

SAPA NO. (03-E-0188SA16)

Notice of Proposed Rule Making **PUBLIC SERVICE COMMISSION**

TEXT ATTACHMENT SUBMITTED ELECTRONICALLY YES NO

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

1. A. *Proposed action:* The Commission is considering authorizing additional approaches for solicitations during 2006 and 2007 in the Main Tier of the Renewable Portfolio Standard (RPS) Program, pursuant to the Commission's Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program that was issued on April 14, 2005.
B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
C. This rule was previously proposed as a consensus rule making under I.D. No. _____ . Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
D. This rule is proposed pursuant to [SAPA §207(3)], Review of Existing Rules.
2. *Statutory authority under which the rule is proposed:* Public Service Law, Section(s) 4(1), 5(2), 66(1) and 66(2).
3. *Subject of the rule:* Procurement and related matters pertinent to implementation of the RPS Program.
4. *Purpose of the rule:* Establish methodologies and standards for 2006-08 Program procurements.
5. *Public hearings* (check box and complete as applicable):
 A public hearing is not scheduled. (*SKIP TO ITEM 8*)
 A public hearing is required by law and is scheduled below.
 A public hearing is not required by law, but is scheduled below.

Date:

Time:

Location:

_____	_____	_____
_____	_____	_____
_____	_____	_____

6. *Interpreter services* (check only if a public hearing is scheduled):
 Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

- 7. *Accessibility* (check appropriate box only if a public hearing is scheduled):
 - All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
 - Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An optional explanation is submitted regarding the nonaccessibility of one or more hearing sites.

- 8. *Terms of rule* (SELECT ONE):
 - The full text of the rule is attached since it is under 2,000 words.
 - A summary of the rule is attached since the full text of the rule is over 2,000 words.
 - Full text is posted at the following State website:
 - Full text is not posted on a State website.
 - Full text is not posted on a State website but this is a consensus rule or a rule defined in SAPA 102(2)(a)(ii)
 - Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii).

9. *The text of the rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:*

Central Operations
3 Empire State Plaza
Albany, New York 12223-1350
(518) 474-2500

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Jaclyn A. Brillling, Secretary
3 Empire State Plaza
Albany, New York 12223-1350
(518) 474-6530

11. *Public comment will be received until:*

- 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it is under 2,000 words or full text of rule has been posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][iii])
- 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][iii])
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing) This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][iii])
- Other: (*specify*)

12. A prior emergency rule making for this action was previously published in the _____ issue the *Register*, I.D. No. _____.

13. *Expiration date* (check only if applicable):

- This proposal will not expire in 180 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. Additional matter is required by statute:
 Check box if NOT applicable

15. **Regulatory Agenda** (The **Division of Housing and Community Renewal; Workers' Compensation Board;** and the departments of **Agriculture and Markets, Banking, Education, Environmental Conservation, Family Assistance, Health, Insurance and Labor** and any other department specified by the Governor or his designee *must complete* this item. If your agency has an optional agenda published, that should also be indicated below):
 This action was a Regulatory Agenda item in the first January issue of the *Register*, (year) _____
 This action was a Regulatory Agenda item in the last June issue of the *Register*, (year) _____
 This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the *Register*.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)
This rule is proposed pursuant of SAPA §207 (check applicable boxes):
 Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a decision of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
 Attached is an assessment of public comments received by the agency in response to the listing of the rule in the regulatory agenda.
 An assessment of public comments is not attached because no comments were received.

17. **Regulatory Impact Statement (RIS)**
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

The attached RIS contains:
 The full text of the RIS.
 A summary of the RIS.
 A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. An RIS is **NOT** attached, because this rule is:
 a technical amendment (*i.e.*, exempt from SAPA §202-a) (*attach a statement of the reason(s) for claiming this exemption*).
 subject to a consolidated RIS printed in the *Register* under I.D. No.: _____; issue date: _____.
 exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 exempt, as defined in SAPA §102(11) [Consensus Rule Making].

18. **Regulatory Flexibility Analysis (RFA) for small businesses and local governments**
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:
 The full text of the RFA.
 A summary of the RFA.
 A consolidated RFA, because this rule is one of a series of closely related rules.

B. An RFA is **NOT** attached, because this rule:
 will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments (*attach a statement in scanner format that explains the agency's finding and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements*).
 is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____; issue date: _____.
 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. **Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

- The full text of the RAFA.
- A summary of the RAFA.
- A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A RAFA is **NOT** attached, because this rule:

- will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas (*attach a statement in scanner format that explains the agency's finding and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements*).
- is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ ; issue date: _____.
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. **Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

- The full text of the JIS.
- A summary of the JIS.
- A consolidated JIS, because this rule is one of a series of closely related rules.

B. A JIS is **NOT** attached, because this rule:

- will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) (Attach a statement in scanner format that explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.)
- is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____ ; issue date: _____.
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- is exempt, because it is submitted by the State Comptroller or Attorney General.
- includes a JIS/Request for Assistance.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name DAVID VAN ORT

Signature _____

Address 3 Empire State Plaza, Albany, NY 12223-1350

Telephone 518-474-7072

Date July 3, 2006

SUBSTANCE OF PROPOSED RULE

The New York Public Service Commission is considering authorizing additional mechanisms for solicitations during 2006 and 2007 in the Main Tier of the Renewable Portfolio Standard (RPS) Program procurements. In an Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program, issued on April 14, 2005 (April Order), the Commission directed Department of Public Service Staff (Staff) to recommend for its subsequent approval the procurement model(s) to be used for future solicitations. Three models were subsequently proposed: sealed bid request for proposals (RFP), standard offer, and a clearing price auction process using a declining clock format. By Order issued January 26, 2006 (Order Authorizing Additional Main Tier Solicitations and Directing Program Modifications), the Commission, after considering the three approaches and the comments of the parties, directed Staff and the New York State Research and Development Authority (NYSERDA) to proceed with Main Tier Solicitations during 2006 and 2007 through development of the clearing price auction process using a declining clock format. The Order also required Staff to report back to the Commission if it should appear that market conditions are not ripe for such a process to be used or if the model for this type of solicitation is not ready in time for the next solicitation.

Staff reports that its development work on a clearing price auction model with a declining clock format is not far enough along for it to be ready for use for the next solicitation. It requests authorization for NYSERDA to execute RPS contracts based on the results of a sealed bid request for proposals (RFP) approach, similar to that authorized for the prior solicitation. It also requests that NYSERDA be authorized to use a standard offer approach for small-scale solicitations if needed to ensure that all eligible technologies have an opportunity to participate in the Program. Staff indicates that the time necessary to complete development of the clearing price auction model would unreasonably delay the next solicitation and potentially reduce the pool of potential bidders because of the shortened time period that would then be available for them to complete financing and construction to meet a December 31, 2007 deadline for Federal Production Tax Credit eligibility. Work on development of a clearing price auction model will, Staff indicates, continue for use as soon as practicable.

Accordingly, the Commission is considering authorizing NYSERDA to execute Main Tier RPS contracts, resulting from solicitations during 2006 and 2007, using any of the

identified approaches: sealed bid request for proposals, standard offer, and clearing price auction using a declining clock format, or a combination of the three approaches.

The Commission may accept, reject, or modify any proposals relating to these matters. Comments are sought on all matters discussed herein.