



January 29, 2013

VIA ELECTRONIC MAIL

Honorable Jaclyn A. Brillling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223
secretary@dps.ny.gov

RE: Case No. 03-E-0188: Comments of the Sierra Club Regarding NYSERDA's 2012 and 2013 Main Tier Solicitations

Dear Secretary Brillling:

The Sierra Club,¹ on behalf of its 35,000 members in New York State, respectfully submits these comments to the New York State Public Service Commission (“Commission”) urging the PSC to require that the New York State Energy Research and Development Authority (“NYSERDA”) increase the funding available for its 2012 Renewable Portfolio Standard (“RPS”) Main Tier solicitation, or, in the alternative, to require that NYSERDA promptly issue its first Main Tier solicitation for 2013 and any other solicitations the Commission believes to be necessary for NYSERDA to meet its 2015 RPS target. The Sierra Club believes that an increase in funding or acceleration in timing of the next Main Tier solicitation is necessary both to ensure that NYSERDA fulfills its fast-approaching 2015 RPS goals and that New York fully capitalizes on the expiring production and investment tax credits.

I. Background

New York’s 2002 State Energy Plan (“Plan”) warned that the state’s primary energy sources are “imported from abroad, have significant and long-term effects on the environment, and ultimately face depletion” and predicted that “[u]ntil new and sustainable sources of energy are developed, the U.S. and New York will continue to experience the economic and social

¹ Founded in 1892, the Sierra Club is the nation’s oldest grassroots environmental organization with approximately 600,000 members in all 50 states, including more than 35,000 members in the State of New York. The Sierra Club’s mission involves promoting the responsible use of the earth’s resources and protecting and restoring the quality of the natural and human environments. In view of this mission, the Sierra Club seeks to ensure the availability of safe and reliable energy in a manner that protects human health and promotes a healthy environment.

challenges of fossil fuel dependency.”² Motivated by these concerns, the Plan recommended a study to determine the feasibility of establishing a statewide RPS.³ In February 2003, the Commission, citing concerns about the “finite supply of natural gas and other fossil fuels,”⁴ instituted a process to develop a “renewable portfolio standard for electric energy retailed in New York State.”⁵ That process was finalized on in September 2004 with the formal adoption of a goal to “increase the proportion of electricity attributable to renewable resources to at least 25 percent of electric energy used in New York State by the end of 2013.”⁶

In January 2010, the Commission modified the RPS by increasing the renewable goal from 25% to 30%, establishing a renewable generation target of 9.8 million MWh/yr from Main Tier solicitations, and extending the deadline to 2015.⁷ Responding to concerns about the lack of predictability in its competitive solicitations for renewable energy attributes, the Commission also mandated that NYSERDA conduct at least one solicitation per year, while also encouraging “as many solicitations per calendar year as are deemed necessary to obtain attributes in the most cost-effective manner consistent with our target, cost estimates and collection schedule.”⁸ Main Tier progress from 2005 through December 31, 2011 was approximately 4.67 million MWh/yr, representing about 48% of NYSERDA’s portion of the 2015 annual RPS target.

A. NYSERDA’s Current Solicitation

NYSERDA’s 2012 competitive solicitation was released on December 20, 2012 and reissued on January 4, 2013. In its notice, NYSERDA stated that it has approximately \$250 million available to purchase RPS attributes.⁹ Eligible facilities must be able to enter commercial operation by May 1, 2014, although this deadline is extendable to December 31, 2014 if certain conditions are met.¹⁰

B. Wide-Reaching Benefits from New York’s RPS Program

NYSERDA’s Main Tier RPS solicitations have garnered significant economic benefits for New York since their inception. In its December 2011 RPS Performance Report, NYSERDA estimated that the total direct and indirect economic benefits to the state resulting from the program will be more than \$4.2 billion over the life of the generation facilities.¹¹ These benefits include “long- and short-term jobs, property taxes or payment-in-lieu of taxes (“PILOT”) to local governments and school districts, biomass fuel purchases, and lease and/or royalty payments to landowners who host wind turbines.”¹² Furthermore, NYSERDA concluded that while it has

² New York State Energy Plan at 1-1 (June 2002).

³ *Id.* at 1-3.

⁴ Commission Case No. 03-E-0188, Order Instituting Proceeding, at 1 (Feb. 19, 2003).

⁵ *Id.*, 2.

⁶ Commission, Case 03-E-0188, Order Regarding Retail Renewable Portfolio Standard, at 3 (Sept. 24, 2004).

⁷ Commission, Case 03-E-0188, Order Establishing New RPS Goal and Resolving Main Tier Issues, at 7 (Jan. 8, 2010).

⁸ *Id.* at 19.

⁹ NYSERDA, Renewable Portfolio Standard Program Purchase of Renewable Energy Attributes, Request for Proposals (RFP) No. 2554 (Jan. 4, 2013).

¹⁰ *Id.*

¹¹ NYSERDA, New York State Renewable Portfolio Standard Performance Report, at 3 (Dec. 31, 2011).

¹² *Id.*

achieved 48% of its 2015 target of 9.8 million MWh, the agency has only expended 39% of its total allocated budget, making the RPS program highly cost-effective.¹³

The RPS program has also produced a number of environmental benefits. Between 2006 and 2011, NYSERDA concluded that the benefits from producing electricity from New York's renewable resources rather than fossil fuel generation amounted to "approximately 3,086 tons of nitrogen oxides, 6,782 tons of sulfur dioxides, and 3.1 million tons of carbon dioxide in reduced emissions."¹⁴ These reductions not only reduce the deadly impacts of climate change, as evidenced by Hurricane Sandy, but also provide enormous public health benefits to New York citizens.

II. The Commission Should Require That NYSERDA Increase Funding for its 2012 Solicitation or Promptly Issue Its First 2013 Main Tier Solicitation to Keep the Authority on Track to Meet Its 2015 Targets and to Take Full Advantage of the Expiring PTC and ITC

In 2009, NYSERDA commissioned KEMA Consulting to issue a report ("Report") evaluating NYSERDA's progress toward its RPS targets.¹⁵ Citing the proposal to modify the RPS from 25% by 2013 to 30% by 2015, the Report noted that "it is expected that most of the total new increment would be realized from Main Tier procurements."¹⁶ Concerned that NYSERDA had failed to meet its annual targets in previous year, the Report warned against allocating insufficient funds to the RPS Main Tier Program going forward, which would cause NYSERDA to miss its 2015 RPS targets as well.¹⁷

Through its seven Main Tier solicitations to date, NYSERDA has procured 4.67 million MWh/year of renewable generation, or slightly under half of its 2015 target. With its focus in 2012 on the Customer Sited tier, it has been more than a year since NYSERDA's last Main Tier solicitation.¹⁸ *As a consequence, in order to meet its 2015 target NYSERDA must solicit a total of 5.13 million MWh/yr of new renewable generation in the next two years.*¹⁹ To help keep NYSERDA on track to meet this goal, the Sierra Club urges the Commission to either require NYSERDA to increase the amount of funding available in the present solicitation or to require the Authority to expeditiously issue its first 2013 solicitation and increase the total number of solicitations going forward. As the Commission has previously recommended, NYSERDA should be required to perform "as many solicitations per calendar year as are deemed necessary to obtain attributes in the most cost-effective manner consistent with our target, cost estimates and collection schedule."²⁰

¹³ *Id.* at 4.

¹⁴ *Id.* at 20.

¹⁵ KEMA Consulting, New York Main Tier RPS Impact and Process Evaluation (Mar. 2009). This report was required by the Commission.

¹⁶ *Id.* at 4-12.

¹⁷ *Id.* at 6-17.

¹⁸ As noted previously, the 2012 Main Tier solicitation was issued on December 20, but then reissued on January 4, 2013.

¹⁹ NYSERDA may actually need to contract for more than 52% of its goal, since its petition to exclude out-of-state renewable resources will decrease qualifying generating capacity.

²⁰ Commission's January 2010 Order at 19.

Increasing the funding allocation for current solicitation or immediately issuing the first 2013 solicitation is particularly critical in light of the expiring production tax credit (PTC) and investment tax credit (ITC). The PTC and ITC, which are slated to expire at the end of 2013, reduce the cost of purchasing power from qualifying wind facilities by 2.2 c/kWh, and the loss of these incentives will increase renewable attribute prices in the future.²¹ It is not coincidental that the Federal Energy Regulatory Commission's latest "Energy Infrastructure Update" report found that in December 2012, the last month before the PTC and ITC were previously set to expire, 3,276 MW of new renewable generating capacity came online, more than 25% of the total renewable generating capacity for the entire year.²² As NYSERDA itself stated in 2010 when the PTC and ITC were also slated to expire at the end of the year for projects not under construction at the time, "[g]iven the likely effect of these tax benefits on the recent Main Tier bids, *having another solicitation as soon as practical in order to take advantage of these credits before they expire is warranted. While the number of new renewable resources that can be obtained given the limited time horizon is unknown, authorizing a further solicitation for new resources now is consistent with our RPS objectives.*"²³ The Sierra Club encourages the Commission to require that NYSERDA structure its Main Tier solicitations to ensure that it is able to take full advantage of facilities in New York that would qualify for the PTC and ITC.

III. Conclusion

The Sierra Club respectfully requests that the Commission require that NYSERDA increase the funding available for its current 2012 solicitation or expedite Main Tier solicitations in the coming months in order to take advantage of expiring federal tax incentives, especially the PTC and ITC, and to help meet its 2015 RPS goal of 9.8 million MWh from Main Tier solicitations. Implementation of these recommended actions would show strong commitment by the Commission toward attainment of its 2015 RPS goals. Furthermore, solicitations for more renewable resources are proven to provide enormous economic advantages to New York, particularly local communities in the form of jobs and PILOT programs, as well as providing significant environmental and public health benefits to New Yorkers.


We look forward to continuing discussions with you on this matter and please contact us with additional questions.

Respectfully submitted,

²¹ In its 2011 RPS Report, NYSERDA attributed the rise in its renewable attribute prices to the pending expiration of the PTC, which "introduces an element of uncertainty into the marketplace, which could affect future RPS attribute prices."

²² Federal Energy Regulatory Commission, Office of Energy Projects, Energy Infrastructure Update (Dec. 2012). The figure for December may be even higher, as a Bloomberg New Energy Finance article found that 5.5 GW of new wind capacity were installed in December 2012. See Bloomberg New Energy Finance, Burst of Construction in December Delivers Record Year for US Wind (Jan. 18, 2013), available at <http://about.bnef.com/2013/01/18/burst-of-construction-in-december-delivers-record-year-for-us-wind/>

²³ *Id.* (emphasis added).



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