

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 19, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

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

ORDER AUTHORIZING THE EXPANSION OF THE SOLAR PHOTOVOLTAIC AND
GEOGRAPHIC BALANCE PROGRAMS FROM 2012 THROUGH 2015 AND THE
REALLOCATION OF MAIN-TIER UNENCUMBERED FUNDS

(Issued and Effective April 24, 2012)

BY THE COMMISSION:

INTRODUCTION

The solar photovoltaic program has been the cornerstone of the Customer-Sited Tier in New York's Renewable Portfolio Standard Program (RPS) administered by the New York State Energy Research and Development Authority (NYSERDA). The Customer-Sited Tier has been the major driver of the New York solar photovoltaic market, outside of Long Island, since the inception of the program and the demand for "behind-the meter" solar photovoltaic installations continues to grow at a robust rate. The RPS program has helped to sustain and grow the solar photovoltaic infrastructure of distributors, installers and other businesses bringing this technology to customers.

Noting the potential of solar energy in New York State, Governor Cuomo announced the NY-Sun initiative in his 2012 State of the State message. The goals of NY-Sun are to install in 2012 twice the customer-sited solar capacity that was installed during 2011, and to quadruple the number of 2011 installations by 2013.¹

In this order, the Commission authorizes NYSERDA to expand the funding for the Customer-Sited Tier Solar Photovoltaic category standard-offer incentive program for smaller-scale solar photovoltaic systems, and to expand the funding for and enhance on a state-wide basis² the Customer-Sited Tier Geographic Balance component competitive bidding program for larger solar photovoltaic systems from 2012 through 2015. These actions support realization of the goals of the NY-Sun initiative. The Commission also authorizes NYSERDA to reallocate \$90,406,444 of unencumbered funds from the RPS Main Tier to fund the expanded programs for years 2012 and 2013 and determines that the sources of additional funding for this authorized four-year program expansion will be established within the context of the 2013 overall RPS program review.³

¹ [Http://www.governor.ny.gov/assets/documents/Building-a-New-New-York-Book.pdf](http://www.governor.ny.gov/assets/documents/Building-a-New-New-York-Book.pdf), at pp. 13-14.

² The state-wide enhancement will be modeled after the Geographic Balance component authorized by the Commission in 2010; Case 03-E-0188, Retail Renewable Portfolio Standard (RPS), Order Authorizing Customer-Sited Tier Programs through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program (issued April 2, 2010).

³ A review of the RPS program is scheduled to occur in 2013; Case 03-E-0188, Retail Renewable Portfolio Standard, Order Establishing New RPS Goal and Resolving Main Tier Issues (issued January 8, 2010).

BACKGROUND

In 2010 the Commission established budgets and targets, through 2015, for the Customer-Sited Tier of the RPS program to encourage certain self-generation "behind the meter" technologies in the State.⁴ In the solar photovoltaic technology category, an annual budget of \$24 million was allocated for standard-offer incentives for residential and small commercial installations, which was expected to yield approximately 82 MWS of new solar photovoltaic capacity.⁵ As a component of the Customer-Sited Tier, the Commission authorized an initiative to encourage larger-scaled installations of solar photovoltaic, fuel cells, and biogas-fueled facilities in the downstate region to help address geographic inequities in the RPS program. This Geographic Balance component is administered through competitive solicitations with a current budget of \$30 million annually through 2015 and is expected to result in a total of 77 MW of solar photovoltaic capacity and a much smaller amount of biogas-fueled capacity.⁶

On February 14, 2012, NYSERDA submitted a petition with a proposal to expand the above-described solar photovoltaic programs, with some refinements, to contribute to the State's achievement of the NY-Sun initiative.⁷

⁴ April 2, 2010 RPS Order, p. 20.

⁵ Ibid., p. 25.

⁶ Ibid., pp. 25 - 38.

⁷ NYSERDA notes that this proposal will serve as one component in a broader Statewide NY-Sun effort that includes solar photovoltaic initiatives on Long Island as well as state sales tax exemption on solar electric systems for commercial customers and a state income tax credit for leased solar photovoltaic systems.

SUMMARY OF NYSERDA'S PETITION

NYSERDA recommends doubling the current 2012-2015 RPS Customer-Sited Tier solar photovoltaic budget, including the Geographic Balancing component, from \$54 million to \$108 million annually. NYSERDA states that the expansion of these programs presents the most efficient strategy for achieving Governor Cuomo's NY-Sun goals and is consistent with the recommendations of the recently released New York Solar Study.⁸ NYSERDA projects, in a forecast it characterizes as aggressive but achievable, that the proposed funding will support the installation of 269 MWs of solar photovoltaic facilities through 2015, and an additional 110 MWs thereafter. It provides the following table to demonstrate the anticipated progress under its proposal.

Table 1

Estimate of the NYSERDA-Administered RPS-CST Program Contribution to the Statewide Goal for Annual Customer-Sited PV Capacity Additions (MW)

	Annual Installation			Progress Toward NY-Sun Goal
	CST PV Programs Underway/ Already Approved	CST PV Programs with NY-Sun Expansion	Combined	
<i>2011 benchmark year(actual installations)</i>	15*	N/A	15	
2012	40*	4	44	Exceeds target of doubling 2011 annual MW additions
2013	44	20	64	Meets target of quadrupling 2011 annual MW additions
2014	39	38	77	Sustains annual investment level
2015	42	42	84	Sustains annual investment level

*Includes ARRA-funded projects.

⁸ New York Solar Study: An Analysis of the Benefits and Costs of Increasing Generation from Photovoltaic Devices in New York, January, 2012; <http://www.nyserda.ny.gov/en/Publications/Energy-Analysis-Reports/Solar-Study.aspx>.

Further, NYSERDA proposes that of the \$54 million annual increase, \$52.5 million would be allocated for direct program incentives while \$1.5 million would be used for program administration, quality assurance and control (but not for the New York State Cost Recovery Fee). NYSERDA premises the achievements in Table 1 by allocating 75% of the \$52.5 million in increased funding (\$39.4 million/year) to a statewide competitive bidding program for larger-scale solar photovoltaic facilities (modeled after the Geographic Balance Program) and 25% (\$13.1 million/year) to the standard-offer incentive program for smaller-scale systems. NYSERDA also seeks flexibility to adjust this percentage split in consultation with Staff, based on market demand and program performance. It also recommends that other program design criteria, such as system size caps for each program, be established in consultation with Staff and reviewed periodically.

Finally, NYSERDA recommends that the Commission adopt the proposed expansion as a four-year, 2012-2015 effort. It claims that doing so would provide market signals to the development community, encourage an expansion of private commitments and investments, provide for economic efficiencies that contribute to ratepayer benefit, and bring jobs and other economic benefits to New York. However, to ensure that goals are in place by 2013, NYSERDA requests authorization to reallocate \$90.5 million⁹ of unencumbered Main-Tier funds now to implement the first two years of the expanded program; and

⁹ NYSERDA notes that \$90.5 million is premised on Commission authorization to reallocate \$17.6 million of unencumbered Customer-Sited Tier funds to the solar photovoltaic categories as requested in its "Petition For Modification - Proposal Regarding Unallocated CST Funds," filed January 30, 2012. The precise amount to be reallocated should be \$90,406,444.

requests consideration of funding for years 2014 and 2015 in the context of the 2013 overall review of the RPS program.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning the expansion of the solar photovoltaic program was published in the State Register on February 29, 2012 [SAPA 03-E-0188SP31]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on April 16, 2012. The comments received are summarized below.

SUMMARY OF COMMENTS

Comments were received from seventeen parties.¹⁰ For the most part, the parties' comments are supportive of NYSERDA's proposals to implement policies to further the NY-Sun Initiative. Only IPPNY and one other individual outright opposes the proposal. IPPNY opposes it primarily because the proposed funding for 2012 and 2013 would come from RPS Main Tier funds. IPPNY believes that there is ample demand for Main Tier solicitations despite uncertainty about renewal of the

¹⁰ Comments were received from the Alliance for Clean Energy New York, Inc. (ACE NY), the Business Council of New York State, the City of New York, Consolidated Edison Company of New York, Inc./Orange and Rockland Utilities, Inc. (Con Edison/O&R), George Stephens, Hudson Valley Clean Energy, the Independent Power Producers of New York, Inc. (IPPNY), Leviton Manufacturing, Inc., Multiple Intervenors (MI), Niagara Mohawk Power Corporation d/b/a National Grid, New York Solar Energy Industries Association (NYSEIA), Pace Energy and Climate Center/ Natural Resources Defense Council (Pace/NRDC), SolarCity, the Solar Energy Industries Association (SEIA), SunEdison LLC/SunPower Corporation, Sunrun Inc., and Wal-Mart Stores, Inc.

Production Tax Credit, and transferring money away from the Main Tier will increase uncertainty for potential investors during an already complex situation. IPPNY also believes the program needs to have greater certainty as to duration to allow for better and longer-term market development. Three parties commented on the relatively expensive nature of solar generation, and the Business Council noted that solar generation was four times that of conventional means of generation, and twice the cost of other renewable generation. MI and the Business Council only support it if the funds are transferred from the Main Tier and no new funds are collected from ratepayers. The Business Council supports the proposal as a preferable alternative to something it does not support, the statutory solar quantity obligation approaches adopted in other states. The Business Council opposes the statutory mandate approach as too costly, arbitrary, and inflexible in response to changing circumstances, resulting in adverse impacts on a State's employment and Gross State Product (GSP). ACE NY generally supports the proposal, but is wary of any initiative that supports one renewable energy technology over others. Pace/NRDC characterizes the NY-Sun proposal as a worthy start, urging policymakers to establish solar development goals that go further.

Many parties generally want assurance that funding will continue past 2013 so as to encourage long-term investments, but several parties believe that funding decisions should conservatively await the Commission's 2013 comprehensive RPS Program review. One party suggests that the funds for 2014 and 2015 also be transferred from the Main Tier budget, citing that this represents only about 4% of the annual Main Tier budget. Several parties support the allocation of funds among regions by means of the relative proportion of RPS funds

associated with a particular region. One party argues that 80% of the incremental funds should be allocated to projects in the City of New York to further the concept of providing for an overall geographic balance of RPS spending. Some parties advocate for portions of the NY-Sun initiative that are not under the purview of the Commission, such as participation by the Long Island Power Authority (LIPA) and the implementation of certain tax incentives. Con Edison/O&R propose that energy efficiency efforts be a prerequisite to incentive awards.

Several developers and installers advocate for additional changes within the current Customer-Sited Tier, including the inclusion and promotion of third party leasing arrangements as a way that average residential customers could afford solar installations that otherwise might only be attainable by the wealthy. In contrast, one commenter argues for complete cessation of solar initiatives based on the proposition that only the wealthy can afford them and that the average citizen would find the money better spent on insulating and upgrading heating systems in older housing stock. Developers and installers generally support elimination of the 300kW per month per installer cap on incentives, treating residential and small commercial installations in separate programs, using performance based incentives for all non-residential solar photovoltaic installations, only allowing bids for actual installations (as opposed to bidding projects as yet unconfirmed), elimination/clarification of any non-price bid criteria, and other refinements to the program. NYSEIA did not call for an elimination of the 300kW per month cap per installer, but instead argues for a proportionate increase in the cap related to the increased funding and kW targets. Developers and installers also indicate a preference for more opportunities for bidding, preferring a quarterly auction

system. SEIA and NYSEIA also favor using similar concepts to further the deployment of Solar Thermal systems in New York.

Con Edison/O&R recommend that the Commission allow for utility ownership of systems where the installed size (the utilities favor allowing installations above 2MW) would displace or postpone distribution upgrades and where systems could be located on utility-owned property.

DISCUSSION AND CONCLUSION

Expansion of RPS Solar Photovoltaic Programs

New York's RPS policies and programs have been a primary contributor to an active solar market for the last decade in the State. We concur with NYSERDA that the most efficient method of increasing solar photovoltaic penetration and to satisfy demand for this technology is to build upon the successes of established programs that NYSERDA currently administers. We believe NYSERDA's proposal is reasonable and cost-efficient. We will, however, modify NYSERDA's request to conform to our decision in response to NYSERDA's roll-over petition that already reallocates \$17,593,556 in unencumbered 2011 Customer-Sited Tier funds to the Solar Photovoltaic category in 2012. Therefore, no additional increased funding for that category will occur for 2012 and NYSERDA is authorized instead to expand funding for the Geographic Balance component¹¹ that encourages larger-scale systems by \$36.4 million in 2012, except that these funds in the Geographic Balance component type

¹¹ Solar photovoltaic is not the only resource type eligible for funding in the current Geographic Balance component, but based on the relative cost and/or scarcity of the other eligible resources (biogas systems) it is expected that the overwhelming majority of the funds will go to solar projects.

solicitations will be offered in all parts of the State where the RPS funds are collected. Also, in order to maintain the geographic balance of program funds, we will require NYSERDA to allocate 50% (\$18.2 million) to NYISO zones A through F, and 50% (\$18.2 million) to NYISO zones G, H, I and J. The split between G & H and I & J will be maintained at the same proportion currently provided (one to five). This allocation of funds to the various NYISO load zones is in rough proportion to the contribution of those areas to electricity demand and RPS ratepayer collections. Further, we will require NYSERDA to implement the revisions prescribed in our order authorizing reallocation of unencumbered 2011 Customer-Sited Tier funds that address caps on funding and equipment size for the Solar Photovoltaic category.

Additionally, for 2013, the funding for the Solar Photovoltaic Standard Offer category will be expanded by \$13.5 million, and the funding for the state-wide Geographic Balance component will be expanded by \$40.5 million implementing the 25%/75% allocation requested by NYSERDA. Within the Geographic Balance component, the additional 2013 funds will be allocated in the same manner as for 2012. The reallocations we are authorizing are shown in the following table:

Approved Reallocation of Unencumbered Funds

	<u>2012 Program Budget</u>	<u>Main Tier Funds Allocated to 2012 Program Budget</u>	<u>Revised 2012 Budget</u>
Solar Photovoltaic	\$41,593,556	\$0	\$41,593,556
Geographic Balance A-F	\$0	\$18,200,000	\$18,200,000
Geographic Balance G&H	\$5,000,000	\$3,033,333	\$8,033,333
<u>Geographic Balance I&J</u>	<u>\$25,000,000</u>	<u>\$15,166,667</u>	<u>\$40,166,667</u>
Total	\$71,593,556	\$36,400,000	\$107,993,556

	<u>2013 Program Budget</u>	<u>Main Tier Funds Allocated to 2013 Program Budget</u>	<u>Revised 2013 Budget</u>
Solar Photovoltaic	\$24,000,000	\$13,500,000	\$37,500,000
Geographic Balance A-F	\$0	\$20,250,000	\$20,250,000
Geographic Balance G&H	\$5,000,000	\$3,375,000	\$8,375,000
<u>Geographic Balance I&J</u>	<u>\$25,000,000</u>	<u>\$16,875,000</u>	<u>\$41,875,000</u>
Total	\$54,000,000	\$54,000,000	\$108,000,000

The funds added to the Geographic Balance component will be administered by NYSERDA in conformance with the guidelines and provisions we stated on pages 37 and 38 of the April 2, 2010 RPS Order, and in conformance with the other requirements in that Order not inconsistent with this order, except that for utilities in NYISO Zones A-F, the requirement that they identify in advance of solicitations locations along their distribution system that would be expected to receive operational benefit from project installations will be voluntary and not mandatory. We note that those requirements already address the Con Edison/O&R concern about energy efficiency. In addition, to provide additional overall geographic balance, NYSERDA shall have authority in its discretion if there is sufficient Downstate demand to transfer up to \$13.2 million in 2012 funds and up to \$15.25 million in 2013 funds from the Upstate zone group A-F budget to either of the Downstate zone

group budgets. The additional detailed design requests stated in the comments will not be considered at this time, but may be reasserted during the 2013 review after there has been more experience with the current requirements.

Solar Photovoltaic Monthly Allowance

Regarding the \$2 million allowance per month that acts as an apportionment mechanism in the Solar Photovoltaic category, we addressed this issue in our decision in response to NYSERDA's roll-over petition that reallocates unencumbered 2011 Customer-Sited Tier funds to the Solar Photovoltaic category in 2012. In that decision, we set the monthly allowance cap at \$3.5 million for May through December of 2012 and laid out additional guidelines for the application of the cap. For 2013, we will set the monthly cap to the average of the total budget of \$37.5 million (the original \$24 million, plus the additional \$13.5 million allocated above) - \$3.125 million/month. The additional guidelines we adopted for 2012 in the roll-over decision will also apply to 2013.

Reallocation of Main Tier Funds

We authorize NYSERDA to reallocate \$90,406,444 from unencumbered Main Tier funds to support expansion of the Solar Photovoltaic category and Geographic Balance component described above for 2012-2013. Using available funds within the RPS Program is a prudent measure and will not deleteriously affect the procurement of Main Tier resources in the affected period. NYSERDA reports that it has sufficient cash balances to cover the expansion of the solar programs for years 2012-2013 while still maintaining an annual schedule for Main Tier solicitations. We also agree with NYSERDA to consider the sources of funding for years 2014 and 2015 of this four-year expanded program in the context of the 2013 review of the RPS program in its entirety.

Administration

NYSERDA's request for an additional \$1.5 million annually to administer the expansion of the Solar Photovoltaic category and Geographic Balance component is denied. The money authorized for reallocation from the Main Tier to fund the expansion is part of the larger existing RPS budget which already includes an administration fee. We have also provided flexibility to NYSERDA to fund its administration cost for the RPS program as a whole and not strictly on a category-by-category, or year-by-year basis. We have also assured NYSERDA that we will explore the adequacy of their administration costs, in total, during the 2013 review.¹²

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to expand the solar photovoltaic programs under the Renewable Portfolio Standard (RPS) Customer-Sited Tier, and is authorized to reallocate \$90,406,444 of RPS Main Tier program funds into the Customer-Sited Tier to support the expansion of the Solar Photovoltaic category and Geographic Balance component for 2012 and 2013 in the manner described in the body of this order. This expansion, along with the rollover of 2011 Customer-Sited Tier funds previously authorized, results in an additional \$216 million in funding for solar photovoltaic programs, and annual budgets for solar photovoltaic programs in the Customer-Sited Tier of \$108 million per year for 2012 through 2015.

¹² Case 03-E-0188, Renewable Portfolio Standard (RPS), Order Authorizing Reallocation of Unencumbered Customer-Sited Tier Program Funds Through 2010 and Resolving Other Issues (issued September 30, 2011).

2. NYSERDA shall develop a revised Customer-Sited Tier Operating Plan to be submitted no later than June 2012, which defines the budgets and programs to be implemented through 2015, as described above and herein. The Operating Plan revisions shall take effect as soon as Staff determines that they adequately reflect the requirements of this order. NYSERDA shall also incorporate the budgets and programs to be implemented through 2015, as described above and herein, into its RPS reports.

3. The Secretary at her sole discretion may extend the deadlines set forth herein.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary