

Renewable Portfolio Standard  
Customer-Sited Tier Program  
CASE 03-E-0188  
February 12, 2007

NYSERDA and DPS Staff Comments and Responses Regarding  
Draft Operating Plan

In its June 2006 RPS Order, the Commission directed the development of a CST Operating Plan for solicitation of customer-sited renewable resources and specified the parameters and principles that NYSERDA, in consultation with New York State Department of Public Service Staff (Staff), should use in developing the Plan. The Order also established funding allocations among resource categories, and eliminated a 300 kWh cap on the size of eligible small wind facilities. The June 2006 Order authorized NYSERDA to implement the CST component of the RPS Program pursuant to the allocated funding levels for eligible resources once the Plan is completed.

Stakeholders and interested parties had the opportunity to comment on the draft Operating Plan. Fifteen sets of comments were received on or before January 5, 2007. Comments and responses are organized by the most relevant section of the draft Operating Plan. Individual commentators are identified by the numbers following the summary comments.

- 1 New York Solar Energy Industries Association
- 2 Nassau County Department of Public Works
- 3 Patterson Farms, Inc.
- 4 Noblehurst Farms, Inc.
- 5 Dr. Norman R. Scott
- 6 Tristate Solar Inc.
- 7 Bergey Windpower Co.
- 8 NorthEast Biogas, LLC
- 9 PV Now and the Vote Solar Initiative
- 10 New York Farm Bureau
- 11 Alliance for Clean Energy New York
- 12 Plug Power Inc.
- 13 Southwest Windpower
- 14 Alfandre Architecture PC
- 15 Fat Spaniel Technologies, Inc.

## SUMMARY OF COMMENTS

### Section 2.1 FUNDING LEVELS

- S The overall funding amounts are inadequate. (1,6,7,8,9,11,14)
  - a. Insufficient to realize the goals of the RPS.
  - b. Insufficient to attract business investment to New York State to bring down cost.
- S The overall budget for small wind incentives is generous. (13)
- S If tax credits become available, the demand for small wind will accelerate and the budget will be insufficient. The incentives for small wind are disproportionately less than PV despite their equal value to customers and the higher siting/permitting costs. (7)
- S Describe how the discretionary fund will be used if all technologies are oversubscribed. (11)
- S Eliminate funding allocations so that the market place can freely determine the appropriate allocations. (7, 13)

### Section 2.3 GENERAL PROGRAM REQUIREMENTS

#### Section 2.3.1 Program Structure

- S The use of the NYSERDA programs as a means of distributing funds is endorsed. (3, 4, 9)
- S Rather than a first come first serve approach, applications should be evaluated on a monthly or equivalent cycle, and specific applications that can demonstrate the lowest cost per kWh installed should be considered first. (13)
- S A streamlined process to apply for and receive funding is desirable. (6, 7)
- S The pass-through requirement for third party contracts is supported. (9, 10)
- S Expedient implementation of the Program to take advantage of the 2007 construction season is needed. (8)

#### Section 2.3.2 Eligibility

- S For anaerobic digestion systems, consideration should be given to existing (*i.e.*, placed into service prior to January 1, 2003) facilities that are improved and/or rehabilitated on or after January 1, 2003. (2)
- S The establishment of a maintenance-tier incentive level for digester systems that were installed prior to the actual issuance of RPS funds but after January 1, 2003 is supported. (10)

Section 2.3.3 Incentives

- S Incentives should be available for the length of the power purchase agreement and/or term of loans to finance a project. (8)
- S Use only a performance incentive rather than a combination of capacity and production incentives. (8)
- S Discuss incentive levels with stakeholder and the industries targeted for incentives. (9)
- S Provide adequate notice prior to changing incentive levels. (9)

Section 2.3.5 Measurement, Verification, Quality Control

- S Inclusion of monitoring systems within a project to provide on-line data access is supported. (5)
- S Inspection and verification plans are supported generally. (9)
- S Design review and inspection should occur in an atmosphere of transparency and fixed standards. (9)
- S The metering and monitoring requirements must be designed to support a viable financial market for environmental attributes of the future without expensive retrofitting. (15)
- S Customers and installers should be allowed to select metering and monitoring systems and service providers. (15)

Section 2.3.6 Capacity Limitation

- S The 400 kW cap on anaerobic digester power seems necessary as a way to distribute limited funds across more projects. (3)
- S By allowing incentives to be provided beyond the site's electric load and up to a 400kW limit, the draft Plan rightly recognizes that farm digesters are sized to manage manure wastes and optimize economic operation. (10)
- S The limitation on capacity at 400 kW or at the customer's peak load, whichever is greater, for anaerobic digestion is unreasonable. (3, 4, 5, 8)

Section 2.4 Renewable Energy Credits and Environmental Attributes

- S Renewable Energy Credits and Environmental Attributes should stay with the system owner. (3, 9, 11)
- S NYSERDA exerting control over the environmental attributes created by the electric generation systems installed with CST funding, during the distribution of that funding, is not opposed, in general. (10)
- S Flexibility should be provided in contracts to allow projects to move to a green energy market opportunity. (10)
- S The establishment of an environmental attribute tracking system should be encouraged,

and both the PSC and NYSERDA should move forward with the establishment of such a system as quickly as possible. (10)

S The treatment of environmental attributes associated with biogas methane destruction is endorsed. (10)

S The rationale for the treatment of attributes associated with biogas methane

S Destruction should be discussed. (11)

### Section 3 PROGRAM ELEMENTS

#### Section 3.1 Solar Photovoltaic Systems

S Project caps for PV should be based only on customer load. (9)

S Special consideration must be given to the New York City metro area, where costs are greater and where there are load pocket and reliability problems. (1, 14)

#### Section 3.2 Fuel Cells

S The division of the fuel cell program money into large and small fuel cell tracks unfairly and inappropriately prohibits small fuel cells from accessing all but a small piece of the available funding. (11)

S The warranty provisions for fuel cells are overly restrictive. (11)

S The fuel cell requirement that at least ten units must have been sold to other customers prior to being eligible for the RPS is unreasonably restrictive. (12)

S The estimates of capacity factors for small fuel cells may be too low. If higher capacity factors are experienced, a reallocation of funds between the small track and a general category would be warranted. (12)

S The reservation of a percentage of funds for small fuel cells should not exclude small fuel cells from participating in the general fuel cell program. (12)

#### Section 3.3 Anaerobic Digestion Systems

S The expected MW capacity encumbered by 2009 considerably underestimates the generating potential available within this time frame. (8)

S Performance-based payments need to be made available, particularly to ensure that performance data is made publicly accessible. (5)

S The establishment of both a capacity incentive and performance-based incentive for digester system installation is supported. (10)

S For anaerobic digestion systems, an up-front \$1,000 per kW of installed additional capacity is the correct incentive to site, install, and commission a 200kW generator. (3)

S The incentive levels for anaerobic digestion systems should be related to percentage of potential operational time as well as simply kW. (3)

- S Any required data reporting and monitoring expenses that do not relate directly to feedback for on-farm digester performance should be incurred by NYSERDA. (10)
- S Program funds are not required to track performance incentives because they can be monitored based upon the actual MWh delivered to the grid by the project and can be validated by data from the utilities and or meters. (8)

#### Section 3.4 Small Wind

- S Small wind should be given a residential rebate at the same rebate levels as proposed for PV. (7)
- S The residential exemption to the SEQRA requirements should be observed. (7)
- S Systems that have an installed cost of less than \$20,000 should not require independent monitoring. (13)

### **RESPONSE TO COMMENTS AND IMPACT ON OPERATING PLAN**

#### Section 2.1 FUNDING LEVELS

A consistent comment among the stakeholders is the need to allocate additional funding to the CST program. This matter, however, was decided by the Commission in its June 2006 Order and was not subject to modification in the Operating Plan development process. The entire RPS Program, including the CST, will be evaluated in 2009, and the next round of funding allocations will be determined at that time. Some commentors recommended eliminating funding allocations for individual eligible technologies all together and allowing the market place to determine demand.

While the amount of funds allocated to each of the four technologies is not open for discussion here, it is important to note that various funding allocation strategies were considered during the development of the CST program. Providing a level of funding certainty to market participants allows for more efficient business planning and investment in decisions without the fear that the funds would have been used by another technology. The discretionary funds also offer a buffer should demand in one program outpace available funds.

#### Section 2.3 GENERAL PROGRAM REQUIREMENTS

##### Section 2.3.1 Program Structure

Most parties support the application-based approach as being the most streamlined and the approach that provides a level of funding certainty. The first come-first

served application-based approach to implementing the Program is designed to streamline access to funding while maintaining the necessary fiduciary and quality control. Competitive solicitations may be used to target markets not adequately represented in the Program. Consequently, no changes to the draft program structure will be incorporated

### Section 2.3.2 Eligibility

The Draft Operating Plan states that facilities that were placed in service (producing electricity) prior to January 1, 2003 are ineligible for participation in the Program. A stakeholder requested that such facilities that have been improved and/or rehabilitated on or after January 1, 2003 should also be eligible. The commentator states that by making existing facilities eligible for funding, owners would have an incentive to update equipment and implement emerging technologies, thus likely improving the energy generating efficiencies of such facilities. The Operating Plan has been revised to reflect consideration of major upgrades in determining eligibility.

### Section 2.3.3 Incentives

One stakeholder commented on the need to provide performance incentives for the length of a loan period or power purchase agreement. Another requested that incentive levels only change after sufficient notice and consultation with the appropriate market participants. NYSERDA is committed to working as a partner with market participants and will seek stakeholder input when considering changes in incentive levels. Stretching out a fixed amount of funding through payments of performance incentives over a period greater than 3-5 years, however, may not be cost effective, given the limited funding available in the CST program and the need to keep administrative and reporting requirements low. This issue will be considered further in the 2009 RPS Program evaluation.

### Section 2.3.5 Measurement, Verification, Quality Control

Several stakeholders expressed concern over potential costs and burdens on the customers associated with monitoring and verification. Accordingly, the Operating Plan has been changed with regard to the requirements and associated costs for the customer versus the costs that will be borne by NYSERDA. In designing the specific programs, NYSERDA will seek to minimize the reporting burdens, especially for the smaller customers. It will, however, still need to establish a credible means of verifying the basis for payments under the program and support high quality installations.

### Section 2.3.6 Capacity Limitation

The Operating Plan states:

“In order to encourage the use of anaerobic digestion system treating farm waste and the resulting public benefits, . . . incentives may be provided

(a) up to the eligibility capacity limit in the net energy metering law, which currently caps farm waste electric generating equipment at 400 kW, or (b) at the customer’s approximate peak connected load, whichever is greater.”

Five out of the six commentators in the biogas area addressed the proposed limit of providing incentives up to a maximum of 400 kW. Commentators generally endorsed the proposal that the CST program should provide incentives beyond the customer load, given that the biogas engines are sized generally to process the waste resources available - not to meet customer electric load.

Several commentators, however, expressed strong concern that providing incentives only up to 400 kW is not adequate to spur the market, for a variety of economic reasons. These comments requested that the 400 kW incentive limit be removed entirely. The Commission may consider this issue as part of the 2009 review.

From a practical standpoint, however, given the amount of dollars available to the CST biogas program (\$3.7 million/yr), we will likely need to establish a project funding cap of \$1 million dollars. At anticipated incentive levels, we would expect that a 400 kW system would reach the project funding cap; hence, the issue of deleting the cap would not have a practical implication on the funding received at a larger site for this first phase of the CST. We decline to do so at this time.

Projects, however, are not precluded from adding capacity above the 400 kW if it makes sense to do so (based on other drivers, *e.g.*, waste management needs, tipping fees, economies of scale). The site owner, however, should consider the financial implications of exceeding the net metering threshold, which would eliminate any net metering benefit. As a further clarification, projects are not precluded from pursuing voluntary green markets for the incremental capacity, and if large enough, may be able to take advantage of the Main Tier RPS credits.

### Section 2.4 Renewable Energy Credits and Environmental Attributes

A commentator requested that flexibility be provided in CST contracts, should certain CST projects wish to move to a green energy market opportunity that offers higher incentives than the CST program. Accordingly, to foster the voluntary green energy market, the plan will allow the customer to terminate CST performance-based incentives and move to a green energy market with the attributes.

