New York State
Public Service Commission
Case 03-E-1088

Proceeding on Motion of the Commission
Regarding a Retail Renewable Portfolio Standard

COMMENTS OF THE
Natural Resources Defense Council (NRDC)
ON SAPA NO. 03-E-0188SP22

I. INTRODUCTION

The Natural Resources Defense Council (NRDC) respectfully submits these comments on the New York Renewable Portfolio Standard (RPS) Mid-Course Review, dated October 14, 2009.

The NRDC believes global warming is the most serious and urgent environmental threat of our time. We have made it our top institutional priority to address this problem and to prevent the more serious consequences of unmitigated anthropogenic climate change.
In addition, we find ourselves in an unprecedented new economic paradigm befallen by a financial crisis that has resulted in severe job loss and reduced business activity. Now is the time for us to seek new, innovative ways to renew our economy.

In meeting the twin challenges of global climate change and renewing the economy, we believe that New York State must commit to developing the right set of policies to effectively achieve a clean energy future. Fostering a self-sustaining and scalable renewable energy marketplace represents a critical piece to effectively achieve New York's clean energy future.

We were engaged in the development of the New York State Renewable Portfolio Standard (RPS) from the very beginning. We agree strongly with the Commission's overarching goal to utilize the RPS as a vehicle toward ultimately achieving a mature and robust renewable energy marketplace in New York State. As the Commission stated in the 2004 RPS Order (paraphrased from the Summit Blue report):

> The Commission desires that, ultimately, competitive markets will sustain renewable resource development . . . transitioning this effort to a more market-based approach over time . . . establishing a viable, self-sustaining competitive renewable generation market.

Below are our responses to the questions posed by the Commission in the SAPA notice dated October 14, 2009.

II. QUESTIONS POSED IN SAPA NOTICE AND ADDRESSED IN STAFF'S MID-COURSE REPORT

A. ISSUES RELATED TO THE RPS PROGRAM IN GENERAL

1. The current RPS targets could move downward if energy efficiency investments produce their expected results. To what extent do these likely energy efficiency savings bear on the reasonableness of expanding the goal and time period for RPS? Should the RPS target be increased to reflect that by the year 2015 at least 30% of the electricity consumed in New York State should be generated using renewable resources?

   NRDC supports the increase in the RPS target. Despite the delayed program approvals by the Commission and Staff for implementation of the 'full scale' energy efficiency portfolio standard (EEPS), NRDC thinks that New York State (NYS) has the ability to still meet its EEPS goal of a 15 percent reduction in forecasted annual energy demand by 2015. Additionally, NRDC supports the position of the Alliance for Clean Energy New York (ACENY) that:

   > The RPS goal should be defined as a set number of megawatts or megawatt hours. A percentage-based goal is a useful communication and education tool and can be used to guide the amount of megawatt hours identified as the goal, but should not be used as a strict measure over time. Developers need certainty in order to invest in project development, which they must do prior to competing for an RPS contract. If the MWh target fluctuates over time based on efficiency gains – and most importantly, has the ability to decline as is suggested would be the case without an increase to 30% by 2015 – developers will invest elsewhere and not in NY. A defined number of MWh could be a floor, but not a ceiling, to ensure the State meets its target and could be adjusted upwards as needed; however, the Commission must state that it will not adjust the number downward given that uncertainty will drive away investment.

2. To what extent do investments in renewable resources produce measurable direct, indirect, and induced economic effects in the state as well as more intangible benefits, such as environmental benefits, resource diversity, and security from energy price and supply interruptions? Recognizing there may be various approaches to establishing such benefits, what is the likely range of these benefits?

   We think the NYSERDA commissioned, *New York Main Tier RPS Impact and Process Evaluation* report completed by KEMA accurately assesses and reports the measurable direct, indirect, and induced economic effects in the state.[1]

[1] [REF NYSERDA KEMA report 2009, Table 8]

While the resulting economic and environmental benefits from renewable energy development spurred by the RPS may carry a range of uncertainty, even conservatively estimating the cumulative impacts shows considerable net benefits to the NYS economy and environment.

3. To what extent is the direct cost to the ratepayers of electricity generated from renewable resources (RPS subsidies and administrative costs) offset by the value to the public of the avoided pollutant emissions from displaced fossil fuels, wholesale electric market price effects (wholesale price suppression), avoided capacity and distribution costs, and stimulus to the state's economy and to the host community's economy through investments in new facilities?

