main Tier solicitation is the most recently completed RPS solicitation. Information on the Main Tier solicitations can be found at http://www.nyserda.ny.gov/all-programs/programs/main-tier/main-tier-solicitations.

therefore be denied. However, MI’s comparison fails to recognize that the awards in the ninth Main Tier solicitation were based on contracts with terms of 20 years. As discussed in the July 2, 2014 Order, the intent of allowing contracts with longer terms was to reduce the RPS incentive price paid. The lower price in the ninth Main Tier solicitation appears to be a result of that change. A more apt comparison for a contract of the term provided here is the eighth Main Tier solicitation, the last solicitation in which a 10-year contract was offered. The weighted average price for an award in that solicitation was $34.95/MWh.

CONCLUSION

The RPS program is designed to increase the proportion of electricity attributable to renewable resources consumed in New York State. The maintenance resource category is a component of the RPS program designed to ensure that valuable baseline renewable resources continue operations by improving their financial position. Based on Staff’s analysis, the Chateaugay Facility fits into that category. The Maintenance Tier contract that is the subject of this Order secures and preserves, for use of New York ratepayers, the renewable attributes generated by the Facility for an extended period of time, at a price below that of a new entrant with a contract of a similar term. It is for just such a purpose that the Maintenance Tier was created and it is therefore an appropriate use of RPS funds.

Staff’s recommendations sufficiently demonstrate the financial need for further assistance to ensure longer term viability, as required for Maintenance Tier support. Furthermore, the incentive payment is consistent with the maintenance award authorized for ReEnergy’s Lyonsdale facility in the November 2014 Order and is below the amount awarded to new entrants in the last Main Tier solicitation offering 10-year contracts. Requiring that ReEnergy demonstrate and secure the plant’s long-term viability prior to receiving further support ensures that the RPS funds granted in this order will create substantial, long-term benefits for New York State.

The Commission orders:

1. ReEnergy Chateaugay, LLC (ReEnergy) is offered a maintenance resource contract under the Renewable Portfolio Standard (RPS) program with a total production incentive of $33.49/MWh, up to 128,000 MWh produced annually, for a term of four years and seven months for actual electricity production, as described in the body of this order. The contract term is to begin upon the Chateaugay Facility’s return to service, but no later than July 1, 2016.

2. 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, upon ReEnergy’s demonstration that the Facility has executed a long term power purchase agreement (PPA) or other arrangement with an independent third party, with a term of at least 10 years from the date of the maintenance resource contract.

3. The Secretary in her sole discretion may extend the deadlines set forth in this order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

List of Comments

Adirondack North Country Association
Airgas USA, LLC
Anthony Marciniak
Anthony Robbie
Assemblywoman Janet Duprey
Biomass Power Association
Brenda Perreault, Write One Plus
Brett Tatro
Burke Farm Supply, Inc.
Chris Monette, Adirondack Energy
CJ Smith Logging
Claude Perras
Daniel Lyndaker
Dan Malloy
David Lyndaker, Lyndaker Timber Harvesting LLC
Derek Crouse, Northern Logging and Trucking
Empire Forest Products Association
Fastenal Company
Fastprint
Franklin County Board of Legislators
Franklin County Industrial Development Agency
Franklin County Legislature
Garland Logging, Inc.
Hall Collins
Henry B. Keller, Bassett Keller Consulting Forestry
Herbert Boyce, Northwood Forest Consultants
Helm Salvage and Trucking
HMT, Inc.
James Pickering
John Doyle, Doyle Builders, Inc.
John Howe
Joseph Higgins, Hanyen-Higgens Co.
Joseph Ryan, Ryan’s Logging and Lumber
Joshua G. Poirier
Joshua Thew
Landvest
Larry Richard
Malcolm Fye
Mark Aanderud
Mary Jane Toomey, Toomey Brothers Logging
Village of Malone
Mid-State Industrial Supply
Mike Lyndaker, MJ Timber Harvesting Inc
Mike Ward, Ward Logging, LLC
Multiple Intervenors
MX Petroleum
New York Biomass Energy Alliance
Northern Biofuels Energy, LLC
North Country Regional Economic Development Council
Nortrax
Patrick Curran
Paul Mitchell, Paul J. Mitchell Logging
Phil Mossow
Plattsburgh Chamber of Commerce
Ray Clukey
Robert Butts
Robert Tender,Sr.
Robert Wellington, MaCadam Cheese
Rocky Daniels
Roxanne Warren
Senator Catherine Young, Chairwoman of the New York State Legislative Commission on Rural Resources
Senator Elizabeth C. Little
Shawn Warner
Smith Timber Harvesting, LLC
Steve Dubois

Steve Poste, J&S Logging, LLC
Sue Robinson
Suburban Propane
The Development Authority of the North Country
Thomas J. Burkum
Timothy Burpoe
TNT Leasing of Plattsburgh
Town of Chateugay
Tug Hill Commission
Wendy Jones