

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0302 - Proceeding on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Standard.

NOTICE WITH RESPECT TO REQUESTS FOR REHEARING
AND RECONSIDERATION

(Issued September 7, 2016)

Beginning on August 23, 2016, various parties and other interested persons submitted petitions for rehearing and/or reconsideration (Petitions) of the Order Adopting a Clean Energy Standard (Order), issued by the New York State Public Service Commission (Commission) on August 1, 2016.¹ Except as described more specifically herein, the Petitions allege errors of law or fact or new circumstances, all grounds for rehearing. 16 NYCRR § 3.7(c).

Some petitions did invoke Commission discretion to change its decision and are for reconsideration in whole or in part.² To the extent they seek rehearing, the Petitions will be treated as timely requests filed within the 30-day period

¹ The Order was issued in the above-captioned Case 15-E-0302, but also in Case 16-E-0270, Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC - Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants. Most of the Petitions were filed only in Case 15-E-0302, but some were also filed in Case 16-0270. Responses need only be filed in Case 15-E-0302, though filings in Case 16-E-0270 will not be rejected.

² Brookfield Renewable sought reconsideration but, in the alternative, timely filed for limited rehearing. Transmission Developers, Inc. timely filed for rehearing, but also seeks reconsideration, by asking that Load Serving Entities (LSEs) purchasing renewable energy be relieved of obligations to purchase Renewable Energy Credits or make Alternative Compliance Payments. CH4 Biogas seeks reconsideration; its September 2, 2016 comments were not timely filed and did not allege errors of law or fact or new circumstances.

prescribed in Public Service Law (PSL) §22 and 16 NYCRR §3.7(a).³ The statute of limitations in which a petitioner for rehearing can seek review by filing an Article 78 proceeding should ordinarily be tolled by a timely petition for rehearing under PSL §22. CPLR §7801(1).⁴ The four-month period in which parties filing for rehearing can seek review under CPLR §217 would not therefore commence until the Commission issues a decision on the Petitions.

In contemplation of a possible grant of rehearing and/or, as appropriate, reconsideration, both of which could entail the amendment of a "rule" for purposes of State Administrative Procedure Act (SAPA) §202, a Notice of Proposed Rulemaking (Notice) in compliance with SAPA with respect to the Petitions will be transmitted to the Department of State for publication in the State Register. It is anticipated that

³ The New York Association of Public Power filed a Request for Clarification and a Petition for Rehearing with respect to Commission assertion of jurisdiction over rural electric cooperatives, which will be treated as a timely petition for rehearing. The Alliance for Clean Energy New York, Alliance for Green Energy and Nuclear Information and Resource Service, Ampersand Hydro, LLC, Castleton Commodities International LLC, Council on Intelligent Energy & Conservation Policy et al., Energy Ottawa Inc., H.Q. Energy Services (U.S.) Inc., Independent Power Producers of New York, Inc., the Public Utility Law Project of New York, ReEnergy Holdings, LLC, RENEW Northeast Inc. and Taylor BioMass Energy, LLC all timely filed for rehearing.

⁴ It appears that a timely petition for rehearing under PSL §22 only tolls the statute of limitations as to the petitioner for rehearing, under CPLR §7801(1) ("[An Article 78 proceeding] shall not be used to challenge a determination . . . where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless . . . the time within which the petitioner can procure a rehearing has elapsed") (emphasis added).

comments pursuant to the SAPA Notice will be due on November 14, 2016.

Please take notice that, pursuant to 16 NYCRR §3.3(a)(1), the time for responses to the Petitions under 16 NYCRR §3.7(c) is hereby set as, or extended to, November 14, 2016.

(SIGNED)

KATHLEEN H. BURGESS
Secretary