STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on December 19, 2013

COMMISSIONERS PRESENT:

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

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

ORDER AUTHORIZING THE REDESIGN OF THE SOLAR PHOTOVOLTAIC PROGRAMS AND THE REALLOCATION OF MAIN-TIER UNENCUMBERED FUNDS

(Issued and Effective December 19, 2013)

BY THE COMMISSION:

INTRODUCTION

In this Order, the Commission authorizes the New York State Energy Research and Development Authority (NYSERDA) to reallocate unencumbered Main Tier funds to the solar photovoltaic (solar PV) programs under the Customer-Sited Tier of the Renewable Portfolio Standard (RPS) Program and to make program revisions in response to changing markets, with the goal of reducing and ultimately eliminating RPS incentives for PV systems.

In the near term, the Commission authorizes NYSERDA, in response to its petition of September 5, 2013, to reallocate $108 million of unencumbered Main Tier funds to the Customer-Sited Tier to support the solar PV programs through 2015. We also provide NYSERDA with flexibility to administer the solar PV budgets and programs more efficiently. Looking ahead, we authorize NYSERDA to redesign and transition the solar PV programs to a megawatt block structure (MW Block) with declining incentives and direct NYSERDA to submit a request for post 2015 funding, which will facilitate transparency and the long-term success of the multi-year MW Block program structure.

Finally, the Commission encourages NYSERDA to work with the Long Island Power Authority (LIPA) and the New York Power Authority (NYPA) to identify the potential merits of a Statewide approach to the solar programs and define how those benefits might be captured in the design and administration of such a revised program.

BACKGROUND

In 2012, the Commission issued an order authorizing NYSERDA to expand the solar PV programs in the Customer-Sited Tier and increase the annual budgets to a total of $108 million per year through 2015 to support the goals of NY-Sun, an initiative launched by Governor Cuomo in his 2012 State of the State message.[1] The Commission also authorized NYSERDA to reallocate $90.4 million of RPS Main Tier program funds into the Customer-Sited Tier to support the aggressive 2012 and 2013 NY-Sun goals but deferred a decision on the source of those funds for years 2014 and 2015 until the scheduled RPS program review, which commenced this year. The Commission further specified how program funds were to be allocated between the standard-offer and competitive solar PV programs and required NYSERDA to submit a revised Customer-Sited Tier Operating Plan to reflect the

[1] Case 03-E-0188 - Retail Renewable Portfolio Standard, Order Authorizing the Expansion of the Solar Photovoltaic and Geographic Balance Programs from 2012 through 2015 and the Reallocation of the Main Tier Unencumbered Funds (issued April 24, 2012).

expansion, budgets, and program requirements imposed by the Commission.[2]

On September 5, 2013 NYSERDA filed a petition requesting that the Commission identify the funding source for the authorized $108 million for the solar PV programs for 2014-2015. NYSERDA also seeks, among other things, to restructure the programs to provide a means of steady, measured, and predictable incentive reductions leading to a cessation of the solar PV rebate program by 2020 or sooner.

SUMMARY OF NYSERDA'S PETITION

NYSERDA requests authorization, as soon as possible, to reallocate $108 million from the Main Tier program budget to the Customer-Sited Tier for the solar PV programs for 2014 and 2015 to avoid program disruptions that would result if incentives were not available at the end of 2013. It notes that the solar PV industry depends upon advance knowledge of available incentives to have adequate lead time to plan projects, staffing and other aspects of their business for 2014, and NYSERDA is concerned that a delay in the designation of the source of funds for 2014 and 2015 will cause uncertainty and disruption that will hamper market confidence and continued program success. NYSERDA states that it does not expect the reallocation from the Main Tier budget to materially affect either the schedule or outcome of Main Tier procurements, given that there are sufficient available unencumbered Main Tier funds.

Furthermore, NYSERDA seeks flexibility to work with DPS staff to establish appropriate funding allocations between the standard-offer and the competitive PV programs and to adjust

[2] Renewable Portfolio Standard Customer-Sited Tier Program Operating Plan (2012-2015), June 2012.

those allocations based on market demand in each respective program.[3] NYSERDA notes that it will preserve the $30 million annual budget that the Commission initially established for NYISO Zones G-H-I-J to increase solar PV installations in the downstate regions.[4] The balance of the $108 million, NYSERDA states, will be allocated based on other market conditions, such as demand for incentives and the need to drive the solar PV industry toward greater cost-effectiveness.

NYSERDA also seeks a number of program changes including transitioning both the standard-offer and competitive PV programs to a regional MW Block structure that would set a longer term schedule for a pre-determined decline in incentive rebates by a pre-determined amount of megawatts (MW Block). The advantage of this approach, NYSERDA asserts, is that it provides measured and predictable incentive level reductions and sends a clear signal to the market that the State intends to eliminate direct incentives through these programs. NYSERDA, therefore, requests authorization to work with stakeholders and DPS staff to develop a program plan for this approach by the first quarter of 2014 for the standard offer program, which supports installations of PV systems up to 200 kW. For the competitive PV program, which supports larger commercial PV installations

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[3] The Solar PV standard offer incentive program is administered by NYSERDA under Program Opportunity Notice (PON) 2112 and the Competitive PV Program is administered under PON 2589. The details of each program are addressed in these respective PONS.

[4] Case 03-E-0188, supra, Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program (issued April 2, 2010).

over 200 kWs, NYSERDA proposes a later transition to a MW Block performance-based approach.

NYSERDA also seeks to eliminate a requirement that the Commission imposed in a previous order that caps the incentive award per installation at 40% of total installed cost after all other tax credits have been applied.[5] NYSERDA states that there is no accurate way to determine the value of the tax credits for each customer at the time applications are received because tax credits are determined at some future date based upon taxable income. NYSERDA proposes, instead, to track this metric internally as an indicator of market conditions that will be considered when setting the appropriate incentive level, including those established through the proposed MW Block approach. NYSERDA notes that incentive levels are between 30-35% of the installed cost.

Lastly, NYSERDA requests authorization to work with DPS and LIPA staff to identify the potential benefits of establishing a Statewide solar PV incentive program, including LIPA customers, to better facilitate the goals of NY-Sun. NYSERDA notes that there may be greater efficiencies to combining efforts for the residential and smaller commercial customer incentive program, perhaps under its administration. NYSERDA believes that there are benefits for the industry and customers if there is more coordination of program design and implementation, including providing common installer eligibility criteria, quality control protocols and data collection across all program service territories.

[5] Ibid. p.21.

NOTICE OF PROPOSED RULE MAKING

A Notice of Proposed Rulemaking (Notice) concerning the program proposals under consideration in this order was published in the State Register on September 25, 2013 [03E0188SP43] pursuant to the State Administrative Procedure Act (SAPA). Additionally, a Notice Soliciting Comments on NYSERDA's petition, among other inter-related clean energy proposals, was issued by the Commission on September 13, 2013. The Commission requested initial comments by October 28, 2013 and reply comments by November 12, 2013, which was also the minimum period for the receipt of public comments pursuant to SAPA.

Initial and reply comments on NYSERDA's petition were received from a diverse group of individuals and organizations representing municipalities, utilities, environmental and public interests, and solar and other clean energy industries.[6] Many

[6] Initial comments were received from: the City of New York/NYC Energy Efficiency Corporation (NYC); Joint Utilities; Alliance for Clean Energy - New York (ACE-NY); the Community Environmental Center (CEC); Environmental Advocates of New York (EANY); Great Brook Solar NRG LLC (Great Brook); HelioSage; Natural Resources Defense Council/Pace Energy and Climate Center (NRDC/Pace); Northeast Clean Heat and Power Initiative (NCHPI); PosiGen Solar Solutions (PosiGen); the Sierra Club; the Solar Coalition (includes the Vote Solar Initiative, Natural Resource Defense Council, Solar Energy Industries Association, Pace Energy and Climate Center, and New York Solar Energy Industries Association (SEIA); TRC Environmental Corporation (TRC). Reply comments were received from: NYS Assembly members Michael G. DenDekker, Andrew Hevesi, Amy R. Paulin, and Aravella Simotas; NYS Senator Timothy M. Kennedy; Earthkind Energy and Starphire New Energy Technologies; GRID Alternatives; Independent Power Producers of New York, Inc. (IPPNY); the National Association for the Advancement of Colored People - New York State Conference (NAACP NY); New York Light Energy, LLC; the New York Public Interest Research Group (NYPIRG), Pace Energy and Climate Center (Pace); PosiGen; SEIA; Sunrun Inc. and Solar City; Solar One.

are parties to the RPS proceeding. These comments are summarized below.

