BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

In the Matter of Sterling Energy Group, Inc., and Niagara Generation, LLC, Petition for Expedited Approval of Enhanced RPS Program Benefits for the Niagara Generation Facility.	))))))))	**Case 14-E-**

PETITION FOR EXPEDITED APPROVAL
OF ENHANCED RPS PROGRAM BENEFITS
FOR THE NIAGARA GENERATION FACILITY

Sterling Energy Group, Inc. ("Sterling") and Niagara Generation, LLC ("NiGen" and, collectively with Sterling, the "Petitioners") respectfully submit this Petition for Expedited Approval of Enhanced RPS Program Benefits for the Niagara Generation Facility pursuant to Rule 3.5 of the Commission's Rules, 16 N.Y.C.R.R. § 3.5 (2013).

INTRODUCTION AND
REQUEST FOR EXPEDITED ACTION

Petitioners are the owners and operators of the Niagara Generating Facility (the "Facility"), which is a 51 MW generating facility located in Niagara Falls, New York, that has been converted to operate on biomass fuel. In a Petition for Expedited Declaratory Ruling Concerning RPS Eligibility of Niagara Generation Facility filed with the Commission on November 14, 2013, in Case 13-E-0514, Sterling requested a declaratory ruling confirming NiGen's right to participate in future Main Tier solicitations conducted by the New York State Energy Research and Development Authority ("NYSERDA") pursuant to the Commission's

Renewable Portfolio Standard ("RPS") program after the termination of its existing RPS Agreement with NYSERDA. That RPS Agreement was originally entered into between NYSERDA and the prior owner of the Facility, USRG Finance Company, LLC ("USRG"), and was in default at the time that Sterling acquired NiGen from USRG.

At the time that petition was filed, Sterling anticipated that NYSERDA would conduct additional solicitations for Main Tier resources. This has not happened in the almost 6 months since the filing of Sterling's petition and does not appear to be likely to occur in the foreseeable future. Accordingly, Petitioners have concluded that the relief requested in Sterling's November 14, 2013, petition will not provide the sound financial basis required for continued operation of the Facility as a biomass resource. Concurrent with the filing of this Petition, Petitioners are submitting a request in Case 13-E-0514 to withdraw that earlier petition.

In this proceeding, Petitioners respectfully request that the Commission take expedited action to supplement the benefits available to the Facility under the current Main Tier program. At the present time, the Facility is operating reliably on approximately 80 percent clean wood biomass fuel and without using the Tire Derived Fuel ("TDF"), which represented approximately 40 percent of the fuel consumed by the Facility when it was operated by USRG. With additional investment, the percentage of biomass fuel used by the Facility could be further increased, perhaps to as high as 90 percent, and the efficiency of the Facility could be increased, thereby reducing the amount of fuel required to operate the Facility.

But the Facility is presently operating at a loss, and Petitioners have only been able to obtain the funding for the repairs required to restore the Facility and to cover these operating losses through a loan secured by the scrap value of the Facility. Unless the Commission is able to take expedited action to provide additional RPS benefits for the Facility by August when this loan comes due, Petitioners could be forced to sell the Facility for scrap. If the Facility is scrapped, hard hit western New York will suffer the permanent loss of the over 100 direct and indirect jobs and $10 to $15 million per year in local expenditures provided by the Facility, as well as the additional jobs and additional local expenditures that potentially could occur as a result of the capital improvements discussed above.

BACKGROUND

1. The Facility

The Facility includes a circulating fluidized bed ("CFB") boiler designed and constructed by Pyropower, Inc. (now Foster Wheeler Pyropower, Inc.) and one steam turbine. Although originally constructed to operate exclusively on coal, the Facility was modified by USRG to allow it to combust a variety of materials, including TDF and clean waste wood. As a result of these changes and USRG's operation of the Facility using substantial quantities of TDF and clean waste wood, the Commission ruled that the Facility had become an alternate power production facility exempt from regulation by the Commission under § 2(2-b) of the Public Service Law ("PSL").[1]

On April 17, 2007, the NiGen entered into a ten-year RPS Main Tier Agreement with the New York Energy Research and Development Authority ("NYSERDA") which provided that NiGen would be paid $ 11.99 per MWH for the renewable attributes associated with up to 180,500 MWH per year of electricity produced from renewable fuels combusted by the Facility (the "USRG RPS Agreement"). Since the execution of the USRG RPS Agreement, wholesale prices for electricity in western New York have fallen precipitously and, as a result, the

[1] Case 13-E-0233, *Niagara Generation LLC, Petition for a Declaratory Ruling that it has become an Alternate Energy Production Facility Exempt from Regulations under the Public Service Law*, Declaratory Ruling On Qualifying Facility Status And Order Rescinding Lightened Ratemaking Regulation (Issued and Effective September 23, 2013).

combined revenues from wholesale sales of electricity and the USRG RPS Agreement proved to be insufficient to cover the costs of operating the Facility.

On February 7, 2013, USRG informed the Commission of its intention to mothball the Facility effective May 9, 2013. On that date, all operation of the Facility ceased and the Facility was placed in long-term cold storage.

2. Sterling

Sterling is a privately-owned energy company formed under the laws of the State of Indiana with operations in power generation and oil and gas production and transmission. Sterling has acquired all of USRG's ownership interests in NiGen, and NiGen is now a wholly-owned subsidiary of Sterling. In light of the Commission's recent ruling that the Facility is an alternate power production facility exempt from regulation by the Commission pursuant to PSL § 2(2-b), no Commission approval was required for this transaction. The Federal Energy Regulatory Commission granted approval for this transaction under section 203 of the Federal Power Act by order dated October 8, 2013.[2]

Since its acquisition of the Facility, Sterling has successfully repaired and restarted the Facility and returned it to reliable operation using 80 percent clean wood fuel and without the use of any TDF. Sterling was able to achieve this remarkable turn-around of this previously under-performing facility due to the considerable expertise of its staff in operating facilities using the Pyropower CFB boiler. In particular, Sterling's President and Chief Executive Officer, Mr. William Harrington, was formerly CEO of a subsidiary of Foster Wheeler, which also owns Pyropower, Inc., the company that designed and built a number of coal-fired CFB boilers, including the boiler in the Facility. In addition, Sterling has retained the services of Mr. John

[2] *Niagara Generation, LLC*, 145 FERC ¶ 62,017 (2013).

Castleman as a consultant. Mr. Castleman successfully supervised the reconfiguration of multiple Pyropower CFB boilers including: Jyvaskylan Energy – Jyvaskylan, Finland Kaukaan Voima – Lappeenrnta, Finland Konin Power – Poland Wilton Station – Teesside, and UK Slough Heat and Power - Slough, UK, England, to run on a fuel mix of approximately ninety (90) percent clean wood and ten (10) percent coal.

ANALYSIS

I. CONTINUED OPERATION OF THE FACILITY WILL SERVE THE PUBLIC INTEREST BY PROVIDING NEEDED RENEWABLE ENERGY, JOBS AND LOCAL INVESTMENT IN WESTERN NEW YORK

As the Commission noted in its Order Establishing New RPS Goal and Resolving Main Tier Issues dated January 8, 2010, "The Renewable Portfolio Standard (RPS) has been New York's primary policy initiative to promote the development of new renewable energy resources since it was established in 2004."[3] In that order, the Commission noted that renewable resources provide a wide variety of benefits that are difficult to quantify. The Commission also noted that renewable resources provide important protections against fluctuations in the price of fossil fuels:

> The history of oil and natural gas price shocks and supply disruptions clearly demonstrates the value in having a diversified energy mix without heavy reliance on one particular fuel source. The RPS program is an effective way to achieve that end, particularly when it can be accomplished at little or no net cost to customers.[4]

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[3] Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Establishing New RPS Goal And Resolving Main Tier Issues, slip op. at 1 (Issued and Effective January 8, 2010).

[4] *Id.*, slip op. at 12.

On the basis of these findings, the Commission reaffirmed its commitment to the RPS program and increased its target for renewable energy supply from 25 percent of total electricity use in 2013 to 30 percent of total electricity use in 2015.[5]

While the Commission's Main Tier RPS program has been highly successful at attracting new wind generation, other forms of renewable energy have not fared nearly as well. This fact is reflected in the Mid Course Report issued by the Commission's Staff on October 26, 2009, which shows that the 28 RPS contracts currently held by NYSERDA are expected to contribute up to 2,947,000 MWH per year to the RPS Main Tier target.[6] Of this amount, fully 2,625,237 MWH is from wind generation and only 218,025 MWH (477,263 MWH when including Maintenance Resources) is from biomass.

This difference is particularly disappointing in light of the fact that biomass operations generally provide substantial community benefits including significantly greater local employment than non-fuel based renewable resources such as wind and hydroelectric facilities.[7] In fact, according to NYSERDA program records, biomass projects bidding into the program in the second and third solicitations provided estimated job benefits seven times greater than wind projects on a per MWH basis.[8] In the case of the Facility, these benefits include over 100 direct and indirect jobs and approximately $15 million per year in local expenditures in hard hit western New York State. All of these benefits will be lost if Petitioners are forced to sell the Facility for scrap.

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[5] *Id*., slip op. at 10.

[6] New York State Department of Public Service, *The Renewable Portfolio Standard: Mid Course Report* at 14 (dated October 26, 2009).

[7] New York State Energy Research and Development Authority, *NYSERDA Main Tier RPS Economic Benefits Report*, March 2009, Section 5-7.

[8] New York State Energy Research and Development Authority, *New York Renewable Portfolio Standard Market Conditions Assessment*, Summit Blue Consulting, Feb. 19, 2009, at. 4-126.

II. THE COMMISSION HAS BROAD DISCRETION TO FASHION THE SUPPLEMENTAL RPS BENEFITS REQUIRED TO ENSURE THAT THE FACILITY CAN CONTINUE TO OPERATE

Petitioners are open to a wide array of potential programs to supplement the meager benefits currently available to the Facility under the USRG RPS Agreement and thereby avoid the need to sell the Facility for scrap. The Commission could provide such enhanced benefits either by restructuring the USRG RPS Agreement or by establishing a new program of supplemental benefits for biomass facilities similar to the Maintenance Tier that the Commission established for renewable energy resources that were already in existence when its RPS program was first adopted. Petitioners are willing to open their books to review by Commission personnel, as is required for projects seeking to participate in the Maintenance Tier. In addition, Petitioners are also willing to restructure or terminate the USRG RPS Agreement as part of any new program that would avoid the need to sell the Facility for scrap, including the conversion of the fixed payments for Renewable Energy Credits established in that agreement to a contract for differences formula. Petitioners are also willing to enter into reasonable commitments concerning employment, capital improvements to the Facility, and further increases in the use by the Facility of clean wood biomass fuel as a part of any such contract restructuring.

CONCLUSION

WHEREFORE, for the above-stated reasons, Petitioners Sterling Energy Group, Inc. and Niagara Generation, LLC respectfully request that the Commission issue an expedited order establishing the enhanced RPS program benefits required to ensure that the Niagara Generation Facility does not have to be sold for scrap.

Respectfully submitted,

/s/

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