

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 27, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman  
Thomas J. Dunleavy  
Leonard A. Weiss  
Neal N. Galvin  
Patricia L. Acampora

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

ORDER APPROVING MODIFICATIONS TO  
MAINTENANCE RESOURCE CATEGORY

(Issued and Effective October 31, 2005)

BY THE COMMISSION:

INTRODUCTION

By Order issued April 14, 2005 (April Order), the Public Service Commission approved an Implementation Plan for the Renewable Portfolio Standard (RPS) Program.<sup>1</sup> In that Order, we approved implementation measures pertinent to the maintenance resource category, which was established to provide RPS Program funding to certain existing facilities that are in danger of ceasing operation or abandonment for financial reasons. Based on our experience applying those implementation measures,<sup>2</sup> we

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<sup>1</sup> Case 03-E-0188, Retail Renewable Portfolio Standard, Order Approving Implementation Plan, Adopting Clarifications, and Modifying the Environmental Disclosure Program (issued April 14, 2005).

<sup>2</sup> Case 03-E-0188, supra, Order Approving Request for RPS Program Funding as a Maintenance Resource (issued September 3, 2005).

adopt two revisions that will limit RPS Program costs while at the same time continue to accomplish our goal of minimizing the loss of renewable facilities that began operation before the RPS Program vintage date of January 1, 2003.

### BACKGROUND

By Order issued September 24, 2004 (September Order), we established a maintenance resource category eligible for RPS Program support to assist certain existing renewable resource facilities, in operation prior to January 1, 2003 (the date we set for the purpose of establishing vintage and calculating the baseline of renewable energy resources), to remain financially viable.<sup>3</sup> The maintenance resource category is an important component of the RPS Program; it is designed to assist valuable baseline renewable resources, not otherwise eligible for RPS Program support, to continue operations by improving their financial position.

The April Order established a process for a case-by-case review and analysis to determine the level of funding offered to a maintenance resource. We intended the case-by-case approach to ensure that the amount of support offered is sufficiently structured to meet the needs of each project, 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, review of financial records, effect of market rules, potential for capital improvements, and relationship with a parent company. The April Order allows a qualified maintenance resource to reject our offer of RPS Program support and, instead, choose to participate in RPS Program procurements.<sup>4</sup>

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<sup>3</sup> Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004). The maintenance resource category is composed of hydroelectric facilities 5 MW and under, direct combustion biomass facilities, and wind facilities.

<sup>4</sup> April Order, p. 31.

A notice of this pending action was published in the State Register, pursuant to the State Administrative Procedure Act (SAPA) §202(1), on August 17, 2005. In the only comments received, Multiple Intervenors fully supported the modifications we adopt here.

### PROPOSED REVISIONS

The first revision that is proposed involves the analysis that is appropriate to determine the proper level of RPS Program support. If economic and contractual analyses indicate that an existing facility would cease operations without RPS Program support payments, but could continue operating if it received payments that were less than the costs of encouraging development of new facilities, then it may be in ratepayers' interests to support such a facility. The proposal is to clarify that to minimize ratepayer costs, the level of support should be no more than the amount necessary to encourage continued operation of the facility.

The second proposed revision would eliminate a discrepancy between the body of the April Order and its Attachment A, which will have the effect of limiting RPS Program costs without jeopardizing the purpose of the maintenance resource category. As noted above, the April Order allows a qualified maintenance resource facility to choose at its own volition to reject an offer of RPS Program funds and instead decide to participate in general Main Tier procurements.

### DISCUSSION AND CONCLUSION

Regarding the first proposed revision, we agree that the level of support would at least need to 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. In short, it should be just sufficient for the owner, or its financial supporters, to continue to operate the facility. By no means should such support be any more than the level required to encourage new renewable facilities. Support should also not generally be provided for facilities that will continue to operate pursuant to provisions of contracts or law, even if financial losses result for the operators and/owners.

Regarding the second proposed revision, although each facility will receive individual review based on that facility's circumstance—and it is possible that the Commission may offer a choice of different kinds of RPS Program support, including authorization to participate in Main Tier procurements—allowing an "out of vintage" facility to participate in general procurements would in most cases not be consistent with a purpose of the RPS Program, namely, to encourage construction of new renewable energy facilities, and to the intent and design of the maintenance resource category. To better align our goal to conserve ratepayer contributions with our goal of retaining existing resources, we will eliminate the automatic ability of a qualified maintenance resource facility to reject the offer of a maintenance resource funding award and instead choose to participate in general procurements.<sup>5</sup>

The Commission orders:

1. Implementation of the RPS Program's maintenance resource category is modified as discussed in the body of this Order.
2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

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<sup>5</sup> This modification does not affect the applications for maintenance resource status on file with the Commission as of the issue date of this Order.