A number of specific comments were also received on other aspects of the RPS program, in response to the reports submitted by NYSERDA that commenced the 2013 RPS program review. These comments will be considered in future matters before the Commission.

SUMMARY OF COMMENTS

Funding Considerations

No comments directly oppose NYSERDA's proposal to reallocate $108 million of unencumbered Main Tier program funds to the solar PV programs for 2014-15. Several comments, including those of the Solar Coalition and EANY, further recommend extending the funds beyond 2015 to be consistent with Governor Cuomo's 2013 State of the State message to extend NY-Sun through 2023 at the existing annual funding levels. NYC recommends that NYSERDA be allowed to transfer uncommitted Main Tier funds on a month-to-month basis without prior Commission approval, if necessary, in an amount sufficient to support the uninterrupted implementation of the solar PV programs though 2015.

IPPNY stated that if Main Tier funds are transferred to the solar PV programs, then the size limit on solar projects should be increased to get better economies of scale. It also recommends that the Commission determine a method for repaying the Main Tier for the loss of funds.

MI, while supportive of NYSERDA's petition in general, finds the reallocations of funds from the Main Tier "troubling" because renewable energy facilities installed through the Main Tier program are more cost effective than those installed in the Customer-Sited Tier. It noted that large reallocations of funds from the Main Tier to the Customer-Sited Tier are likely to weaken the benefit-cost ratio of the total RPS Program.

ACE-NY stated that it does not want NY-Sun funding to "disadvantage" other technologies in the Customer-Sited Tier program. NCHPI added that the "playing field" should be level for all technologies.

Solar PV Program Restructuring

The vast majority of comments supported transitioning both the standard-offer solar PV and the competitive solar PV program to a MW Block structure with declining incentives. Many offered program design considerations under this new approach citing regional market and customer class distinctions. Others recommended expansion of the NY-Sun initiative to include other business models and pilot programs to support solar PV technology.

The Solar Coalition suggests that the standard-offer MW Block program include a limited number of separate regional blocks including Long Island, Consolidated Edison of New York's service territory, and one or two additional blocks for the remainder of the State. It also recommends providing NYSERDA with flexibility in allocating budgets among regions based on a set of guiding principles based on ratepayers served. For the competitive PV Program, the Solar Coalition recommends providing a minimum of six months' notice prior to transitioning from the current competitive bid model to a MW Block performance based model.

NYC supports the regional MW Block approach and agrees with NYSERDA that the details of the program should be developed in consultation with DPS staff and stakeholders. It also recommends modifying the solar PV program to support development of community solar projects and also to more effectively target solar PV installations in high load areas, such as New York City.

PosiGen expresses concern over the most recent changes to the standard-offer program, which increased the eligible project size from 50 KW to 200 kW. It believes this change adversely impacted low to moderate income (LMI) customers because it accelerated the drop in incentives, making it much more difficult for LMI customers to participate in the program. It is concerned that a MW Block program will exacerbate this problem. PosiGen proposes that MW Block regions be based on income, rather than geographic location, and that a higher incentive amount be available for LMI customers. It cites California's program which sets aside ten percent of its solar program budget for low to moderate income households. The Solar Coalition, in its initial comments, also suggests consideration of a targeted program to better serve LMI customers.

PosiGen's comments concerning LMI customers were supported, in reply, by Assemblyman Michael DenDekker, Assemblyman Andrew Hevesi, Assemblywoman Amy Paulin, Assemblywoman Aravella Simotas, and Senator Timothy Kennedy as well as SEIA, Solar One, GRID Alternatives, and the NAACP New York and GRID Alternatives.

Joint Utilities proposed that the current practice of targeting incentives for solar PV in strategic locations within the existing competitive program be continued and refined as part of the proposed MW Block regional approach. Joint Utilities also proposes that performance-based incentives under that program be extended from the current three years to ten or fifteen years. Joint Utilities supports conditioning solar PV incentives on concurrent efficiency requirements and providing incentives that encourage PV installers to position PV systems to maximize peak demand concurrence, rather than maximum total electric output. It notes that solar PV has "hidden" power quality costs borne by all other customers and proposed that the Commission set up a pilot program for "smart invertors with remote monitoring and control capabilities."

Great Brook Solar proposed a seasonal enhanced incentive ($0.25 more per watt) during January through July to reduce the pressure on the peak installation months of August through December.

HelioSage recommends including utility sized projects (2 MW through 20 MW) in a standard-offer MW Block program and also proposes that the program be performance based. However, HelioSage warns that this program should be constructed so as to not "cannibalize" the smaller PV market, as it claims happened in New Jersey.

EarthKind and Starphire, in reply, support the transition of the competitive solar PV program to a MW Block program, with performance-based incentives and extended contract terms from the current three years to ten to fifteen years. They also state that the current competitive PV program process is too lengthy and risky for developers due to the delays between preparing the estimate for the customer and the eventual contract with NYSERDA that is completed only after a round of a competitive solicitation is closed and winners are selected.

In reply comments, Solar One and the Solar Coalition recommend that the Commission advance community solar by directing NYSERDA to develop and publish a Statewide community solar roadmap by the summer of 2014. The roadmap would identify necessary changes to remote net metering laws and other policies and target the interconnection of at least one community solar project by the end of 2014.

IPPNY, however, expresses concern that large community owned solar PV systems, depending on their size, could become local power plants without the obligations imposed upon power plant owners, such as permitting under Section 68 or Article 10 of the Public Service Laws or in accordance with the competitive wholesale electricity markets rules of the NYISO.

In reply, NYSERDA notes that its Technology and Market Development Program (T&MD), which is funded through the Systems Benefit Charge and also administered by NYSERDA, includes programs specifically intended to support demonstrations of new and emerging technologies and business models. It proposes discussing these ideas with parties and stakeholders and working with them to identify opportunities for pilot projects, and directing developers of such demonstrations to the appropriate programs and funding sources.

Administrative Flexibility

No commentators objected to the Commission providing NYSERDA with more flexibility in administering the solar PV programs either under its current design or, if authorized, a MW Block approach. This includes the request by NYSERDA to have flexibility in allocating funds between the standard-offer and competitive PV programs.

With the exception of NYLE, comments were also in support of giving NYSERDA the flexibility to eliminate the "40 percent installed cost rule" for the standard-offer program. NYLE recommends that the rule be maintained, however, but measured against documented total direct and indirect costs, and not merely installed costs. NYLE states that the Commission and NYSERDA should impose stringent regulation on the PV industry to prevent the use of inferior equipment and shoddy workmanship.

Statewide Coordination of Solar PV Programs

Those that commented on this aspect of the proposal were in favor of NYSERDA working with LIPA and stakeholders towards a coordinated Statewide solar PV program including the Long Island service territory. NRDC/Pace and the Solar Coalition note the contributions and importance of the Long Island market to solar energy and highlight the importance of maintaining LIPA's feed-in tariff programs, part of LIPA's Clean Solar Initiative under NY-Sun. It also states that if NYSERDA were to administer a Statewide solar PV program, including LIPA's customers, then appropriate funding contributions should be made by LIPA ratepayers. A figure of $42 million was suggested, the amount needed to bring NY-Sun up to Governor Cuomo's stated goal of $150 million per year through 2023.

Lastly, the Solar Coalition urges the Commission, NYSERDA, and Governor Cuomo to explore a mechanism to increase the New York Power Authority's (NYPA) contribution to advancing solar installations in the state to make NY-Sun a truly Statewide program. It notes that while NYPA's municipal and school district customers do not pay the electric SBC and RPS surcharge, many taxpayers in those communities do and would directly benefit from a NYPA program that reduced energy costs for those municipalities and school districts.

DISCUSSION

Funding Considerations

In 2012, when we authorized NYSERDA to reallocate approximately $90.4 million from Main Tier funds to support the expansion of the solar PV programs through 2013, we did so knowing that NYSERDA had sufficient uncommitted funds on hand in the Main Tier to support the expansion of the solar PV programs without having any deleteriously affect on the procurement of

Main Tier resources in that time period. We reserved a decision on the future source of funding for the solar PV programs for years 2014 and 2015 until the RPS 2013 program evaluation period, in order to have sufficient analyses on the status of both the Main Tier and Customer-Sited Tier programs before making any funding determinations. NYSERDA has since filed a series of market assessment and program evaluation reports to commence the 2013 RPS review. Those reports, in addition to the information in its annual RPS Performance Report, make clear that sufficient funds are available to support the reallocation of requested funds from the Main Tier to the Customer-Sited Tier solar PV programs for 2014-2015. While we are mindful of MI's and IPPNY's concerns regarding the erosion of the Main Tier budgets, we believe using the available uncommitted funds now is a prudent measure while we consider the direction and future of the Main Tier program during this review period. Therefore, we authorize NYSERDA to proceed with the reallocation of $108 million from the Main Tier to the Customer-Sited Tier to fund the solar PV programs.

Solar PV Program Restructuring

We support NYSERDA's efforts to improve the current solar PV programs by providing more transparency and predictability to the solar markets and also by sending a clear signal that the program will eventually result in the elimination of direct rebate incentives. We are also encouraged by the interest expressed in comments that support NYSERDA's declining incentive MW Block approach. We believe that restructuring these programs, as proposed by NYSERDA, aligns with our efforts to assist technologies, such as solar PV, to achieve scale and ultimately rely on market based solutions.

This "exit strategy", however, will need to be well designed and executed, perhaps with some flexibility to minimize program disruptions while still meeting our solar energy goals in a cost-effective manner. We note, however, that the program requested by NYSERDA goes beyond the budgeted year of 2015 without consideration of extending program funding to accomplish the goal of the MW Block structure. For a MW Block program to be most transparent, effective, and successful, we should provide the market with funding certainty for the term of the revised program. We therefore direct NYSERDA to submit a request for post 2015 program funding. That request should be accompanied by program goals and the design criteria that will be used to develop the MW Block approach under consideration. The program, while taking into consideration some of the design criteria suggested in comments regarding regional and customer distinctions, should remain simple, transparent, and predictable.

With respect to comments urging consideration of pilot programs for other solar deployment proposals, we agree with NYSERDA that development of these projects and concepts may be better served in other programs administered by NYSERDA that are specifically intended to support demonstrations of new and emerging technologies and business models.

<u>Administrative Flexibility</u>

We agree with NYSERDA that it may allocate funds between the standard offer and the solar PV competitive programs based on demand and other market factors, providing that it preserves the $30 million annual budget established by the Commission for the downstate regions. In addition, we will relax the current procedures we have imposed on maintaining monthly budgets and for adjusting incentive levels in the standard-offer program in this interim period to provide NYSERDA flexibility as it develops a MW Block design. We will expect NYSERDA to continue providing information on its website to keep the solar community informed of the incentive levels and budgets. We will also grant NYSEDA's request to adjust and refine program rules, including the "40 percent of installed cost rule," while continuing to track installation rates across the state to assist in setting appropriate incentives.

Statewide Coordination of Solar PV Programs

LIPA has been promoting solar PV on Long Island for more than a decade and has been an integral participant in Governor Cuomo's NY-Sun Initiative. We agree with NYSERDA that there may be greater efficiencies for the solar industry, program administrators, and customers if State incentives for solar technology were better coordinated, and we want to consider whether those benefits might support establishing a Statewide program. We also agree with the Solar Coalition that there is merit in exploring mechanisms to address increasing the participation of municipalities and school districts that are customers of the New York Power Authority to allow more direct participation by those entities in solar PV programs. We therefore encourage NYSERDA to work with LIPA and NYPA to identify the potential merits of a Statewide approach and to submit a proposal that defines how we might capture those benefits in the design and administration of such a program.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to reallocate \$108 million of RPS Main Tier program funds into the Customer-Sited Tier to support the solar photovoltaic programs for years 2014 and 2015.

2. NYSERDA is directed to submit, for our approval, the design criteria that will be used to develop the MW Block programs under consideration and a funding request to support the program structure post 2015.

3. NYSERDA is authorized to administer the current solar PV programs beginning January 1, 2014 with the flexibility provided in this order, while it develops a MW Block program structure.

4. This proceeding is continued.

By the Commission,

Kathleen H. Burgess

Digitally Signed by Secretary
New York Public Service Commission

KATHLEEN H. BURGESS
Secretary