

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 REALLOCATION OF UNENCUMBERED 2011 CUSTOMER-
SITED TIER PROGRAM FUNDS AND RESOLVING OTHER ISSUES

(Issued and Effective April 20, 2012)

BY THE COMMISSION:

INTRODUCTION

The Customer-Sited Tier is a major component of the Renewable Portfolio Standard (RPS) program administered by the New York State Energy Research and Development Authority (NYSERDA). It allows customers to directly participate in the promotion of innovative technologies using only certain self-generation, "behind-the-meter" facilities located in New York.

In this order, the Commission authorizes NYSERDA to reallocate \$19,093,556 in unencumbered RPS Customer-Sited Tier 2011 program funds to enhance program funding in 2012 for the Solar Photovoltaic and Small Wind categories. The Commission also authorizes minor revisions to the manner in which caps on funding and equipment size are implemented for Solar Photovoltaic incentives. None of the 2011 program funds are

reallocated to the Geographic Balance component of the Customer-Sited Tier in this order.

BACKGROUND

The April 2, 2010 RPS Order¹ authorized program budgets for 2010 through 2015 for five primary categories of eligible technologies in the Customer-Sited Tier, and separate program budgets for the Geographic Balance component. NYSERDA was instructed² to calculate, at the end of each calendar year 2010 through 2014, the unencumbered balance in each of the five primary categories and to file proposals as to whether such unused funds by technology category should remain available for additional projects in that category or should be transferred to a different category to satisfy other demands. On January 30, 2012, NYSERDA submitted a petition presenting its calculations for the end of calendar year 2011, and its recommendations for the disposition of such funds.

SUMMARY OF NYSERDA'S PETITION

NYSERDA calculates the end of calendar year 2011 unencumbered balance in each of the five Customer-Sited Tier primary categories to be as follows:

RPS Customer-Sited Tier - 2011 Unencumbered Program Funds

Solar Photovoltaic	\$246
Anaerobic Digesters	13,458,381
Fuel Cells	1,179,710
Small Wind	51,074
Solar Thermal	4,404,145
Total	\$19,093,556

¹ Case 03-E-0188, Retail Renewable Portfolio Standard (RPS), Order Authorizing Customer-Sited-Tier Programs through 2015 and Resolving Geographic Balancing and Other Issues Pertaining to the RPS Program (issued April 10, 2010).

² Ibid., p.20.

NYSERDA recommends that the funds be reallocated to enhance program funding in 2012 for the Solar Photovoltaic and Small Wind categories, and the Geographic Balance component.

NYSERDA proposes that \$4,404,145 be allocated to the Solar Photovoltaic category, representing a transfer of the full amount of unencumbered funds from the Solar Thermal category. According to NYSERDA, this transfer will retain solar funding for smaller-scale projects and will provide some market stability (in the context that there is robust demand for solar photovoltaic funding). Regarding the Solar Thermal category, NYSERDA notes that its experience in 2011 indicates that there is inadequate market capacity to handle more than the original 2012 budget and that awareness and outreach efforts for Solar Thermal will be commencing in 2012. NYSERDA also notes that increased funding for the Solar Photovoltaic category will support the Governor's NY-Sun initiative³ which presents a goal of doubling the 2011 customer-sited photovoltaic capacity additions in 2012, and by 2013 quadrupling the 2011 capacity. In conjunction with NYSERDA's proposal to budget more money for the Solar Photovoltaic category, NYSERDA seeks authorization to use such funds in months when demand exceeds the \$2 million per month schedule specified in the April 2, 2010 RPS Order. NYSERDA also seeks authorization to eliminate the separate equipment size cap of 25 kW for installations by not-for-profit customers, and to allow such installations to be designated as either residential or commercial subject to the respective caps of residential, which will remain capped at 7 kW per site/meter for residential installations and 50 kW per site/meter for commercial installations. According to NYSERDA, its experience

³ NYSERDA has filed an additional petition regarding implementation of a NY-Sun initiative, which petition will be addressed separately.

is that many not-for-profit applicants would, but for the cap, be eligible for larger systems and applications from eligible municipal and other governmental entities have been capped at 25 kW because they cannot qualify as commercial. NYSERDA believes there is no programmatic benefit to the distinction. NYSERDA states that eligibility as residential or commercial would be determined by whether the utility classification of the on-site meter is "residential".