   We think the public value from renewable energy development brought on by the RPS greatly outweighs the cost to the bill-paying customers of the investor owned electric utilities in the State. We think the benefit-cost assessment methodology and results of the NYSERDA-commissioned RPS Market Assessment Reports—which included valuing the benefits to public health and the environment, the electric grid and electric market, and direct and indirect economic activity—are wholly appropriate, accurate and defensible.

4. Given current economic conditions, the significant upward pressure now occurring on utility rates, and potential other uses for ratepayer-supplied capital, is it in the ratepayer's interests to increase the State's commitment to renewable resources on the scale reflected in the attached schedule? What is the likely effect on utility rates and customer bills of fully funding the RPS program based upon the attached schedule? Are these results within the range of acceptable outcomes? What modifications, if any, are necessary to assure that continued RPS funding produces acceptable results?

   There's no better time for the Commission to increase the scale of investment it is making toward renewables than in the 30% by 2015 RPS. Whether for economic revitalization, addressing global warming pollution, or greater energy security, the RPS is a key driver for NYS in meeting these vital objectives; and will ultimately re-position the State as a clean energy technology leader for a rapidly changing global world order that President Obama described quite succinctly:

> From China to India, from Japan to Germany, nations everywhere are racing to develop new ways to produce and use energy. The nation that wins this competition will be the nation that leads the global economy. I am convinced of that. And I want America to be that nation.[2]

[2] http://www.whitehouse.gov/issues/energy-and-environment

The highest range of estimated customer bill impacts of the RPS, presented at the PSC Nov 12, 2009 RPS Technical Conference, is 1.55% in 2015. Given this estimate and the recent rise of utility rates resulting from volatile swings in fossil fuel prices, we think the forecasted customer rate impact resulting from this higher RPS goal (which is a much more certain prediction for the Commission to consider than forecasting fossil fuel prices even just a few months in advance) would be unnoticeable, and, in any event, very minimal.

The citizens of New York have continued to show strong support for clean energy development in the state.[3]

5. What is the value of continued renewable investments producing economies of scale and encouraging technological improvements that in turn will drive the costs of these resources further down toward the point where their price will converge with that of conventional generation technologies?

The potential for continued renewable investments producing economies of scale is certainly attainable, but the scope of such question highly depends on the specific industry/technology and accompanying supply chain, labor force maturation, finance streams, and delivery costs involved. Wind energy, for instance, in states such as California, Minnesota, Iowa and Texas have experienced measurable economies of scale to bring down installed costs of these renewable technologies.[4] Very similar technology cost decreases from economies of scale for solar PV have visibly shown up in expanding markets resulting from long-term industry support policies in California and New Jersey.[5]

6. If future Main Tier solicitations do not achieve the targets or result in unreasonable upward pressure on utility rates and bills, should the Commission consider, as an alternative, the costs and benefits of allowing parties to bid in verifiable MWhs resulting from cost-effective energy efficiency investments in the service territories of utilities subject to the jurisdiction of the Commission in lieu of renewable resources?

No; we do not think the Commission should consider trade-off of energy efficiency investments to meet RPS requirements. This would create uncertainty in the renewable development marketplace, which would result in less development of such generation and thus decreased competition and, ultimately, a less effective (i.e. more expensive) RPS. In addition, we agree with the position put forth by ACENY for the Commission to do what it can to support a more certain Main Tier renewable development business environment,

[3] https://docs.google.com/fileview?id=0Bx8f3U3D1yoZNGY3MzJmZmEtYTU5MS00MGZhLWEyMmUtMzE0MzFjM2E4NGQ1&hl=en

[4] http://www.awea.org/publications/reports/AWEA-Annual-Wind-Report-2009.pdf

[5] http://eetd.lbl.gov/ea/emp/reports/lbnl-2674e.pdf

> . . . while ACE NY believes the State needs a one-stop shop siting board authorized by the legislature, in the absence of such a board, the Commission should do everything it can to streamline the review and approvals of renewable energy projects within its jurisdiction.

7. If future energy efficiency investments made pursuant to the Commission's Energy Efficiency Portfolio Standard do not produce MWhs sufficient to obtain the goal of 15% energy efficiency by 2015, should the Commission consider costs and benefits of altering the solicitation process to permit increased renewable investments?

   No; we will continue to support that all cost-effective energy efficiency be pursued first, which we feel goes well above the EEPS goal of 15% by 2015. The increased investment in the energy efficiency delivery industry that is now emerging in New York as a result of Commission-approved NYSERDA and utility programs needs certainty and a clear demonstration of State commitment, similar to investment in and development of renewable energy that has resulted from the RPS.

8. Should the RPS program schedule be modified in any manner to reflect outside considerations such as the Regional Greenhouse Gas Initiative or potential national energy legislation?

   No; we do not think it is appropriate to change the RPS program schedule at this time even as RGGI gets implemented and potential national energy legislation moves forward. New York State has shown excellent regional and national leadership in creating and implementing the state RPS and RGGI. Both of these programs will position the state favorably for future renewable energy development as federal clean energy and climate legislation becomes more certain.

9. To what extent can and should the Commission encourage utilities and energy services companies (ESCOs) subject to its jurisdiction to enter into financial "hedging" contracts related to the sale of energy into the New York spot market by Main Tier participants and other renewable resource generators?

   We agree with ACENY that:

> . . . the Commission use its jurisdiction to encourage or require ESCOs to enter into contracts for energy from renewable energy projects that would help these projects obtain financing and help lower bids to NYSERDA. This would in fact help move New York's central procurement model closer to the RPS structure used in other states without completing transitioning from central procurement to Load-Serving Entity (LSE) procurement.

10. Should the delivery requirement element of the RPS program be changed in any manner?

No; we agree with the argument put forth by ACENY that:

> The delivery requirement continues to serve the purpose of leveling the playing field between in-state and out-of-state resources as described by John Saintcross of NYSERDA at the RPS Technical Conference. While we understand the Commission's interest in potentially lower cost out-of –state resources, not only do they have an advantage in the energy markets (without the delivery requirement) but using RPS funds to support out-of-state projects results in substantially fewer economic benefits to New York and means that New York will receive nothing from this investment of ratepayer money once the contract has ended. On the other hand, using ratepayer money for in-state investments results not only in local economic benefits, but the energy generated will continue to be injected into the New York wholesale market after the end of the contract.

11. Should the "central procurement" model, a key element of the RPS program, be modified in any manner?

Yes; we think a few modifications are necessary to create a more effective RPS program:

- An RPS solicitation schedule extending through 2015 with annual or bi-annual competitive solicitations should be published.
- Unencumbered funds from any given solicitation period should roll over into future solicitations and be published accordingly.
- Procurement selection merits should emphasize quantity of renewable energy credits (RECs) produced.
- A subsequent REC tracking system should also be implemented.
- The Commission and NYSERDA should commit to purchasing all MWh's (RECs) needed to meet targets in each solicitation.

12. How should the Main Tier procurement of small-scale hydropower and biogas resources be handled, including consideration of whether this should be done through an ongoing Standard Offer Contract approach? If so, should there be a resources size cap and/or funding cap above which the offer would not be available?

We agree with Commission Staff recommendations to continue the Standard Offer Contract offering for qualifying small-scale hydropower and biogas projects.

13. Should the maximum lead-time before the in-service date of Main Tier procurements be extended for biomass projects?

We support providing flexibility for in-service dates for these projects.

14. What changes, if any, should be made to the "vintage" requirement? Is it appropriate to offer RPS financial support to renewable energy generation facilities that have already obtained financing and been constructed?

The vintage requirement should not be changed. Our reasons for this are explained in the comments regarding this question by ACENY.

15. Main Tier contracts currently provide a fixed premium over ten years for every MWh produced. That is, all bidders are ranked on an equivalent basis using their fixed price bids. Should other bidding options, such as but not limited to, contracts for differences, price caps and price floors be considered? If so, how should they be employed in a competitive procurement process and how should the collection schedule be modified to automatically match variations in cost?

NRDC supports further exploration of the contracts for differences in approach and looks forward to seeing what ideas are proposed by other parties.

16. Under the current bid scoring mechanism, bid price is weighted at 70% of total score and expected in-state benefits are given a weight of 30% of the total score. Should this weighting be retained? Is the value of in-state economic benefits properly reflected by the current scoring methodology? Is the value of potentially lower-cost resources from outside the State properly reflected by the current scoring methodology?

Given the specific local economic benefits (i.e. jobs and increased local spending) that occur from renewable energy development, we feel this is a fair and reasonable weight for in-state geographic preference in scoring bidders.

B. SECONDARY ISSUES

17. Is it more efficient and cost effective for Main Tier procurements to be regularly scheduled by NYSERDA, in consultation with Staff, without the need for individual Commission authorization?

Yes, it is more efficient and cost effective for Main Tier procurements to be regularly scheduled by NYSERDA.

18. Should Main Tier funds that become unencumbered be immediately available to NYSERDA for additional Main Tier procurements?

Yes; as we stated earlier in question 11, unencumbered funds should be made available for the subsequent future solicitations.

19. Is it appropriate for Main tier contracts to have a mandatory term of 10 years? Should there be an exception for fuel-based resources?

The 10-year contract term has worked reasonably well to date. NRDC is open to having the Commission explore alternative contract lengths. The Commission should implement a tracking system for fuel-based resources, especially now that formal EPA guidelines for determining a national low carbon fuel standard (LCFS) are being finalized. If a project's fuel mix goes above the threshold to be considered a low carbon fuel, then the resource should be deemed ineligible for REC procurement in NYS.

20. What is the impact on geographic equity of the current procurement practices for the Main Tier production? Should geographic equity be considered in future procurements, and if so, how?

NRDC does not think that determining the flow of RPS program funding along some arbitrary measure of intra-state geographic location is particularly beneficial to ratepayers. Instead, NRDC agrees with NYSERDA staff on the principle that many high priced load pockets in downstate New York would benefit immensely from distributed generation renewable resources that match well with local peak coincident loads (solar PV technology is an excellent match) and therefore offset the potential for expensive grid build-out in that area. We think utilities should be given the option to consider siting these renewable distributed generation resources in high priced load pockets. A suitable program mechanism we think the Commission ought to consider in bridging the value that distributed renewables can bring to congested grid areas is the Reverse Auction Mechanism (RAM) that is now before the California Public Utilities Commission[6].

21. Should any new types of resources be added to the current list of Main Tier-eligible technologies as part of the 2009 review and if so, why?

Yes; we support the petition to the Commission by Niagara Generation, LLC to allow the clean wood component of construction and demolition ("C&D") waste to be separated from the rest of the C&D waste stream either at the construction site or at a solid waste material recovery facility ("MRF").

[6] http://docs.cpuc.ca.gov/efile/RULINGS/106275.pdf

Otherwise we are strongly opposed to any other kind of resource becoming eligible in the RPS.

We do not have comments on Questions 22 – 31

POTENTIAL FOR UTILITY-SITED TIER

32. Should a new "Utility-Sited Tier" be established to promote small, utility solar photovoltaic facilities that integrate renewable energy generation into the distribution system at strategic locations? If so, what parameters would be used to define “strategic location”?

    See Question 20 above for our response to the first question. We would welcome working with the Commission and Staff to define parameters for “strategic location” and construct a market-based program to integrate distributed renewable energy generation where its value would be effectively met at high congestion areas within investor-owned utility grid service areas.

PROGRAM DESIGN AND IMPLEMENTATION ISSUES

33. Should a new schedule of RPS collections be set through calendar year 2024 based upon a forecast of all future RPS costs? Should additional collections be authorized at this time to fully fund the RPS program based on the attached schedule?

    Yes; all funding that is forecasted to be necessary to reach newly adopted RPS goals should be authorized by the Commission.

34. Is it reasonable to reflect the SBC/RPS charges on utility bills as a single Clean Energy Initiative (CEI) charge? How might this objective be accomplished?

    No comment.

35. Given that the RPS program and the Energy Efficiency Portfolio Standard (EEPS) program are still in their early stages, should the Commission conduct another comprehensive review of the RPS program to examine the results of these initiatives and to evaluate the ability of these programs to achieve their intended objectives? Is 2012 too soon for another review?

    We do not think a comprehensive review as early as 2012 is necessary; instead, a review in 2015, at the conclusion of the updated RPS goal and timeframe, is appropriate. The RPS program should continue to be transparent and flexible in providing annual progress reports and make minor program adjustments. This

will keep the renewable development community informed and continue to maintain a high degree of trust and certainty in the New York State market place.

ISSUES RELATED TO THE VOLUNTARY MARKET

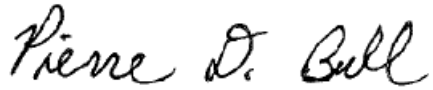
36. To what extent should the current efforts to develop a more automatic and certificate-based tracking system in New York State which might accommodate some certificate trading be continued?

NRDC thinks an electronic REC-tracking system that Commission staff and NYSERDA have explored to-date should be implemented immediately. We encourage Commission staff and NYSERDA to reach out to the U.S. Environmental Protection Agency (EPA) Green Power Partnership Program[7], if they have not already done so, to obtain assistance in getting such a system up and running as soon as possible.

III. CONCLUSION

NRDC looks forward to working with the Commission, staff and NYSERDA in making the necessary changes to the RPS program to make it an efficient and effective vehicle to get New York State to its goal of 30% renewable energy by 2015. Below are our responses to the questions posed by Commission staff and distributed to parties on October 14, 2009.

Respectfully Submitted,



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[7] http://www.epa.gov/grnpower/gpmarket/tracking.htm