

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 20, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Patricia L. Acampora
Maureen F. Harris, abstaining

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

ORDER RECOGNIZING ENVIRONMENTAL ATTRIBUTES AND
ALLOWING PARTICIPATION OF PROJECTS WITH
PHYSICAL BILATERAL CONTRACTS

(Issued and Effective June 28, 2006)

BY THE COMMISSION:

INTRODUCTION

By Order issued September 24, 2004,¹ the Public Service Commission adopted a policy of increasing to at least 25 percent the proportion of electricity derived from renewable resources used by retail consumers in New York State.² Consistent with this policy, we adopted requirements for a Renewable Portfolio

¹ Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) (September 2004 Order).

² Achievement of this goal requires implementation of a complementary program on the part of the Long Island Power Authority.

Standard (RPS) Program. The RPS Program, because it does not recognize the unbundling of environmental attributes from energy, requires that participating generators sell energy into wholesale spot markets administered by the New York Independent System Operator and does not allow use of physical bilateral contracts. These measures were included to protect the integrity of the Environmental Disclosure Program.³

We conclude that these measures are not necessary because the Environmental Disclosure Program can be modified in ways that continue to afford consumers the ability to evaluate energy choices. Due to the need to enhance and strengthen the RPS Program, we determine in this Order to change these requirements and allow the use of physical bilateral contracts in the RPS Program and unbundling of attributes to provide more opportunities to realize the objectives of the RPS Program.

BACKGROUND

In a recent Order in this proceeding,⁴ we stated that we were considering: (1) recognizing the unbundling of environmental attributes from the associated energy; and (2) allowing participation in the RPS Program of renewable generators that enter into physical bilateral agreements for the sale of energy that is separated from associated RPS Program environmental attributes. We explained in the January 2006 Order that we were persuaded by the parties' assertions that lower RPS Program costs could result from use of physical bilateral contracts and unbundling energy from its environmental attributes. We stated that these actions could provide generators greater market access and improve liquidity of the

³ Case 94-E-0952, Competitive Opportunities, Opinion No 98-19, (issued December 15, 1998).

⁴ Case 03-E-0188, supra, Order Authorizing Additional Main Tier Solicitations and Directing Program Modifications, issued January 26, 2006 (January 2006 Order).

market while decreasing financial risks. In the January 2006 Order, we stated our intention to implement these changes to the RPS Program after we determined that the changes necessary to the Environmental Disclosure Program to accommodate the new policies would not impair its effectiveness.

New York's Environmental Disclosure Program provides consumers with standard information in a uniform format regarding the fuel mix and emissions of the electricity supplied to them by load serving entities. The information is presented in the form of a label. The label discloses the mix of fuel sources used to produce the electricity and a graph that displays the emission levels of sulfur dioxide (SO₂), nitrogen oxide (NO_x) and carbon dioxide (CO₂). The fuel mix supplied to the customer is compared to the average New York State fuel mix. This information allows consumers to make energy choices that reflect their preferences, including support and purchases of renewable, or green, power. The goal of environmental disclosure is to facilitate informed customer choice, which could, in turn, lead to improved environmental quality and resource diversity.

A Notice regarding possible modifications to the RPS Program and their effect on the Environmental Disclosure Program was published in the State Register pursuant to State Administrative Procedure Act (SAPA) §202(1) on February 15, 2006. In particular, the Notice sought comment on whether the purpose and usefulness of the Environmental Disclosure Program would be degraded as a result of recognizing environmental attributes separate from energy and allowing participation in the RPS Program of projects with physical bilateral contracts.

AES-NY, LLC (AES), Alliance for Clean Energy New York (ACENY),⁵ FPL Energy, LLC (FPLE), International Brotherhood of Electrical Workers, Local 97 (Local 97), Joint Utilities,⁶ Multiple Intervenors (MI),⁷ Noble Environmental Power LLC (Noble), Pace Law School Energy Project and Clean Power Markets, Inc. (PACE), PJM Environmental Information Services, Inc. (PJM), Ridgewood Power Management, LLC (Ridgewood), and Taylor Recycling Facility (TRF) submitted comments.

In addition, Department of Public Service (DPS) and New York State Energy Research and Development Authority (NYSERDA) Staff hosted a full-day workshop on these issues on May 24, 2006. Approximately 25 parties were represented at the workshop.

DISCUSSION AND CONCLUSION

Proposal

The Notice sought comments on a proposal to recognize in the RPS Program the unbundling of energy from its associated attributes. This would allow the renewable generation subject to physical bilateral agreements to qualify for the RPS Program; the generators entering into these agreements would not sell their energy directly into markets administered by the New York

⁵ ACENY members include AES-Acciona Energy NY, Airtricity, altPower, American Wind Energy Association, Arcadia Wind Power, AWS Truewind, Babcock & Brown, Bergey Wind Power, Community Energy, Delaney Construction, Ecogen, EverPower Renewables, Horizon Wind Energy, Natural Resources Defense Council, Nixon Peabody, Noble Environmental Power, Pace Energy Project, PPM Energy, Renewable Energy Long Island, Tamarack, TetraTech EC, and UPC Wind Management.

⁶ Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation comprise the Joint Utilities.

⁷ Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

Independent System Operator. The Notice also asked for comments on potential effects of these changes on the Environmental Disclosure Program.

Comments

The commenting parties uniformly support the unbundling of energy from its associated attributes. Joint Utilities, for example, states that the program modifications would enhance the development of a market for renewable energy, which would serve to lower overall program costs. MI adds that allowing physical bilateral contracts into the program will increase the supply options available to retail customers and should benefit the competitive market. The parties support unbundling because it would provide generators greater market access and improve liquidity of the market while decreasing financial risks.

A discussion with the parties at the May 24 workshop and further analysis indicate that these changes to the RPS Program would require modifications to the Environmental Disclosure Program. The modified Program, however, would continue to provide information to consumers about the fuel mix used to provide energy by their load serving entities.

Discussion

Unbundling energy from its environmental attributes, in the context of the RPS Program, could provide generators greater market access and improve market liquidity while decreasing financial risks. It could also decrease risk because generators would be able to enter into firm multi-year contracts with NYSERDA for attributes under the RPS Program and also enter into firm multi-year energy contracts with load serving entities and/or direct customers. These contract arrangements could provide greater market liquidity and ultimately allow generators to reduce their bid prices.

In addition, unbundling allows NYSERDA, as the RPS Program's central procurement administrator, to acquire environmental attributes from generators instead of the rights

that prevent generators from selling or transferring their environmental attributes to others. Increased control of the attributes can provide more assurance that double counting of attributes is avoided. If a certificate-based tracking system is developed, then the title to the environmental attributes could be in the form of renewable energy certificates (RECs), which would be easily transferred to NYSERDA as proof of its acquisition of renewable attributes.⁸ Thus, unbundling of attributes has the potential of strengthening significantly the market for renewable energy and opportunities for achieving the objectives of the RPS Program.

The Department of Public Service Staff advises that a review of the New England disclosure system suggests that New York's Environmental Disclosure Program can be successfully modified to accommodate the new policies. While the new labels after unbundling would provide slightly different information, consumers would receive meaningful and useful descriptions of the amount of green energy supplied. The Environmental Disclosure Program labels after implementation of the changes may provide more homogeneous information than under the current program. We conclude that this result will not change the usefulness of the labels in any material way and consumers will continue to receive the information needed for energy choice. Experience suggests that labels are most useful for those customers interested in supporting green power, and those are the same consumers who are most likely to participate in the voluntary green power market and see a significant difference in the emissions profile on their labels.

Accordingly, we modify the RPS Program to recognize the unbundling of attributes from energy, to allow projects with

⁸ At the May 24, 2006 Workshop, the parties discussed development of an attribute tracking system for New York. NYSEDA and Staff will issue a request for proposals for development of a tracking system.

physical bilateral contracts to participate in the Program, and to eliminate the requirement that participating generators must sell into the wholesale markets administered by the New York State Independent System Operator.⁹ Staff is directed to analyze the changes needed in the Environment Disclosure Program and report to us its recommendations for necessary modifications that require our review and determination.

The Commission orders:

1. The RPS Program is modified as discussed in the body of this Order.
2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

⁹ Energy must continue to be delivered for use by New York consumers.