NYSERDA proposes that \$1,500,000 be allocated to the Small Wind category. According to NYSERDA, the recent increase from 600 kW to 2 MW in the equipment size cap for Small Wind installations has poised the market for strong growth in 2012. NYSERDA notes that the \$400,000 maximum on incentive funding per project combined with the larger turbines results in good value due to the relatively high delivery of kWh per incentive dollar.

NYSERDA proposes that the remaining \$13,189,411 be allocated to the Geographic Balance component of the Customer-Sited Tier. NYSERDA states that experience in 2011 indicates significant demand, and that attractive prices are achievable. NYSERDA also notes that increased funding for the Geographic Balance component (which primarily supports solar photovoltaic projects) category will also support the objectives of the NY-Sun initiative. NYSERDA requests that funds reallocated into the Geographic Balance program be split between the ISO Zone Groups GH and IJ at NYSERDA's discretion, in consultation with DPS Staff, based on the quality and quantity of proposals received.

NYSERDA does not propose making any allocation to the Anaerobic Digesters or Fuel Cells categories. For anaerobic digesters, NYSERDA notes that in contrast to the 2010 pent-up demand which resulted in over \$18 million of applications being received during the program open period of November and December

2010, in 2011 only one application (requesting \$1 million) was received. This indicates that there is currently inadequate market capacity to handle more than the original 2012 budget. For fuel cells, while market capacity is developing based on the availability of the new UTC 400 kW product meeting the program's criteria of commercially mature, NYSERDA believes that the 2012 budget appears adequate as demonstrated in 2011 by the receipt and acceptance of six (6) applications for large fuel cells.

NYSERDA has made an analysis of the effect of its reallocation proposals on the projected MW and MWH achievements toward the targets that can be expected from the Customer-Sited Tier and concludes that the proposed reallocations would result in a net increase in both. The biggest driver of the increase appears to be more support for projects in the Small Wind category given the recent increase in allowed equipment size.

NYSERDA also states that as a result of reallocation of funds, quality assurance/quality control cost issues may need to be revisited later this year, but requests no action at this time.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning NYSERDA's petition for the reallocation of unencumbered funds and other modifications to the Customer-Sited Tier program was published in the State Register on February 15, 2012 [SAPA 03-E-0188SP30]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on April 2, 2012. Eight

parties submitted comments.⁴ The comments received are summarized below.

SUMMARY OF COMMENTS

CENY-ORU supports NYSERDA's petition in its entirety, with the exception of allowing any discretion in allocating additional Geographic Balance funding between the NYISO zone groups established by the Commission. It proposes that unencumbered funds transferred to the Geographic Balance budget follow the same breakdown previously used by the Commission.

ACE NY generally approves of NYSERDA's petition to use the 2011 CST budget unencumbered funds to supplement the CST budget for 2012. However, it would limit the transfer of funds to Geographic Balance to \$8.6 million, citing limitations in eligible technologies, geographic area, and track record of completed projects and performance for that program. Specifically, ACE NY would allocate the \$19.1 million in unencumbered 2011 CST budget funds as follows: \$2.4 million to Fuel Cells, \$5.0 million to Solar Photovoltaic, \$3.1 million to Small Wind, and \$8.6 million to Geographic Balance.

ACE NY also supports the changes to kilowatt caps as proposed by NYSERDA and asks that the Commission consider increases to the kilowatt limits for residential and non-residential Solar Photovoltaic systems to match their individual needs rather than arbitrary program parameters. It further supports NYSERDA's proposal to use reallocated funds for Solar

⁴ Comments were received from the Alliance for Clean Energy - New York, Consolidated Edison of NY-Orange and Rockland Utilities (CENY-ORU), Halco Renewable Energy, Hudson River Sloop Clearwater, Inc. (Clearwater), Distributed Wind Energy Association (DWEA), Environmental Advocates of New York (EANY), Sustainable Energy Developments, Inc. (SED), and United Technologies Corporation Power (UTC Power).

Photovoltaic in months where demand exceeds the \$2 million per month limit set by the Commission in the April 2, 2010 CST Order. It also supports using Geographic Balance type competitive, performance-based programs for other CST technologies, specifically for larger commercial installations.

Clearwater, DWEA, EANY, and SED all fully support the comments of ACE NY. Clearwater and EANY also propose that additional funding for Solar Thermal be provided or that funds be held in reserve for that technology to match the growth expected from its recent start in 2011.⁵ UTC Power proposes an increase to the 2012 Fuel Cell budget to match the funds expended in 2011, \$6.0 million. This proposal matches that encompassed by the comments of ACE NY, Clearwater, DWEA, EANY, and SED.

DISCUSSION

Reallocation of Funds

We shall authorize NYSERDA to reallocate the unencumbered 2011 funds to enhance program funding in 2012 for the Solar Photovoltaic and Small Wind categories. We accept NYSERDA's arguments that the greatest demand is in those areas and that there is no current compelling need to enhance funding for Anaerobic Digesters and Fuel Cells. While spending in 2011 for Fuel Cells exceeded the amount recommended by NYSERDA in its petition, we believe that the higher level of spending for this technology in 2011 was partially related to pent up demand from 2010. As UTC noted in its comments, we increased the 2011 Fuel Cell budget by carrying over the full 2010 unencumbered budget, which had been entirely unspent. We agree with NYSERDA that the

⁵ Neither party indicates from where such additional Solar Thermal funding should come.

\$3.6 million budgeted for Fuel Cells for 2012 is sufficient.

Similarly, we agree with NYSERDA's \$1.5 million reallocation to the 2012 Small Wind Budget, rather than the increase of approximately double that amount proposed by ACE NY and others. We note that the 2011 Small Wind expenditures are very close to the funds available, yet less than the entire budget allowed. The smaller increase recommended by NYSERDA seems to better capture the anticipated increased funding requirement expected for 2012.

We note that the Geographic Balance component was not one of the categories we originally contemplated for such reallocations. The five Customer-Sited Tier primary categories are for smaller installations, whereas the Geographic Balance component was designed differently to satisfy demand for larger projects. While we agree with NYSERDA that putting the funds toward satisfying some of the demand in that component would be an efficient use of the funds, we are also advised by Staff that there are a significant number of applications for Solar Photovoltaic funding in NYSERDA's queue that would amount to over \$6 million in incentives. We believe that these smaller projects should get first consideration for the rollover of funds originally dedicated to smaller projects. In addition, NYSERDA has submitted a separate petition seeking to increase the budget for the Solar Photovoltaic category in amounts that exceed the dollars NYSERDA recommends here that we reallocate to the Geographic Balance component. Given that context, the logical course of action is to preserve the funds for the smaller projects. This decision makes moot any need to consider allocation issues for the Geographic Balance component, including those proposed by other parties. Additional enhancements to the Solar Photovoltaic category and the Geographic Balance component are more properly considered in

reaction to the other petition. The reallocations we are authorizing are shown in the following table:

Approved Reallocation of Customer-Sited Tier Funds

	2011 Unencumbered Program Funds	2012 Approved Program Budget	2011 Funds Allocated to 2012 Program Budget	Revised 2012 Program Budget
Solar Photovoltaic	\$246	\$24,000,000	\$17,593,556	\$41,593,556
Anaerobic Digesters	13,458,381	12,000,000	0	12,000,000
Fuel Cells	1,179,710	3,600,000	0	3,600,000
Small Wind	51,074	2,900,000	1,500,000	4,400,000
Solar Thermal	4,404,145	4,300,000	0	4,300,000
Total	\$19,093,556	\$46,800,000	\$19,093,556	\$65,893,556

Caps on Funding and Equipment Size

In the April 2, 2010 RPS Order we stated that the Solar Photovoltaic funding authorization is predicated on and shall be subject to the following guidelines:

- (a) For solar photovoltaic, our primary goal is to establish the lowest incentive level possible that can be offered on a sustained and predictable basis to continue the markets in New York State. The incentive levels should be adjusted regularly to address consumer demand and market factors in a way that will avoid program starts and stops and enable the industry to grow. Our funding is predicated on the following equipment size and incentive payment caps:

Residential:	Maximum 7 kW per site/meter
Commercial:	Maximum of 50 kW per site/meter
Not-for-Profit:	Maximum of 25 kW per site/meter
All:	Incentive amount may not exceed 40% of total installed cost after all other tax credits have been applied.

The \$24 million annual budget will be treated as a monthly allowance of \$2.0 million in each month from January 2010 to December 2015. No new applications shall be accepted for funding in a month when applications for that month already equal or exceed the available funds. The per-watt incentive

for solar photovoltaic shall be limited and adjusted, as follows:

- (i) the incentive level shall begin at \$1.75 per watt.
- (ii) NYSERDA may adjust the incentive level every two months to allow a reasonable period for installers and customers to enter into contractual agreement;
- (iii) if applications in the prior two months exceed by a material amount the amount of available funds and fully use the available funds, NYSERDA will reduce the incentive level for the subsequent two months;
- (iv) if applications in the prior two months did not fully use the available funds, NYSERDA may increase the incentive for the subsequent two months;
- (v) NYSERDA may impose a cap on how much each installer can take of the available funds in any given month to ensure that multiple installers have an opportunity to participate; and
- (vi) in an effort to educate customers interested in solar photovoltaic on efficiency measures that could help optimize the size of their potential installations and reduction in their electricity bills, we will require solar photovoltaic installers to provide a walk-through electricity audit concurrently with a consultation on solar photovoltaic installation. NYSERDA shall describe the details of this audit as part of the solar photovoltaic program in the revised Customer-Sited Tier operating plan.

Regarding the \$2 million allowance per month that acts as an apportionment mechanism, the monthly allowance shall be in addition to the first \$6 million of reallocated funds in anticipation that the \$6 million will be used to fund the projects currently in the queue for which there are applications that could not be accepted. For the months of May 2012 through December 2012, the monthly allowance shall be \$3.5 million instead of \$2 million, which will generally spread over time the

amount of remaining reallocated funds in an even manner. However, we note by way of clarification that when the monthly allowance and the amount of otherwise available funds has been exceeded and NYSERDA may not accept new applications for funding in that month, while we encourage NYSERDA to continue keeping track of unaccepted application requests in a queue, if in the subsequent month the incentive level per watt has been lowered to dampen demand, those in the queue should be the first to have their applications accepted, but the acceptance should be at the lower level of incentive per watt. NYSERDA should review its practices in this regard and ensure that installers and customers making applications are aware that being in a queue does not create an entitlement to a particular level of incentive. The guidelines discussed above are intended to result in the incentive levels being adjusted regularly to address consumer demand and market factors, therefore a queue system is not to be implemented in a manner that defeats the adjustment to dampen demand, and because if too many projects make it into the queue it could lead to a future forced curtailment of the program.

Our institution of a separate capacity cap for not-for-profits was in part driven by concerns about market demand. We will defer to NYSERDA's expertise that concludes there is no programmatic benefit to the distinction. The separate not-for-profit category shall be eliminated and we will adopt NYSERDA's suggestion that eligibility as residential or commercial would be determined by whether the utility classification of the on-site meter is "residential". In addition, the current requirement imposed by NYSERDA that equipment capacity be sized not to exceed 110% of the customer's usage is adopted by us as well.

Comments supporting increases to the kilowatt limits for residential and non-residential photovoltaic systems to match their individual needs are not fully explained or supported by the parties suggesting them. A program with no specific limits set in its parameters would be complex to implement and produce guidelines that would be difficult to manage and evaluate. The caps we have set for customer participation in the Solar Photovoltaic category are intended to be fair and provide results that are auditable. The change proposed would eliminate those important features.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to reallocate \$19,093,556 in unencumbered Renewable Portfolio Standard (RPS) Customer-Sited Tier 2011 program funds to enhance program funding in 2012 for the Solar Photovoltaic and Small Wind categories in the manner described in the body of this order.

2. NYSERDA shall implement revisions to the manner in which caps on funding and equipment size are implemented for Solar Photovoltaic incentives in the manner described in the body of this order.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary