

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 8, 2015

COMMISSIONERS PRESENT:

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

CASE 10-M-0457 - In the Matter of System Benefits Charge IV.

CASE 07-M-0548 - Proceeding on Motion of the Commission
Regarding an Energy Efficiency Portfolio
Standard.

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

ORDER DENYING PETITION REGARDING
VOLUNTARY OPT-IN MECHANISM

(Issued and Effective January 13, 2015)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on May 1, 2014 (Petition), Global Structured Finance Advisors and GP Renewables and Trading, LLC (the Petitioners) request, on behalf of certain municipal customers of the New York Power Authority (NYPA), that the Commission create a voluntary "SBC/RPS Opt-In" mechanism for all NYPA municipal customers. Because NYPA customers are exempt from the System Benefits Charge (SBC), the Energy Efficiency Portfolio Standard (EEPS), and the Renewable Portfolio Standards (RPS) surcharge, they are not eligible to participate in

programs funded by these surcharges.¹ Through the proposed mechanism, NYPA municipal customers would be able to opt in, by individual meter, to the SBC and the RPS surcharge, and thereby would become able to participate in SBC and RPS surcharge-funded programs. The Petition is denied, as it results in a redesign of the program that is inequitable, by forcing utility customers who cannot opt-out of the surcharges to subsidize the subset of NYPA customers that believe they would benefit from opting into participation in the programs.

BACKGROUND

The SBC program was established in 1998 as a means of ensuring continued financial support for programs providing important public benefits that were historically funded through utility rates, but would not be offered by participants in competitive markets.² The program is funded through a surcharge on the electric bills of the investor-owned utilities' delivery customers and supports, inter alia, energy efficiency, research and development, low-income cost management, and environmental protection initiatives. Following its inception, it has been extended to continue through the end of 2016.

The RPS program was adopted in 2004, with the goal of increasing the proportion of renewable electricity consumed by retail customers. Similarly to the SBC and EEPS, the RPS program uses revenues derived from a mandatory volumetric charge

¹ Utilities generally combine the EEPS and SBC charges on a customer's bill, labeling the entire charge an SBC surcharge.

² See Cases 94-E-0952 et al., Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (issued May 20, 1996).

on utility delivery customers' bills.³ The RPS programs have been administered by the New York State Energy Research and Development Authority (NYSERDA).

The Energy Efficiency Portfolio Standard (EEPS) program was adopted in 2008 to promote energy efficiency through programs run by both NYSERDA and the investor-owned utilities.⁴ The program is funded through surcharges on customers' bills that fund customer-sited efficiency measures. The SBC surcharge that appears on customer bills covers the cost of the EEPS program, which is administered by both NYSERDA and investor owned utilities, as well as the SBC program administered by NYSERDA.

NYPA customers have always been exempt from paying the SBC and RPS surcharges, even if they receive delivery services from investor-owned utilities. The primary reason for this is that NYPA's "statutory mission ... is to provide low cost power to business and industry, municipal and rural cooperatives, and governmental entities in order to assist economic development in New York State;"⁵ therefore, "requiring such customers to pay for the objectives of [RPS and SBC] would be counterproductive to economic development goals."⁶ Because NYPA customers are exempt from SBC and RPS surcharges, they are ineligible for

³ See Case 03-E-0188, Retail Renewable Portfolio Standard, Order Regarding Renewable Portfolio Standard (issued September 24, 2004) (2004 SBC Order).

⁴ See Case 07-M-0548, Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (Issued June 23, 2008) (2008 EEPS Order).

⁵ Case 05-M-0090, System Benefits Charge III, Comments of the New York Power Authority (October 14, 2005) (NYPA Comments).

⁶ 2004 SBC Order at 55.

participation in the NYSERDA-administered programs that the surcharges fund.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning the Petition was published in the State Register on June 25, 2014. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on August 11, 2014. Comments were received from the City of New York (City) and, collectively, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Central Hudson Gas & Electric Corporation (Joint Utilities).

THE PETITION

The Petitioners begin by stating that the Petition is submitted on behalf of certain municipal customers of NYPA. Noting that NYPA offers its customers public benefit programs similar to those offered by NYSERDA with SBC and RPS funds, the Petitioners nevertheless argue that municipalities and school districts need access to NYSERDA SBC and RPS program funds to make energy efficiency measures and renewable energy system installations economically viable. In doing so, the Petitioners point to differences between NYPA's and NYSERDA's photovoltaic (PV) generation programs. They contend that, while NYPA's programs seek to foster technological improvements, NYSERDA's programs are designed to bring the cost of electricity that PV systems generate down to a level competitive with electricity generated by conventional sources, through furnishing directly to the PV system developers cash incentives that reduce the cost of these systems. The Petitioners believe that NYSERDA

incentives cover approximately 30 percent of the cost of installing a PV system.

The Petitioners request that the Commission create a voluntary SBC/RPS Opt-in surcharge mechanism for all NYPA customers. Under such an SBC/RPS Opt-in mechanism, municipalities and school districts that are NYPA customers would be able to choose which facility or facilities would be subject to the SBC/RPS surcharge, and which would remain exempt. Under the proposal, municipalities opting into the surcharge would irrevocably waive their right to claim exemption from the SBC/RPS surcharge at each individual meter serving a facility that has opted in. These facilities would then become eligible for NYSERDA energy efficiency and renewable energy programs that are funded by the RPS and SBC surcharges.

SUMMARY OF COMMENTS

The City

The City supports expanding municipal customers' access to the RPS, SBC and EEPS incentives through the opt-in mechanism, provided that the mechanism is implemented in a manner that allows the customer to "opt into" the programs only for specific accounts. Stating that, if the opt-in mechanism is adopted as proposed, it would expand the RPS and EEPS programs to a new pool of customers, the City maintains that the expansion would assist the State in meeting its energy efficiency and renewable energy goals, while enabling the City to accelerate the development of new clean energy projects. The City also asserts that the opt-in mechanism enables NYPA's municipal customers to limit the incremental utility costs they incur to levels that avoid unduly burdening their taxpayers, who ultimately are responsible for such costs.

The City recommends that the Commission adopt a limitation on surcharge collections allocable to opt-in customers during the first year of the opt-in mechanism. Clarification of how much program funding would be required to support the projects the opt-in customers sponsor would accompany the limitation. The Commission, the City adds, should restrict annual expenditures on the opt-in projects collectively to a percentage (e.g., 10% to 15%) of the aggregate annual RPS, EEPS and SBC budgets for the initial year of program implementation. Later, the City elaborates, the Commission might decide to adjust, or eliminate this ceiling based on a review of actual and projected demand for the opt-in mechanism.

The Joint Utilities

The Joint Utilities oppose selective opting-in by NYPA customers, and urge that the opt-in mechanism be rejected. They argue that allowing individual NYPA customers to choose to pay the SBC/RPS surcharge at specific meters each identifies, and thereby gain access to the SBC/RPS funds, is inequitable and discriminatory to the customers who currently fund the SBC/RPS surcharge. The Joint Utilities maintain that, if the Commission is inclined to allow NYPA customers to participate in SBC/RPS programs, then all NYPA customers should be required to contribute to the SBC and the RPS collections. That contribution requirement, they argue, would remove the inequities inherent in the Petitioner's proposal. Because all NYPA customers would support program funding, all NYPA customers would participate in clean energy programs on an equal footing with other customers.

The Joint Utilities further recommend that, if the NYPA customer eligibility is permitted upon expanding payment of the surcharges to all NYPA customers, EEPS II utility program administrator budgets should be increased to a level

corresponding with the SBC collections from NYPA customers projected within each respective service territory. The Joint Utilities also note that they support the Clean Energy Fund. They urge the Commission to evaluate any changes to the SBC and RPS surcharge through proceedings conducted regarding that Fund, arguing that changes in advance of the Clean Energy Fund decision would create unnecessary confusion for the utilities and their customers.

DISCUSSION AND CONCLUSION

The opt-in mechanism proposed by Petitioners is inequitable to customers of investor-owned utilities and is therefore rejected. By requiring only those participants who plan on benefitting from the programs to pay the requisite charge, the proposal subverts the design of the SBC and RPS programs. As the Commission explained in initiating the SBC, the program "would be designed to ensure that the cost of carrying out [the] public policy initiatives was *fairly* allocated *across most, if not all*, users of the power distribution system, and recovered in a competitively neutral manner" (emphasis added).⁷ Moreover, when the Commission adopted EEPS, it referenced the SBC in directing the "investor-owned utilities to commence collection, through the [SBC], of additional funds to support the EEPS..."⁸ Likewise, in initiating the RPS, the Commission stated that an objective of the program was to "develop an economically efficient RPS requirement that minimizes adverse impact on energy costs, allocates costs

⁷ Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) at 61.

⁸ 2008 SBC Order at 3.

equitably among ratepayers, and affords opportunities for recovery of utility investment.”⁹

As Joint Utilities note, utility customers other than NYPA customers may not opt out of contributing to the programs, even if they do not intend to access the programs. The proposed effect of the proposed opt-in mechanism for NYPA customers is then to create two customer classes, one of which may selectively opt in, and another that not only contributes by default, but cannot opt out. Allowing a group of customers who do not support the SBC, EEPS, and RPS programs as a class to nonetheless benefit from the programs does not meet the programs’ stated objectives of fair implementation premised upon distributing costs across most, if not all, customers. Because the Petition is denied, the Joint Utilities’ request that the proposed relief be addressed in the context of Clean Energy Fund proceedings is moot. Petitioners, however, should note that those proceedings, and the Reforming the Energy Vision proceedings, will determine the future of the RPS program beyond 2015. While the development of a Clean Energy Fund is under consideration,¹⁰ disruptive changes to the RPS program should be avoided.

Finally, we remind Petitioners that NYPA customers may directly benefit from the NY-Sun MW Block Program, insofar as their participation can be supported by proceeds from the

⁹ 2004 SBC Order at 24.

¹⁰ See Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Order Commencing Proceeding (issued May 8, 2014).

Regional Greenhouse Gas Initiative program.¹¹ Funds from the NY-Sun MW Block Program are used to support, implement, and administer PV projects, directly reducing such projects' costs. In light of the NY-Sun MW Block Program, as well as NYPA's own support of solar and energy efficiency projects,¹² NYPA customers claiming the financial support for PV and energy efficiency projects they can access is inadequate should seek avenues of redress other than participation in the RPS and EEPs programs.

The Commission orders:

1. The Petition of Global Structured Finance Advisors and GP Renewables and Trading, LLC is denied.
2. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

¹¹ See Case 03-E-0188, Retail Renewable Portfolio Standard, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs (issued April 24, 2014) at 7. See also NY-Sun Initiative Frequently Asked Questions, <http://ny-sun.ny.gov/About/NY-Sun-FAQ.aspx>.

¹² Contrary to the Petitioners' implications, NYPA does offer some direct funding and low-cost financing for energy efficiency and photovoltaic projects. See, e.g., <http://www.nypa.gov/Press/2012/120202a.html>.

CASES 10-M-0457 et al.

Commissioner Diane X. Burman, concurring

As reflected in my comments made at the public session on January 8, 2015, I concur and specifically note my concurrence is conditioned on the denial of the petition without prejudice to address these issues in other relevant Commission matters.