Several stakeholders commented that we need to develop an attribute tracking system expeditiously. We note that such a system is in development. The June 2006 Order granted authority to NYSERDA, with support from Staff, to issue a Request for Proposals to develop an attribute tracking system.

The Operating Plan states that “the environmental attributes associated with biogas methane destruction are considered to be separate from electricity-based RPS-eligible attributes and will be retained by the customer.” One commentator requested clarification of the rationale to allow environmental attributes associated with methane destruction to be treated differently from environmental attributes associated with the production of renewable electricity. The New York Farm Bureau, in its comments, clearly addressed this issue, stating that unlike many of the environmental attributes created by other CST technologies, biogas methane destruction does not depend upon the use of electrical generation to occur. Farms could use a flare system to destroy methane, providing benefit to the environment but not assisting in achieving the RPS goal. We concur with the New York Farm Bureau assessment. The act of destroying methane alone would not warrant a CST incentive, and we therefore conclude that attributes associated with methane destruction should be retained by the customer who is responsible for managing the waste.

### Section 3     PROGRAM ELEMENTS

#### Section 3.1   Solar Photovoltaic Systems

There is interest on the part of one stakeholder that the project cap be based only on the customer load. In this program, however, project caps are used to maximize the number of individual customers that can benefit from participation.

Two commentators requested special consideration of the incentive levels for photovoltaic installations in the New York City area. Incentive levels are established to strike a balance between the level of funding necessary to encourage installations and the need to maximize the number of customers that can be served within the funding allocated to the program. NYSERDA will evaluate the program on a regular basis to determine if some markets are not being served and make changes to incentive levels, or implement an additional competitive program, as necessary.

#### Section 3.2   Fuel Cells

In response to comments that it is too restrictive to require each make and model of a fuel cell to have been installed and commissioned at ten end-user sites, language in the Operating Plan has been changed to reflect the requirement that the make and model of the fuel

cell must have been offered for commercial sale and covered by commercial warranties within the two-year period preceding entry into the CST program. In addition, the make and model of the fuel cell will be required to receive certification of compliance with ANSI Standard FC-1 from a nationally recognized testing laboratory.

Concern was raised by one commentator that funding for Small Fuel Cells would be restricted. Accordingly, language in the Operating Plan has been changed to show that the funding amount for Small Fuel Cells is a “set-aside” and that General Fuel Cell funding is available to both small and large fuel cells. The portion of the fuel cell funds allocated to the Small Fuel Cells “set-aside” will be evaluated periodically throughout the program duration in response to market activity. Further, a change to the Operating Plan to allow Small Fuel Cells to also participate in the General Fuel Cell category should alleviate concerns.

### Section 3.3 Anaerobic Digestion Systems

Several stakeholders in the biogas area provided strong support for performance incentives. NYSERDA will consider this position in designing relative incentive levels of capacity payments versus performance payments. The majority of the total CST incentive in the biogas area will likely be performance-based. This will be addressed in specific solicitations.

### Section 3.4 Small Wind

One stakeholder argued that the incentive amounts provided to small wind should be equal to the funds provided under the photovoltaic program. On a percentage of installed cost basis, the incentives are comparable. In the case of small wind installations, incentives can range from 50% to 70% of the cost for a system up to 10kW system. Under the current photovoltaic program, the incentive can be no more than 60% of the installed cost of the system. Even so, allocation of funds between technology categories has been decided by the Commission and is a matter that can be changed only by the Commission.

One stakeholder commented on NYSERDA’s review of small wind projects under the State Environmental Quality Review Act (SEQRA) and referenced a “residential” exclusion. Based on a review of SEQRA guidelines, we find no “residential” exemption to SEQRA that would apply to small wind installations. SEQRA requires state agencies and authorities to take a “hard look” at the potential environmental impacts of projects that it undertakes, approves, or funds. NYSERDA takes its responsibilities under SEQRA very seriously. Because NYSERDA funds small wind projects, including projects at ratepayers' facilities, compliance with SEQRA is critical. NYSERDA will continue to inform public officials, planning boards, customers, and installers about the requirements of SEQRA.