STATE OF NEW YORK
PUBULIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on November 13, 2014

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 Retail Renewable Portfolio Standard.

ORDER APPROVING REQUEST FOR FUNDING AS A MAINTENANCE RESOURCE

(Issued and Effective November 19, 2014)

BY THE COMMISSION:

INTRODUCTION

In this order, we authorize the New York State Energy Research and Development Authority (NYSERDA) to enter into a three-year Maintenance Tier contract with ReEnergy Lyonsdale, LLC (ReEnergy). The contract shall commence on January 1, 2015 and expire December 31, 2017. ReEnergy shall receive an incentive payment of $33.49/MWh on 131,238 MWh of energy generated at its 22 MW biomass-fired facility located in Lyonsdale, Lewis County, New York.

BACKGROUND

The availability of financial support, under the Maintenance Tier of the Renewable Portfolio Standard (RPS) program, was established in our September 24, 2004 Order to assist certain eligible renewable generating facilities to remain financially viable.[1] Two subsequent Orders, issued April 14, 2005 and October 31, 2005, provided guidance and a process for a case-by-case review and analysis to determine the level of funding that should be afforded for the maintenance of an existing eligible renewable energy facility.[2] At that time, the Commission clarified that the level of support for existing facilities "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."[3]

This approach was intended to ensure that the amount of maintenance support provided is tailored to each facility to enable it to stay in operation, while reserving the largest possible portion of RPS program funds for incremental renewable energy resources. As we noted in the April 14, 2005 Order, "[r]egarding the award of financial support to [maintenance resource] eligible projects, the OEE Director shall recommend to us, for our approval, a set payment award amount at the minimum level to assure project solvency ...."[4] Eligibility criteria include consideration of operating costs, financial performance, effect of market rules, and potential for capital improvements, and relationship with a parent company.[5]

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[1] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Regarding a Retail Renewable Portfolio Standard (issued September 24, 2004).

[2] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Approving Implementation Plan, Adopting Clarifications, and Modifying the Environmental Disclosure Program (issued April 14, 2005) (April 14, 2005 Order); Order Approving Modifications to Maintenance Resource Category (issued October 31, 2005) (October 31, 2005 Order).

[3] October 31, 2005 Order, at 3.

[4] April 14, 2005 Order, at 32.

[5] April 14, 2005 Order, Appendix A at 10–12.

On April 15, 2005, NGP Power Corporation (NGP Power), on behalf of its subsidiary, Lyonsdale Biomass, LLC (Lyonsdale), submitted an application for a determination that its Lyonsdale biomass facility, which facility began commercial operation in August 1992, was eligible for RPS Program funding as a maintenance resource. After review and consideration of the application, the Director of the Office of Electricity and Environment determined that the facility was eligible to participate in the RPS Program as a maintenance resource. By Order dated August 31, 2005, the Commission provided Lyonsdale with two options for obtaining RPS Maintenance Tier support. At that time, Lyonsdale was given an option to either accept one of the Maintenance Tier awards offered or reject the offers and bid into a solicitation in the Main Tier of the RPS program. Lyonsdale exercised its option to bid into a Main Tier solicitation in December 2006.[6] As a result of that bid, Lyonsdale was awarded a seven-year RPS contract, effective January 1, 2008 through December 31, 2014.

On June 13, 2005 NGP Power transferred ownership of the facility to Catalyst Renewables Corporation. In March 2011, ReEnergy acquired the Lyonsdale facility from Catalyst and has continued operations at the facility, while investing to improve its efficiency and performance. It currently sells energy and capacity into markets controlled by the New York Independent System Operator, Inc. (NYISO) and also receives revenues from the sale of steam to a neighboring business.

SUMMARY OF PETITION

On May 8, 2014, ReEnergy filed a petition requesting that the Commission authorize continued participation of the

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[6] Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Approving Request For RPS Program Funding As A Maintenance Resource (Issued August 31, 2005).

Lyonsdale facility in the RPS program as a Maintenance Tier resource, for a term of 3 years and at a price of $46.22 per MWh, commencing upon conclusion of its current RPS contract. It notes that the 3 year term is the difference between its current 7-year contract and the current 10-year RPS contract term limit extended to facilities, at that time, in the RPS program. ReEnergy further requests that the Commission allow it the option to accept or reject any Maintenance Tier award offered by the Commission so that the Lyonsdale facility may alternatively be eligible to participate in NYSERDA's next Main Tier solicitation. Lastly, ReEnergy requests that the Commission allow the Lyonsdale facility to enter into a contract with NYSERDA for a term of greater than 3 years, in the event the Commission removes or modifies the 10-year term limit cap.[7]

In the absence of the considerations above, ReEnergy asserts, the Lyonsdale Facility is destined for closure at the end of 2014. According to ReEnergy's petition, the facility provides significant economic benefits to the region by supporting more than 100 direct and indirect jobs, many directly related to the logging industry that harvest the fuel for the biomass facility.

NOTICE OF PPROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the petition was published in the State Register on June 11, 2014 pursuant to the State Administrative Procedure Act (SAPA). SAPA comments were due July 26, 2014. Comments were received from 79 parties representing employees, facility suppliers, local

[7] On July 2, 2014, we issued an Order in this case increasing the term for Main Tier contracts executed in subsequent RPS solicitations from 10 years to a maximum of 20 years. Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Authorizing NYSERDA to Increase the Maximum Length of RPS Main Tier Contracts to a Term Not to Exceed 20 Years (issued July 2, 2014)(July 2, 2014 Order).

citizens, public utilities, community and trade groups, and state and local officials. Most comments supported the petition. Two parties filed comments in opposition to the petition. A list of commenting parties is included as Appendix A.

SUMMARY OF COMMENTS

The vast majority of the comments received were supportive of ReEnergy's petition. Most of these comments focused on the facility's impact on the economic health of the region, the environmental benefits, and fuel diversity in the RPS program.

Comments in Support

Of the 79 comments received, 74 addressed the importance of the Lyonsdale facility and its beneficial impacts on the regional economy. Many of these comments noted that jobs are scarce in this upstate area of New York and stated that closing the Lyonsdale facility would be detrimental to the regional economy. The County of Lewis Industrial Development Agency also stated that "[c]losure of a facility of this magnitude would have a significant negative impact in a region that struggles to sustain its employment base every day." Other comments stressed that the plant supports many more jobs beyond those directly involved in the plant's operations. For example, the Biomass Power Association commented that "every 1 MW of biomass power supports an estimated 5 jobs." It noted that four of these five jobs are from indirect employment that services the facility, many of which are loggers who supply the facility with fuel. Landvest, a forest management company, noted that, "[i]f the facility were to cease operations, it would have a chilling impact on fuel suppliers and on the health of the forests in that immediate region." The Lewis County Board of Legislators noted that the Lyonsdale facility has "a significant impact to the Lewis County economy. The $6.6 million in annual fuel purchases and additional operating expenses create a multiplier effect."

Assemblyman Ken Blankenbush and State Senator Joseph Griffo, both of whom represent the Lyonsdale area, commented on the importance of the biomass industry in supporting jobs within their districts.

Comments from many parties noted that the facility, in its use of low value wood, forest residue and shrub willow, can improve the quality of trees in managed woodlots. The facility provides an outlet for low grade materials that could not be otherwise used for logs or pulp. By allowing for the removal of low value wood within a woodlot through a process known as Timber Stand Improvement, there is less competition for resources among the desirable species. This method of forest management improves the overall condition of the woodlot and concentrates wood growth on a number of select trees. This process can improve wildlife food and habitat and overall health of a woodlot. Like any other agricultural crop, commentors argued, forests need care to produce high quality product. Commentors also noted that, without an outlet, residual materials are often left behind to decompose on the forest floor, releasing methane (CH_4), a potent greenhouse gas.

Some commentors noted that the use of shrub willow as a fuel source allows certain farmers in the region better use of marginal farmland. The State University of New York (SUNY) Center for Sustainable and Renewable Energy noted that the United States Department of Agriculture (USDA) has invested $1.2 million to assist landowners to establish and grow shrub willow on marginal agricultural land as a renewable energy fuel in Central and Northern New York. It was noted that this effort was undertaken collaboratively between ReEnergy and the SUNY College of Environmental Science and Forestry in Syracuse and that, to date, about 1,200 acres of willow have been established as part of the program. The comments noted that over the 11-year life of the project, it is expected that more than 150,000 green tons of biomass will be produced and used by the ReEnergy biomass facilities.

Several of the commentors noted that New York State has been blessed with abundant natural resources, including biomass. However, they continued, RPS Main Tier solicitations have been dominated by wind projects. These commentors note that it is important to maintain a balance of energy resources within the RPS program and encourage the Commission to support biomass. The commentors also note that the use of biomass will help reduce New York's dependence on fossil fuels.

Comments in Opposition to ReEnergy's Petition

Two filings were made opposing ReEnergy's petition. Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) (collectively, the Companies) submitted joint comments in which they "urge[d] the Commission to decline to authorize additional RPS support for the [Lyonsdale] project." The Companies equate the ReEnergy request for a new contract to a "double dip" from the RPS program. Con Edison and O&R state that "there should be no expectation on the part of the renewable energy facility of continued customer support at the conclusion of a Main Tier contract. Allowing renewable energy facilities originally funded under the Main Tier program to receive either additional Main Tier funding or Maintenance Tier funding encourages renewable energy facilities to rely on the State for support in perpetuity." The Companies also noted that "ReEnergy has requested Maintenance Tier funds ($46.22/MWh) in excess of current average Main Tier awards. The Companies note that the Commission should consider whether ratepayer funds can be spent more effectively by awarding contracts to new facilities participating in the Main Tier program.

Finally, the Companies suggested that, if the Commission decides that maintenance support under the RPS program is necessary, then the Commission should clarify that any additional support provided to the Lyonsdale facility is non-precedential as it relates to other resources currently receiving Main Tier support.

In addition, Mr. Kevin Kapfer, a local citizen, filed comments opposing the petition because of concerns related to local road damage by trucks traveling to the facility.

STAFF’S ANALYSIS

Staff’s analysis included an extensive review of ReEnergy’s May 8, 2014 petition, supporting records and documentation and updated financial work papers. As a result of this analysis, Staff has recommended adjustments to ReEnergy’s forecasted operating revenues and expenses. Staff’s recommended adjustments are similar to adjustments we have made in other Maintenance Tier award calculations.

Plant Operating Revenues

Staff proposes two adjustments to ReEnergy’s forecasted revenues. The first would account for energy prices forecasted by the NYISO and the second would account for imputed steam sales.

In its filing, ReEnergy forecasted its revenues using energy prices obtained from a national energy trading firm. Instead, staff recommends the use of the energy price forecast developed by the NYISO for its 2013 Congestion Assessment and Resource Integration Study (CARIS) Report because it is a public, independent report prepared by the entity that has authority over the energy markets in New York State.[8] The CARIS Report forecast provides a summary of future zonal energy

[8] Table E-24: Projected Zonal LBMP $/MWh (2013-2022) by Zone (page E-19 of the Appendix); November 19, 2013.

prices, statewide, for 2013 through 2022. Each zonal energy price forecast is the average of all generator-level bus price forecasts (the price the electric generator is paid) within the respective NYISO zone. A review of historic zonal price for the Mohawk Valley Zone (the zone in which Lyonsdale is located) and the historic Lyonsdale's bus price for the last three years shows that the average zonal price was approximately 5% greater than the average Lyonsdale bus price. Therefore, in order to capture this historic difference between the average actual zonal and Lyonsdale bus prices, Staff recommends an adjustment to the NYISO forecast to reduce the forecast by the 5% difference, and to use the revised forecasts to recalculate ReEnergy's revenues.

Staff further recommends adjusting ReEnergy's projected revenues for imputed steam sales. The Lyonsdale facility has the ability to make steam sales to a neighboring business – Burrows Paper Corporation. In its filing, ReEnergy did not forecast any steam sales to Burrows, claiming its contract with Burrows would expire in December 2015. However, Burrows filed comments supporting the petition and noting the importance of the Lyonsdale facility in meeting Burrows' steam load. Based on this, Staff believes Burrows intends to continue purchasing steam from Lyonsdale in the future. Moreover, upon further discussion with Staff, ReEnergy provided Staff with an updated estimate of future steam revenues and associated costs. Accordingly, Staff has incorporated these revenues and associated costs into its recommendation.

Plant Operational Expenses

Consistent with the Commission's October 31, 2005 Order, Staff recommends adjustments to ReEnergy's forecasted operating expenses. These adjustments will ensure that the facility's future operating costs and necessary future capital (together sometimes referred to as "to go" costs) are covered, without necessarily paying all of the facility’s “sunk costs.” More specifically, Staff recommends adjusting forecasted expenses to eliminate the following expenses from the calculation of the eligible RPS incentive payment: management fees, interest expense, and depreciation and amortization expenses relating to property and equipment currently in service. These expense items represent the cost of existing plant-in-service (i.e. sunk costs) and also allocations from ReEnergy, Lyonsdale’s parent company. Absent the Maintenance Tier, Staff asserts that these costs are the responsibility of the facility owner, whether the facility continued to operate or not. Staff further recommends adjusting depreciation and amortization expenses to amortize the cost of future capital expenditures over the projected useful life of the capital expenditures, rather than completely amortizing those expenditures in the year incurred, as proposed by ReEnergy.

Staff also proposes to eliminate an expense for an incentive compensation package because these expenses are not considered necessary to keep the facility operational and that it is not appropriate for the RPS program to support an incentive compensation program. Staff does recommend allowing expenses associated with health and safety programs.

Based on these proposed adjustments, Staff recommends an RPS Maintenance award payment of $33.49/MWh.

DISCUSSION AND CONCLUSION

The Maintenance Tier was designed to minimize attrition of certain baseline resources in our RPS program, operating prior to 2003, which are in danger of ceasing operation or abandonment because they are uneconomic to operate and maintain. Staff’s analysis finds that this facility, upon expiration of its current RPS contract on December 31, 2014, would be in such a position.

We agree with Con Edison and O&R that, as part of the RPS program, there should be no expectation on the part of any owner of a renewable energy facility of continued ratepayer support at the conclusion of a Main Tier contract and have indicated such in our recent decision regarding Main Tier contract terms in future Main Tier solicitations.[9] The general position is grounded upon the reasonable presumption that, when calculating their bid prices (upon which their RPS contract is ultimately based), project developers had factored in the full recovery of project development costs over the term of the initial contract. Thus, in general, providing these developers with additional RPS incentives beyond an initial Main Tier contract would not be in the best interest of ratepayers or the RPS program that seeks to procure new incremental renewable energy.

In this particular instance, however, the Lyonsdale facility's energy output is included in the RPS baseline, and we had previously deemed the Lyonsdale plant eligible to participate as a Maintenance Tier resource. The provision of maintenance support, if it is needed to ensure the continued operation of this baseline plant during times of economic distress, and if such support is no more than the cost of a new entrant into the market, is consistent with our stated policy objectives. We also recognize the contributions of this renewable energy resource to the local economy, as described in the comments summarized above.

Based on Staff's review, we believe that a showing of legitimate need for maintenance support has been made in this particular case. Therefore a maintenance award at the price recommended by Staff is appropriate. We will provide for three additional years, as requested by ReEnergy, since the three year term is reasonable and will complete a 10-year contract length,

[9] July 2, 2014 Order, at 13.

consistent with existing contracts for other resources in the RPS program.

With respect to eligible generation from the facility, we deny ReEnergy's request to increase the amount from 131,238 MWh annually (the amount allowed in its existing contract) to a forecasted annual average of 151,700 MWh since the former is the amount we seek to maintain. Any generation above the current contracted amount of 131,238 MWh is eligible to bid into future Main Tier solicitations, as long as other program eligibility rules are satisfied.

As a result, we authorize NYSERDA to offer ReEnergy a Maintenance Tier contract in the amount consistent with adjustments recommended by Staff, in the amount of $33.49/MWh for a contract amount of up to 131,238 MWh annually for a term of three years beginning January 1, 2015. We find that these contract terms are reasonable and necessary to keep the facility solvent.

Lastly, we deny ReEnergy's request for an option to participate in a future Main Tier competitive solicitation for the energy amount (131,238 MWh) covered by its current contract, in lieu of receiving a maintenance award set by us for the reasons stated in our October 2005 order, elaborated above. Primarily, the objective of the RPS program is to encourage the development and construction of new renewable energy facilities. Our case-by-case review of eligible facilities seeking maintenance support allows us to award an amount tailored to the needs of each facility in order to continue operating, while continuing to reserve the greatest possible portion of RPS program funds for new facilities to meet program goals.

The Commission orders:

1. ReEnergy Lyonsdale, LLC (ReEnergy) is offered a maintenance resource contract under the Renewable Portfolio

Standard Program (RPS) with a production incentive of $33.49/MWh, up to 131,238 MWh produced annually, for a term of 3-years for actual electricity production, beginning January 1, 2015, as described in the body of this order.

2. ReEnergy shall provide written notice of its decision whether or not to accept the offer of a maintenance resource contract to the Secretary to the Commission within 30 days after the date of issuance of this order. Failure to timely file the notice shall be deemed a decision by ReEnergy to decline this offer.

3. The New York State Energy Research and Development Authority (NYSERDA) is authorized to enter into an RPS maintenance resource contract, as described in the body of this order.

4. NYSERDA is authorized to begin making payments for actual electricity produced on or after January 1, 2015, upon ReEnergy's submission of a written notice of its acceptance of this decision and execution of the contract.

5. The Secretary in her sole discretion may extend the deadlines set forth in this order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. This proceeding is continued.

By the Commission,

/s/

KATHLEEN H. BURGESS
Secretary

List of Comments

Adirondack North Country Association
Al Shaw
Anthony Marciniak
Barry Dwyer
Bernie Pate, DBS Partnership
Biomass Power Association
Bruce Bush
Burrows Paper Corporation
Celtic Energy Farm
Charlie Kloster
Christopher Guignard
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly)
County of Lewis Industrial Development Agency
D. Bruce Proven
Dale Manning
Dale Myslivecek
Dan Malloy
Daniel Lyndaker
Darwin Keefer
David Beyer
David Keefer
David Pate, DBS Partnership
Dean Keefer
Dennis Webber
Empire State Forest Products Association
Eric Grau
Frank LiLL & Son, Inc.
Greg Rogers
Gregory Hemmerich
HMT, Inc
James Ely
James F. Backus
John Howe
John Lyndaker
Joseph A Griffo
Joseph Lisowski
Ken Blankenbush
Ken Newvine
Kevin Kapfer
LandVest
Larry Hoffert
Laurie Turck
Lawrence Dolhor
Lewis County Board of Legislators
Lewis County Chamber of Commerce
Matthew Farr
Michael Black
Michael Brummer and Associates
Michael Flynn
Michael Hutchins
Michael Nagengast
Molpus Timberlands Management
New York Biomass Energy Alliance
North Country Regional Economic Development Council
NYS Legislative Commission on Rural Resources
NYS Woodsmen's Field Days
Pat Brown
Patrick Herlihy
Paul King
Randy Hulbert
Richard Bartelotte
Richard Olmstead
Richard Pate
Ron Aden
Ron King, Jr.
Ron Spann
Ronald Krug
The Development Authority of the North Country
Thomas Satterly
Tim VanNostrand
Timothy Brasie
Timothy Volk, SUNY EFS
Todd McIntyre
Travis Hartley
Tug Hill Commission
Vickie Backus
Walter Fidler
Wayne Kirk
Wayne Tripp