

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 16, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre

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

ORDER AUTHORIZING REALLOCATION OF UNENCUMBERED 2012  
CUSTOMER-SITED TIER PROGRAM FUNDS

(Issued and Effective May 22, 2013)

BY THE COMMISSION:

INTRODUCTION

The Customer-Sited Tier is a component of the Renewable Portfolio Standard (RPS) program administered by the New York State Energy Research and Development Authority (NYSERDA). It allows customers to participate directly in the promotion of certain technologies using self-generation, "behind-the-meter" facilities located in New York. The five standard offer incentive programs are the Solar Photovoltaic Program (Solar PV Program); Anaerobic Digester Gas to Electricity Program (ADG Program); Fuel Cell Program; On-Site Wind Program; and, the Solar Thermal Program.

In this order, the Commission authorizes NYSERDA to reallocate \$29,032,535 in unencumbered RPS Customer-Sited Tier 2012 program funds to 2013 program budgets in the following manner: \$11,601,521 to the Solar PV Program; \$12,931,014 to the ADG Program; \$3,000,000 to the Fuel Cell Program; and,

\$1,500,000 to the On-Site Wind Program. No unencumbered funds will be allocated to the Solar Thermal Program.

#### BACKGROUND

On April 2, 2010, the Commission issued an Order that, among other things, authorized budgets from 2010 through 2015 for the five standard offer technology-based incentive programs in the Customer-Sited Tier.<sup>1</sup> That Order required NYSERDA to calculate, at the end of each calendar year 2010 through 2014, the unencumbered balance in each of the five programs, and to file proposals as to whether such unused funds should remain available for additional projects in their original programs or should be transferred to different programs to satisfy other demands.<sup>2</sup> On January 30, 2013, NYSERDA submitted a petition presenting its unencumbered balance calculations for the end of calendar year 2012, and its recommendations for the disposition of such funds.

#### SUMMARY OF NYSERDA'S PETITION

NYSERDA calculates the end of calendar year 2012 unencumbered balance in each of the five Customer-Sited Tier programs as follows:

---

<sup>1</sup> Case 03-E-0188, In the Matter of a Renewable Energy Portfolio Standard, Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program (issued April 2, 2010), pp. 20-21.

<sup>2</sup> NYSERDA calculated the unencumbered funding balances in accordance with the Commission's directive in Case 03-E-0188, Order Authorizing Reallocation of Unencumbered Customer-Sited Tier Program Funds Through 2010 and Resolving other issues (issued September 19, 2011), p. 17.

**RPS Customer-Sited Tier - 2012 Unencumbered Program Funds**

Solar Photovoltaic	\$568,880
Fuel Cell	\$6,875,000
Anaerobic Digesters	\$12,931,014
On-Site Wind	\$3,956,794
Solar Thermal	\$4,700,847
<b>Total</b>	<b>\$29,032,535</b>

NYSERDA recommends that the remaining 2012 funds be reallocated as set forth below.

**Solar PV Program**

For 2013, NYSERDA proposes to augment the remaining funds in the Solar PV Program with the full amount of unencumbered funds from the Solar Thermal Program in addition to a portion of the unencumbered funds from the On-Site Wind and Fuel Cell programs for a total of \$11,601,521, because the budgeted funds for these technologies in 2013 are anticipated to fully fund their demand. NYSERDA notes that the Solar PV Program remains fully subscribed and the increased funding will continue to provide market stability while supporting the NY-Sun objectives.<sup>3</sup>

**Fuel Cell Program**

NYSERDA proposes that \$3,000,000 be allocated to the Fuel Cell Program, and notes that, in the aftermath of Super Storm Sandy, marketplace participants have indicated an increased interest in large-size fuel cells for daily use, with the provision that the systems can run during a grid outage as a resiliency feature. NYSERDA states that the program now has projects involving two vendors of large-size fuel cells, which should result in an increase in marketplace participation in

---

<sup>3</sup> The NY-Sun initiative was announced by the Governor in his 2012 State-of-the-State address, and establishes a goal of doubling the 2011 customer-sited PV capacity additions in 2012, and quadrupling them by 2013. Those goals were reiterated and expanded in the Governor's 2013 State-of-the-State address.

