

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 8, 2006

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.
(Chateaugay Power Plant -- Request of Boralex
New York Inc. for Renewable Portfolio Standard
Support as a Maintenance Resource.

ORDER APPROVING REQUEST FOR RPS PROGRAM
FUNDING AS A MAINTENANCE RESOURCE

(Issued and Effective February 16, 2006)

BY THE COMMISSION:

INTRODUCTION

By Order issued April 14, 2005 (April Order), the Public Service Commission approved the Implementation Plan for the Renewable Portfolio Standard (RPS) Program.¹ On July 13, 2005, Boralex New York, Inc. (Boralex), on behalf of its Chateaugay Power Plant (Chateaugay), submitted an application for a determination that the Chateaugay facility is eligible for RPS Program funding as a maintenance resource. The Chateaugay facility, which uses wood biomass as a fuel, is located in Chateaugay, New York and commenced operation in 1993. After review and consideration of the application, the Director of

¹ Case 03-E-0188, supra, Order Approving Implementation Plan, Adopting Clarifications, and Modifying the Environmental Disclosure Program (issued April 14, 2005).

Electricity and Environment (OEE Director) determined, in a letter to Boralex dated November 1, 2005, that the Chateaugay facility is eligible to participate in the RPS Program as a maintenance resource. In this Order, we offer Boralex RPS Program support.

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 to remain financially viable.² The maintenance resource category is an important component of the RPS Program, designed to avoid losing valuable baseline renewable resources not otherwise eligible for RPS Program support because they may be financially unable to continue operations.

The April Order established a process for a case-by-case review and analysis to determine the level of funding for a maintenance resource. The case-by-case approach was intended to ensure that the amount of support provided is sufficiently tailored to meet the needs of each project, while reserving the largest possible portion of RPS Program funds to encourage the development of additional renewable resources. Eligibility criteria includes consideration of operating costs, financial records, effect of market rules, potential for capital improvements, and relationship with a parent company.

² Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004).

A notice of this pending action was published, pursuant to the State Administrative Procedure Act (SAPA) on November 9, 2005 in the State Register. No comments were received.

APPLICATION

The Application seeks authorization for Boralex's Chateaugay facility to participate in the RPS Program as a maintenance resource. Boralex states that the request is necessary to enable it to recover losses incurred at the plant and to allow for continued plant operations. It explains that salaries for 18 employees and purchases of fuel are an important component of the local economy. The Chateaugay facility sells its energy and capacity through the New York Independent System Operator's (NYISO) day-ahead and real-time markets. It reports no byproduct sales of heat or steam.

Boralex contends that its Chateaugay facility and its other facilities in the Northeast have all been substantially affected by energy market conditions over the past four years. These conditions, coupled with high fuel costs, have resulted in it having to sell one of its facilities and to defer operations at another, both in Maine; although a recent power purchase agreement has allowed the deferred project to resume operations after not operating for 30 months. With respect to the Chateaugay facility, Boralex asserts that the plant's financial statements show that it has suffered and continues to suffer losses. Boralex believes that support through the RPS Program will provide it an opportunity to recover losses incurred and allow continued plant operations, thereby continuing to provide benefits to the local economy and New York's environment. In support of the application, the facility's owner submitted three years of financial data showing net losses each year.

DISCUSSION AND CONCLUSION

Funding Award

We reviewed the application and supporting materials provided by Boralex, as well as Staff's analyses, to determine a reasonable level of support that might be provided. We find that the Chateaugay facility is in need of financial support to meet its operating and capital requirements. In particular, without support, the Chateaugay facility would likely continue to have negative cash flows and ultimately cease operation.

We offer Boralex a production incentive of \$13.87 per MWH, up to 128,000 MWH per year delivered to the New York energy market in conformance with RPS Program requirements, prorated based on the percentage of generation fueled by RPS Program-eligible (unadulterated) wood compared to total generation. This incentive shall be adjusted according to changes in the average monthly wholesale price of energy, over a 10-year period beginning upon the execution of a contract with New York State Energy Research and Development Authority (NYSERDA).³ If the average monthly wholesale price of energy increases above the forecast of prices that was provided to us by Boralex, the RPS Program incentive payment would decline. On the other hand, if the average monthly wholesale price of energy decreases below the forecast, the RPS Program payment would increase but would be capped at \$15.00 per MWH. This approach is sufficient to support continued operations and necessary capital improvements.⁴

³ Amended Appendix B appended to the April Order (or as subsequently modified) shall be used to define RPS Program-eligible fuel resources. No payment will be made for production from ineligible fuel.

⁴ Should Boralex elect not to accept the offer, the April Order allows the Chateaugay facility to participate in a future RPS Program solicitation in the same manner as any similarly situated renewable facility, except that the facility would not be subject to the vintage eligibility requirement.

No incentive, however, will be paid for annual production above 128,000 MWh. Such additional production could be offered in the voluntary green market or for Executive Order 111 solicitations. With advance notice as established in the contract with NYSERDA, Boralex may suspend receipt of some or all of its RPS incentive payments if it chooses to sell that portion of its output into the New York State voluntary green market or pursuant to Executive Order 111 procurement.

Other Matters

President Bush signed into law the Energy Policy Act of 2005 on August 8th. One of the provisions of the Act is to establish grants of up to \$20/ton for biomass fuel. Establishing the criteria for awarding these grants falls to the Secretary of Energy. The Chateaugay Power Plant is a biomass-fueled electric generator that may qualify for a grant. As such, any such grant should be treated as an offset to any payments made to Boralex for the Chateaugay facility under the RPS Program. Because the grant program has not been designed nor implemented, however, it is impossible to forecast if or when Chateaugay might be eligible for such a grant. Therefore, as a condition for maintaining its eligibility as a maintenance resource under the RPS Program, Boralex will be required to apply for any fuel grants for which the Chateaugay facility may be eligible under the Act, and that any such grants awarded for the Chateaugay facility be used to offset the maintenance resource payments provided by NYSERDA.

In addition, NYSERDA should include provisions in the contract requiring Boralex to report if facility ownership changes occur, or other operational changes arise, that result in a substantial change in the financial support needed. The contract should provide, under such circumstances, for the Commission to revisit the level of payment authorized herein.

The Commission orders:

1. The application of Boralex New York, Inc. for RPS Program funding as a maintenance resource is approved, subject to receipt of the written notice required in ordering clause 2; the funding shall be administered by New York State Energy Research and Development Authority in accordance with the discussion in the body of this Order.

2. Boralex New York, Inc. is offered RPS Program support subject to the conditions described in the body of this Order, and shall provide written notice of its decision whether or not to accept the offer to the Secretary to the Commission within 30 days after the date of issuance of this Order, or another date established by the Secretary upon Boralex New York, Inc.'s request for additional time to file such notice. Failure to timely file the notice shall be deemed a decision by Boralex New York, Inc. to decline this offer of RPS Program support.

3. To maintain the maintenance resource status of the Chateaugay facility, Boralex New York, Inc. is required to apply for fuel grants established in the Energy Policy Act of 2005 for which it is eligible and to notify the OEE Director of those applications.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary