

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of ReEnergy Chateaugay LLC for Public
Service Commission Approval for the Chateaugay
Biomass Generating Facility to Terminate Maintenance
Tier Contract and Participate in Main Tier Solicitation.

Case: 14-E-_____

PETITION

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PETITION

Pursuant to the Public Service Commission's ("Commission") Orders in the Renewable Portfolio Standard ("RPS") proceeding (Case 03-E-0188), ReEnergy Chateaugay, LLC hereby petitions the Commission for an Order authorizing ReEnergy to participate in the next Main Tier solicitation conducted by the New York State Energy Research and Development Authority ("NYSERDA"). The Chateaugay facility is a 21-MW biomass generating facility located in Franklin County, New York. The Chateaugay facility has not operated for financial reasons since September 12, 2012.

ReEnergy respectfully requests that the Commission further authorize ReEnergy to enter into a contract with NYSERDA for a period of four years and seven months, which represents the length of time that has elapsed from shutdown of the Chateaugay facility in September 2012 until the March 30, 2016 expiration of its current Maintenance Tier contract, plus the one year and two months during which the facility had been idle before its shutdown on September 12, 2012.¹ In the absence of this consideration, the Facility will remain shut down indefinitely. The relief sought herein, if granted, would allow ReEnergy to reopen the Chateaugay facility and

¹ During the term of its current maintenance contract, generating records indicate that the Chateaugay facility has been idled (other than planned shutdowns for maintenance), during the following periods: May 2-August 9, 2009; Oct. 31-November 30, 2009; May 15-June 8, 2010; April 1-May 30, 2011; Oct. 1-Dec. 4, 2011; Feb. 14-July 15, 2012; and September 12, 2012 to the present.

operate at least four plus years during which time ReEnergy is optimistic that market conditions and other factors will allow the Chateaugay facility to once again operate competitively in the New York energy markets.

I. BACKGROUND

ReEnergy

ReEnergy Chateaugay LLC is a subsidiary of ReEnergy Holdings LLC. ReEnergy Holdings, with corporate offices and staff in Latham, New York, owns and operates electricity generation facilities fueled by biomass and other residual fuels to produce renewable energy in New York, Maine, Connecticut, and North Carolina. ReEnergy Holdings' portfolio includes three biomass facilities in New York: the 60-MW ReEnergy Black River facility at Fort Drum, near Watertown; the 22-MW ReEnergy Lyonsdale facility in Lewis County; and the 21-MW ReEnergy Chateaugay facility in Franklin County. ReEnergy Holdings' facilities have participated in the Main Tier (the Black River and Lyonsdale facilities) and as a maintenance resource (the Chateaugay facility). These three facilities represent a combined nameplate capacity of 103 MW — enough electricity to serve 96,000 homes. When all three facilities are operating, they purchase more than \$24 million of sustainably harvested fuel from local suppliers and support more than 500 direct and indirect jobs in New York. In the past five years, ReEnergy Holdings has invested more than \$65 million in New York in electricity generation facilities powered by biomass.

New York boasts plentiful land and forest resources. Expanding the sustainable management of these resources to produce homegrown biomass-derived energy stimulates economic activity and jobs within the State, while displacing the use of imported fossil fuels with renewable energy. Thus, a thriving biomass sector produces many benefits by: creating new jobs

and retaining existing ones, particularly in rural areas where biomass is produced and used; reducing greenhouse gas emissions; strengthening the reliability of the electricity grid with continuous, baseload energy; enhancing forest health with sustainable harvesting practices; meeting the highest environmental standards with state-of-the-art technology; and advancing the State's portfolio diversity and energy independence.

The Chateaugay facility began operation in 1993. When operational, the Chateaugay facility uses locally sourced sustainably harvested forest residue known as biomass to produce approximately 154,000 net MWh of electricity each year, enough to supply 20,000 homes. The electricity is sold into the NYISO market on a day-ahead basis. During its operating period, the facility reduced the region's reliance on fossil fuels and was responsible for 18 direct and 94 indirect jobs, \$6.1 million in annual fuel purchases and \$7.1 million in total payrolls.

The facility is idled due to energy market conditions and the value of the facility's renewable energy credits in the context of current-day wholesale energy prices. The closure has devastated the employees and their families, as well as the businesses – many of them logging companies – that have relied on the facility for many years. The idling of the facility also negatively impacts the health of the region's forests and increases the region's reliance on fossil fuels.

RPS Proceedings

In September 2004, the Commission established the Maintenance resource category as part of the RPS program.² According to the Commission, the “maintenance resource category is an important component of the RPS Program, designed to avoid losing valuable baseline

² See Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (September 24, 2004).

renewable resources, not otherwise eligible for RPS Program support because they may be financially unable to continue operations.”³

On February 16, 2006, the Commission granted Boralex New York LP (“Boralex”), the then-owner of the Chateaugay facility, a 10-year Maintenance support contract for the facility capped at \$15 per MWh for up to 128,000 MWh per year.⁴ NYSERDA and Boralex executed the Maintenance Tier contract on April 1, 2006 expiring on March 31, 2016.

On November 15, 2011, Boralex filed a petition with the Commission to modify its Maintenance resource award. According to Boralex, changes in the energy markets and fuel prices, among other things, resulted in significantly reduced revenues for the Chateaugay facility. For the years 2008-2011, it was reported that the facility incurred \$4.5 million in losses. Because market conditions changed significantly after the contract was awarded in 2006, the Chateaugay facility was idle repeatedly by former owner Boralex in 2009, 2010, and 2011 and by ReEnergy in 2012.⁵ Boralex requested that the Commission authorize a Maintenance Tier subsidy of \$35 per MWh for 140,000 MWh annually.

On April 20, 2012 the Commission authorized a modification to the Maintenance resource award. The Commission directed NYSERDA to offer ReEnergy an incremental production incentive of \$11.00 per MWh, for a total incentive cap of \$26 per MWh, for up to 128,000 MWh per year. ReEnergy accepted the Commission’s offer on June 19, 2012.

Over the next few months, however, it became clear to ReEnergy that the incremental allowance authorized by the Commission was insufficient to allow the Chateaugay facility to

³ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard (Lyonsdale Biomass Facility – Request for Renewable Portfolio Standard Support as a Maintenance Resource.)*, Order Approving Request for RPS Program Funding as a Maintenance Resource 2 (August 31, 2005) [hereinafter August 2005 Order].

⁴ Case 03-E-0188: *Renewable Portfolio Standard (RPS)*, Order Approving Request for RPS Program Funding as a Maintenance Resource (Feb. 16, 2006).

⁵ ReEnergy acquired the Chateaugay facility from Boralex in December 2011.

operate without continuing to incur significant losses. Accordingly, ReEnergy suspended operations on September 12, 2012, and the facility has now remained idle for almost two years.

II. PETITION

ReEnergy seeks Commission authorization to allow it to bid into the next Main Tier solicitation offered by NYSERDA for a contract term of four (4) years and seven (7) months. ReEnergy respectfully requests that the Commission act expeditiously on ReEnergy's instant petition so that the requisite approvals can be in hand before the next Main Tier solicitation.

The RPS program began as a means of reducing New York's dependency on fossil fuel by increasing the proportion of renewable energy that is consumed within the state. According to the Commission, "renewable resources provide ancillary benefits such as increased fuel diversity and energy security, the potential for economic development as a result of growing industries that typically tap into indigenous resources and invest in local and regional economies, and reduced environmental impacts. Accordingly, they warrant a certain level of support to facilitate their growth."⁶

The Commission also determined that existing renewable resources provided the same benefits and established the maintenance resource category. According to the Commission, "[t]he purpose of the maintenance resource category is to avoid losing valuable baseline renewable resources, not eligible due to vintage, because they may be financially unable to continue operations without RPS Program support."⁷ In its 2012 Order authorizing a modification to the Chateaugay facility's Maintenance resource incentive, the Commission stated, "[i]f we are to reach our goal of satisfying 30% of projected retail electric load in 2015 with renewable resources, *it is critical that we maintain our existing resources* while at the same

⁶ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (Apr. 14, 2005), at 2 ("April 2005 Order").

⁷ April 2005 Order, at 31.

time encouraging the construction of new ones.”⁸ The Commission’s offer of a Maintenance resource incentive demonstrates the Commission’s recognition of the importance of the Chateaugay facility to RPS goals and the contributions made by the facility to the state and local economy. As noted above, however, the Maintenance Tier incentive authorized by the Commission proved to be insufficient to allow continued operation of the Chateaugay facility and the facility ceased operations in September 2012.

The Commission’s Orders in the RPS proceeding contemplate that facilities that qualify as Maintenance resources can also receive certification as Main Tier eligible facilities to bid into competitive solicitations. As the Commission stated in its April 14, 2005 Order in the RPS proceeding:

It is important to keep these [maintenance] facilities as part of a renewable portfolio to help achieve the targets of the RPS Program. Allowing NYSERDA, with Staff’s guidance, the flexibility to offer a price on a case-by-case basis may relieve small certified maintenance resource facilities from the requirements of participating in a general procurement. It also offers qualified resources the flexibility of accepting the offer or rejecting it *to participate in general procurements*.⁹

In subsequent orders in the RPS proceeding, the Commission interpreted the April 14, 2005 Order as “generally provid[ing] a maintenance resource with the opportunity to bid a plant’s entire output into the Main Tier procurements.”¹⁰ In the instant petition, ReEnergy simply seeks what it otherwise would have been entitled to if it had not accepted the Maintenance resource incentive offered by the Commission in 2006, *i.e.* the ability to bid into the Main Tier.

⁸ Case 11-E-0706: *Petition of Boralex New York LP for Modification of an RPS Maintenance Tier Contract*, Order Approving Request for Modification of Funding as Maintenance Resource (Apr. 20, 2012), p. 16 (emphasis added).

⁹ Case 03-E-0188: *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program (Apr. 14, 2005), p. 31 (emphasis added).

¹⁰ Case 03-E-0188: *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Granting Petition for Clarification (Oct. 27, 2005), p. 3; In 2006, Lyonsdale Biomass LLC declined the Commission’s offer of a Maintenance Tier incentive and participated in NYSERDA’s next Main Tier solicitation.

ReEnergy respectfully requests that the Commission authorize ReEnergy to bid into NYSERDA's next Main Tier solicitation. ReEnergy's existing contract with NYSERDA terminates on March 31, 2016. ReEnergy requests that the Commission authorize NYSERDA to enter into a Main Tier contract with ReEnergy, if selected, for a period of four (4) years and seven (7) months, *i.e.* the length of time the facility has been, and will be, shut down during the term of the existing Maintenance Tier contract.

ReEnergy is also aware that on December 16, 2013, Pace Energy and Climate Center, *et al.*, ("Pace") filed a petition with the Commission seeking to modify Main Tier solicitation issues and resolving Main Tier issues.¹¹ As part of its petition, Pace requests that the Commission (i) remove the 10-year cap on Main Tier contracts, and (ii) implement a contract-for-differences approach.

In comments submitted to the Commission, ReEnergy Holdings supported Pace's request to remove the 10-year cap. Since the Commission has not issued an order addressing Pace's requested relief by the time of this filing, ReEnergy respectfully requests that the Commission, in its Order on the instant petition, authorize ReEnergy to enter into a Main Tier contract with NYSERDA in excess of the remainder of its Maintenance Tier contract should the Commission remove or modify the 10-year cap while ReEnergy's request is pending.

¹¹ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding Retail Renewable Portfolio Standard*, Petition for an Order Modifying Main Tier Solicitation Process and Resolving Main Tier Issues (Filed Dec. 16, 2013).

III. CONCLUSION

For the foregoing reasons, ReEnergy requests that the Commission authorize ReEnergy to (1) bid the Chateaugay facility into NYSERDA's next Main Tier solicitation, and (2) enter into a Main Tier contract with NYSERDA, if selected, for four (4) years and seven (7) months, or longer if the Commission alters RPS policy as requested by Pace.

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