2013. NYSERDA states that any fuel cell funds not committed by the end of 2013 will be proposed for reallocation to another technology category for 2014.

ADG Program

NYSERDA proposes that the full amount of unencumbered ADG Program funds, \$12,931,014, be allocated to that program's 2013 budget. It notes that the recent increase of the program's per project funding cap from \$1 million to \$2 million will stimulate greater market demand.<sup>4</sup>

On-Site Wind Program

According to NYSERDA, although market demand for On-Site Wind is forecasted to increase according to industry projections, the increase is not expected to be large enough to fully utilize the \$3.1 million of that program's unencumbered 2012 budget. Therefore, NYSERDA proposes that only \$1.5 million of the unencumbered funds be allocated to the On-Site Wind Program. NYSERDA further proposes that any On-Site Wind Program funds not committed by the end of 2013, be allocated to another Program for 2014.

Solar Thermal Program

NYSERDA does not propose to allocate any of the unencumbered balance to the Solar Thermal Program, since experience in 2012 indicates that there is inadequate market demand to require more than the original 2013 budget. NYSERDA intends to launch its Solar Thermal Awareness and Outreach campaign this year to help boost demand.

Customer-Sited Tier Program Targets

In its petition, NYSERDA presented information on actual and forecasted capacity (MW) and energy (MWh) targets for 2006-2012 and 2013-2015 for each Customer-Sited Tier program.

---

<sup>4</sup> Case 03-E-0188, Order Authorizing the Increase of Maximum Project Incentive for the Anaerobic Digester Gas-to-electricity Program (issued January 23, 2013).

NYSERDA notes that it utilized \$29 million less than budgeted for 2006-2012, resulting in approximately 23 fewer MW and 89,000 fewer MWh than projected had the full budget been applied. It also notes that the reallocation of the \$29 million into the 2013 budgets will increase the forecast for MW and MWh in 2013 relative to the original forecast, which will make-up a portion of the shortfall.

NYSERDA notes that expected results for the five programs through 2015 (installed or under contract) if the proposed reallocation it requests is authorized, would be approximately 244 MW and 488,000 MWh of energy capacity and delivery, respectively. Finally, NYSERDA proposed further examination of program targets and funding associated with administering the Customer-Sited Tier as part of the scheduled RPS program review commencing this year.

#### NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning NYSERDA's petition for the reallocation of unencumbered funds was published in the State Register on February 20, 2013 [SAPA 03E0188SP37]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on April 8, 2013. Four parties submitted comments, summarized below.<sup>5</sup>

#### SUMMARY OF COMMENTS

East Coast Solar Policy Advocate (the Vote Solar Initiative) supports NYSERDA's petition to reallocate the 2012 unencumbered funds in the manner proposed by NYSERDA. It also

---

<sup>5</sup> Comments were received from East Coast Solar Policy Advocate (The Vote Solar Initiative); ClearEdge Power; Alliance For Clean Energy New York, Inc.; and, Pace Energy and Climate Center.

comments that it may be more appropriate for NYSERDA to monitor market conditions and program demand during 2013 before making a determination to reallocate unencumbered Fuel Cell and On-Site Wind funds in 2013 to other technology categories. It further suggests that the scheduled 2013 program review would be an appropriate venue for discussing year-to-year program funding objectives and demand as well as program design that will aid the goal of market transformation.

ClearEdge Power (ClearEdge) comments that it supports the reallocation of funds into the Fuel Cell Program that will enhance the 2013 budget to a total of \$6.6 million. It, too, cautions NYSERDA against recommending 2014 budget decisions within the context of the 2013 reallocation proposal. It notes that the petition appears to indicate that if the market demand for fuel cell systems does not meet or exceeds 2013 expectations, the program funding should automatically be allocated to a different program rather than maintained within the Fuel Cell Program. This, ClearEdge states, preemptively assumes a level of activity, or non-activity, within the Fuel Cell Program for 2013 before necessary data is available to make an accurate determination of funds spent.

Alliance for Clean Energy New York, Inc. (ACE NY) states that it has traditionally opposed the transfer of funds from one technology to another and supported keeping unused funds dedicated to the technology to which they were originally allocated but supports NYSERDA's petition, in this instance, given current market conditions and the multi-year history of experience NYSERDA has had with administering the Customer-Sited Tier programs. Like the other commenters, ACE NY encourages NYSERDA to continue to monitor and assess the demand for each program before making judgments on the disposition of unallocated 2013 funds.

The Pace Energy and Climate Center (Pace) supports NYSERDA's petition and states that it successfully balances the need to support multiple technologies with the need to respond to fluctuating demand in the marketplace. It notes that the increase in the Solar PV Program budget for 2013 will assist in meeting the targets set forth in Governor Cuomo's NY-Sun Initiative.

#### DISCUSSION

In order to allocate the unencumbered funds where anticipated market demand is expected to grow and to pursue new aggressive NY-Sun goals, we will authorize NYSERDA to reallocate the 2012 unencumbered Customer-Sited Tier funds as follows:

#### Approved Reallocation of Customer-Sited Tier Funds

	Current 2013 Budgets	NYSERDA's Recommendation for Reallocation of 2012 Unencumbered Funds	Proposed 2013 Budgets
Solar PV	\$37,500,000	\$11,601,521	\$49,101,521
Fuel Cell	\$3,600,000	\$3,000,000	\$6,600,000
ADG	\$11,600,000	\$12,931,014	\$24,531,014
On-Site Wind	\$3,100,000	\$1,500,000	\$4,600,000
Solar Thermal	\$4,300,000	\$0	\$4,300,000
<b>Total</b>	<b>\$60,100,000</b>	<b>\$29,032,535</b>	<b>\$89,132,535</b>

With respect to the Solar PV Program, we have previously predicated the solar PV program funding by requiring a monthly apportionment mechanism to establish the lowest incentive level possible that can be offered on a sustained and predictable basis. This was first introduced in our April 2, 2010 Order and reaffirmed in our April 24, 2012 Order expanding the Solar PV Program as part of the NY-Sun initiative.<sup>6</sup>

---

<sup>6</sup> Case 03-E-0188, Order Authorizing the Expansion of the Solar Photovoltaic and Geographic Balance Programs from 2012-2015 and the Reallocation of the Main-Tier Unencumbered Funds (issued April 24, 2012), pp. 9-11.

With our authorization of the additional \$11,601,521 in reallocated 2012 funds to the 2013 Solar PV Program, we expect NYSERDA to continue the monthly apportionment for the solar PV budget for the months of June 2013 through December 2013 (approximately \$4.782 million), which will spread the amount of remaining reallocated funds in an even manner. Further, the guidelines we established in both the April 2010 and April 2012 Orders for adjusting incentive levels will remain in effect. These guidelines are intended to produce incentives that are regularly adjusted to appropriately reflect consumer demand and market factors.

With respect to concerns from commenters that NYSERDA may be making judgments on the disposition of unallocated 2013 funds prematurely, we direct NYSERDA to continue to monitor the markets and abide by the established process in place to address unallocated funds and file a petition in 2014 addressing any unencumbered Customer-Sited Tier funds from 2013. This process assures that the total dollar amount of available unencumbered funds is known, and that the most recent market experience can be utilized in the determination of how best these funds can be used to accomplish the RPS goals.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to reallocate \$29,032,535 in unencumbered Renewable Portfolio Standard (RPS) Customer-Sited Tier 2012 program funds to 2013 budgets for the Solar Photovoltaic, Anaerobic Digester Gas to Electricity, Fuel Cell, and On-Site Wind Programs, in the manner described in the body of this Order.



2. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary