RPS IMPLEMENTATION PLAN

The New York Public Service Commission is considering an implementation plan that addresses matters pertinent to the Retail Renewable Portfolio Standard (RPS) the Commission adopted in its Order Regarding Retail Renewable Portfolio Standard, issued on September 24, 2004 in Case 03-E-0188 (Order).[1] In the Order, the Commission adopted a policy designed to increase the percentage of renewable energy used by New York consumers from the current figure of approximately 19 percent to at least 25 percent by 2013. The RPS component of the renewable energy policy is designed to achieve a renewable energy percentage of 24 percent. The Commission expects that the voluntary green power market will contribute at least one percent to the overall 25 percent goal.

Key elements of the RPS decided by the Commission in the Order included determinations of resource eligibility, identification of the funding source, and designation of the New York State Energy Research and Development Authority (NYSERDA) as the central administrator of an incentive-based procurement program. The Order also stated that the Commission would consider and approve an implementation plan that addresses in more detail the various elements of the RPS. These matters include, but are not limited to, consideration of: criteria and procedures to determine facility eligibility; procurement models that may be used by the central procurer for main tier and customer-sited tier resources; a process to determine the future eligibility of

[1] SAPA No. 03-E-0188SA3 focuses on those matters that pertain to the one-year extension of the federal Production Tax Credit. This notice addresses the entire implementation plan.

technologies not currently eligible for participation in the RPS; criteria for determining financial eligibility of existing hydroelectric facilities of five megawatts or less, existing direct combustion biomass facilities, and existing wind facilities not currently eligible to participate in the RPS; design of an on-going monitoring and evaluation program; potential modifications to the Environmental Disclosure Program to accommodate the RPS; a mechanism to ensure the allocation and disclosure of renewable power related to the RPS surcharge to the retail customers paying the RPS surcharge; the process and issues appropriate for the 2009 review of the RPS; and, administrative costs.

The Commission may accept, reject, or modify any proposals relating to these matters. Comments are sought on all aspects of the proposed implementation above.

A more thorough discussion of these matters follows.

I. CRITERIA AND PROCEDURES TO CERTIFY FACILITY ELIGIBILITY

In designing effective and transparent eligibility and certification procedures, the Commission is considering these objectives:

- Provide certainty to developers to minimize pre-development cost and risk due to uncertainty in potential eligibility;
- Minimize administrative burdens to generators and regulators;
- Minimize time requirements so as not to unduly slow the procurement process;
- Ensure that only eligible projects are certified;
- Create an open and transparent process; and
- Afford confidentiality to developers during the development process.

Different certification procedures that satisfy these objectives may be appropriate in some circumstances. For instance, the Commission is considering requiring all potential renewable energy projects to seek provisional or operational certification by NYSERDA as a pre-condition for participating in an authorized central procurement solicitation (projects that are not so certified would not be eligible to participate in the RPS). Provisional certification would be necessary for facilities that are not yet constructed. A request for operational certification would be required for facilities that are constructed and operating at the time of the procurement and for all provisionally certified facilities prior to the payment of any incentives.

The Commission is considering assigning to NYSERDA the task of developing the appropriate forms for demonstrating such certification and authorizing NYSERDA to make the initial determination of eligibility in this process. Any information submitted during this process for provisional certification would be subject to further verification once the facility is complete. The Commission would hear any appeals of NYSERDA's decisions. In addition, developers would be able to identify information that they believe should be treated confidentially during the provisional certification process pursuant to New York Public Officers Law § 87(2) (d), 21 NYCRR Part 501, and 16 NYCRR Part 6. The Commission is further considering whether, to ensure ongoing eligibility, NYSERDA should require this certification to be renewed periodically, perhaps once every two years.

Alternatively, some states use an optional “advisory ruling” process in advance of solicitations, which allows projects still in the development stage to assess the likelihood and conditions under which the project would qualify for RPS support. Other states require provisional certification only for those projects that are selected or that are finalists for selection. The Commission is considering these approaches as well.

Regarding certification of certain biomass facilities, the Commission is considering whether a distinction should be made between a forest management plan and a harvest plan for the procurement of eligible sources of harvested wood and silvicultural waste wood. A forest management plan would be developed by the biomass facility forester and would address overall management goals and performance standards for procuring the biomass resource. A supplier for a particular biomass facility would be expected to be in compliance with the facility's specific Forest Management Plan (and have a copy of that plan).

A separate and discrete harvest plan would also be required for each supplier's harvesting operation(s). The Commission is considering the following management goals to guide the development of individual harvest plans:

- Landowner objectives and available alternatives;
- Site characteristics, timber stand condition in regards to age, vigor, species mix, and past harvest history; and
- Impact on the ecology of the site, including water quality, wildlife, aesthetics, and recreational uses.

The Commission is also considering the appropriate components of a harvest plan, such as:

- Map, including the area to be harvested, topography, skid road layout, location of all streams, wetlands and water bodies, and forest type designation;
- Harvest objective (e.g., long-term timber management, land conversion);
- Types of harvest (e.g., integrated harvest, fuel wood only);
- Description of silvicultural technique(s) to be implemented;
- Anticipated volume of wood to be harvested; and
- Best Management Practices to be implemented.

The Commission is further considering whether, in order to satisfy these requirements, the Commission should require the biomass facility forester to meet with Department of Public Service (DPS) Staff, Department of Environmental Conservation personnel, or a qualified private consultant hired by the State at least once a year to conduct on-site inspections during active harvesting operations or recently completed operations. A review of harvest plans corresponding with the inspected sites might be included as part of the on-site inspections.

II. PROCUREMENT METHODOLOGIES FOR MAIN TIER AND CUSTOMER-SITED TIER RESOURCES

A. Main Tier

1. Procurement Context

As described in the Order, NYSERDA, as central procurer, will provide a financial incentive in the form of a premium payment to renewable

generators based on energy sold into the wholesale market on the condition that, in exchange for this payment, NYSERDA would obtain control of the associated renewable energy attributes and the generator would be precluded from selling those attributes. Such a structure (or some similar form) is intended to ensure that New York State ratepayers obtain an identifiable result from the RPS surcharge on their bills.

The Commission is considering a number of objectives in the context of assessing procurement options. These include objectives to:

- Minimize cost to end use customers;
- Contract with projects that have good probability of achieving operation;
- Support project financing;
- Maximize leverage of program by considering other factors such as the Federal Production Tax Credit;
- Achieve RPS quantity objectives;
- Minimize interference with competitive wholesale markets;
- Diversify electric generation fuel sources, making consumers less vulnerable;
- Capture economic development opportunities;
- Encourage viable competitive renewable energy and green power markets;
- Create a base of information and experience to facilitate transition to more market based procurement approaches; and
- Create a foundation for future flexibility and process evolution.

2. Procurement Timeframe Considerations

The Order's energy targets for new renewable supplies begin in 2006 and steadily increase through 2013. Multiple procurement cycles are expected. Successive procurement quantities may be modified commensurate with the quantities placed under contract by NYSERDA in preceding procurement cycles.

The Commission is considering authorizing NYSERDA, as each successive solicitation provides information from the market and feedback on the solicitation process, to modify procurement procedures and methods to enhance the effectiveness in meeting the overall RPS program goals.

Several practical requirements must be considered in meeting ongoing RPS procurement objectives. These include:

- The time needed to design, conduct, and administer a solicitation for renewable attributes;
- The time needed to bring a renewable energy project to operation from the time an RPS-eligible resource has been selected to receive funds; and
- Any time limits associated with relevant renewable energy tax credits.

For year 2006 RPS quantity targets not satisfied by an expedited procurement process and for year 2007 RPS quantity targets, solicitations will likely need to begin in early to mid-2005 and continued on a regular cycle. The Order calls for an assessment of the process in 2009. The Commission is considering a centralized procurement process that may need to evolve through a series of solicitations in the following phases:

a. 2005 Start-up Phase for Periodic Procurements Process

In 2005, a formal, periodic solicitation process would be developed and implemented.

b. 2006 - 2009 Refinements and Transition

Throughout this period, NYSERDA would conduct periodic solicitations. Using the information gained about the market and information obtained in the procurement process, each successive solicitation would be refined or redesigned, as necessary.

c. 2009 - 2013 Shift More Responsibility/Risk to Market

The Order calls for a program review in 2009. Following the program review, it is expected that the procurement process would be changed to a program with an increasing emphasis toward the development of sustained markets for renewable project development.

3. Procurement Situations

To attain RPS objectives, it is likely that a variety of distinct procurement situations (e.g., project sizes, types, and market conditions) would affect the design and implementation of the procurement process. The State's renewable energy objectives and need to develop better information about the renewable market place suggests that the Commission should authorize NYSERDA to explore and use a variety of procurement options. Several of the procurement situations that may exist are summarized below:

a. Existing Maintenance Tier Projects[2]

The Commission is considering two approaches for existing projects.

i) Case-By-Case Approach

As discussed below in Section IV, any existing Maintenance Tier project seeking RPS incentives might be subject to a review of its anticipated cash flows to establish financial need. Given that an estimate of costs and overall requirements of each entity will be known, a competitive process (auction or otherwise) might not be appropriate. It might be preferable to provide an existing renewable facility with RPS support on a case-by-case basis. Pertinent to this conclusion is that we would anticipate that some existing projects might have short term working capital requirements and a limited ability to borrow, while others might have problems that are longer term in nature. In these circumstances, a standardized procurement approach might not be appropriate.

ii) Competitive Bidding

It might make sense to consider some sort of competitive bidding (and/or competitive negotiations) among the qualifying existing projects if, for example, the need for assistance exceeds the available resources and, hence, allocation choices must be made. This would be relevant in the situation where there is a limit on the extent to which retail customers would be charged for the provision of assistance to existing projects. In addition, if new Main Tier renewable energy projects are available in the market in excess of the RPS

[2] In this context, existing projects are renewable energy projects that were commercially operational prior to January 1, 2003 and included in the RPS baseline.

targets, existing resources should have to compete head-to-head with such new projects. If the support required by an existing facility exceeds that for an eligible new facility, that existing facility would be considered economically obsolete. While there may be other determinative factors (e.g., term of commitment, reliability) so that such a rule should not be applied without consideration of these factors, public policy and the RPS objectives might not be best served in paying existing renewable energy facilities more to stay on-line than new renewable energy facilities would require coming on-line.

b. Main Tier Projects

The Order defined two major types of RPS-eligible projects, namely, the Main Tier and the Customer-Sited Tier. The discriminating factors between these tiers are the point of interconnection (Main Tier projects are grid connected and Customer-Tier projects are behind-the-meter in retail customer facilities). The Order suggests that Main Tier projects would typically be medium to large-scale electric generation facilities and Customer-Sited facilities are more typically smaller facilities using emerging technologies that cannot compete economically with the larger projects.

It is probable, however, that Main Tier projects will also include small projects in addition to medium to large-scale projects. The Main Tier may also include projects that are operational or already financed as well as projects in early stages of development. A discussion of the procurement situations that may occur with Main Tier projects follows:

i) Existing or Financed or Under Construction Main Tier Projects

Main Tier projects include renewable projects that became operational after January 1, 2003. It also includes RPS-eligible projects that have obtained financing or are under construction.

ii) New Medium to Large Main Tier Projects

New medium to large Main Tier projects are those larger renewable electric generating facilities that will likely provide a substantial majority of the energy required under the RPS for the years 2007 and beyond. These projects may rely more directly on RPS contracts as a prerequisite for financing than projects that are in commercial operation, or already financed, or are under construction. The availability of federal tax credits (and if available, the magnitude) for projects that become operational after January 1, 2006 and beyond is uncertain at this time. Solicitations for these Main Tier projects will need to begin in 2005, if these projects are to complete project planning, obtain permits, financing, and construction approvals, to provide renewable energy production to meet RPS requirements in 2007 and beyond. Solicitations targeted to these facilities will be conducted periodically throughout the RPS implementation period.

Procurements targeted to these projects are well suited to competitive bidding or auctions. The number of projects should be sufficient to make these procurements competitive.

iii) Small Main Tier Projects

Smaller, grid-connected renewable projects may have difficulty competing economically with larger projects. In addition, the costs and risks of participating in a larger scale competitive solicitation would likely disadvantage these projects or discourage participation. Simplified procurement mechanisms may be necessary to foster development of these projects if it is deemed that factors other than cost would make RPS support for these projects desirable. A standard offer approach, perhaps designed based on results from larger project solicitation results, might be a more effective procurement approach for these facilities. Alternatively, a distinct tier of competitive bids or auctions could be designed for smaller projects.

3. Procurement Models

The procurement processes and choices will likely need to adapt and evolve in response to changing market conditions. Given the different categories of renewable projects, the market for renewable resources could be segmented into homogeneous groups (e.g., existing/ operating resources that require no financial support but which are eligible for the RPS, eligible developing resources that need financial support, and existing resources that demonstrate economic hardship). Additional factors could further segment the market for renewable energy, including:

- Locational wholesale market prices may alter the competitive economics for similar projects in different locations;
- Contract terms and conditions needed for different project types might vary; and

- Financing requirements might vary by project size and type.

The Commission is considering authorizing several different options and allowing NYSERDA to use its discretion in choosing among alternative procurement models or formats,[3] including:

a. Auction format;

b. Request For Proposals; and

c. Standard offer.

The selection of an approach to a specific procurement will be largely based upon its ability to minimize costs (i.e., the amount to be paid by NYSERDA) for the particular circumstances at hand (i.e., market context). For example, standard offer approaches could be useful to simplify and minimize the administration of smaller project development.

The RFP approach, on the other hand, has worked well in solicitations where multiple evaluation criteria and project due diligence are important, for projects not yet financed, and in situations where competition is more limited. In other words, an RFP might be a good choice to minimize costs where there is a desire for a diverse group of projects and/or where projects are in very different stages in the development process and, as a result, could have very different needs. Finally, the auction-style procurement might work well for periodic solicitations for larger Main Tier projects, particularly once standard terms and conditions are established and as the renewables market becomes more liquid.

[3] We also encourage parties to propose other procurement options.

A brief description of each of the three procurement approaches under consideration is provided below:

a. Auctions

Auctions have worked well in circumstances in which the good or service is sufficiently defined, such that the winner(s) can be determined solely by price and not by other factors such as quality of dependability. With respect to the latter, in certain markets, spot power is transacted on the basis of hourly (or other) auctions. In addition, provider of last resort service (POLR) may be acquired through auctions that are held periodically, as may be required (e.g., New Jersey Basic Generation Service, discussed further below). In both instances, the auction can work because procurement targets are fixed, delivery is not in question once the bidders qualify (they are licensed and creditworthy), the contracts are standard, and the winning bids are unambiguous. Moreover, unless the bidder has violated some pertinent rule (regarding bid collusion; for example), the winners are appropriately paid for what they deliver.

Auctions are more typically constructed to offer a good or goods to buyers bidding with the objective of maximizing the revenue to the seller. In the RPS context, a single buyer (NYSERDA) would be seeking to minimize the cost of production incentives “purchased” from many sellers. Auctions can be structured such that the winning bidders can be paid the same price – known as a clearing or uniform price – or paid what they bid. The choice may depend upon the specific details of the auction and the type of auction to be utilized; conversely, the choice may also influence the selection of a specific auction

model. Note that competitive bidding utilizes a “pay as bid” approach, although the bids may be subject to negotiation, depending upon the design of the process.

There are several types of auctions, with the most common categories of auction types summarized briefly as follows:

i. First-Price Sealed Bid

In a first-price, sealed bid auction, each bidder submits an independent, sealed bid, the amount of which is unknown to other bidders. The winning bid is the highest bid in an auction conducted with the buyers bidding and, conversely, the lowest bid in an auction conducted with the sellers bidding. “First-Price” refers to the fact that the price paid is equal to the highest (lowest) bid price (i.e., the winning bid sets the price).

ii. Second-Price Sealed Bid

In a second-price, sealed bid auction, each bidder submits an independent sealed bid, as in a first-price, sealed bid auction. However, the winning bid is set to the second highest bid in an auction conducted with the buyers bidding and, conversely, the second lowest bid in an auction conducted with the sellers bidding. “Second-Price” refers to the fact that the price paid is equal to the second highest (second lowest) bid price (i.e., the second bid sets the price). This auction approach is known as a “Vickrey Auction.”

iii. Ascending-Bid Auctions

Ascending bid auctions are open auctions where the bids of all participants are known to all bidders, bidding starts at a low price and continues

as long as at least two bidders offer higher bids. The bidding ends when one bidder is left.

iv. Descending-Bid Auctions

Descending bid (or clock) auctions are open auctions where bidding starts at a high price. The auction price is lowered in increments until the amount of the commodity offered equals the amount demanded. This auction is known as a "Dutch Auction."

v. Multiple Unit Auctions

Auctions involving the transaction of multiple units or items, which is the context for this RPS Procurement, are of two general types:

- "Sequential" auctions transact the units in an auction in sequence until all units are transacted.
- "Simultaneous" auctions transact all units at one time and price.

Many alternative structures for multiple unit auctions are used in a variety of situations. Three examples from recent practice are summarized briefly for illustration:

a) Simultaneous Descending Clock Auction – New Jersey's Basic Generation Service (BGS, a.k.a. provider of last resort service) is served by power suppliers selected through an annual descending bid auction of this type. The state's BGS load is divided into 100 MW slices. The auction selects suppliers to provide BGS under terms of a standard, one-year contract.

b) NYISO Transmission Congestion Contracts (TCC) Auction – NYISO conducts semi-annual and monthly auctions of TCCs (financial contracts to hedge congestion costs). The TCC auction allocates available TCCs in standard contracts (six month – five year terms) through a series of bids.

c) Hybrid Model - A multiple round descending clock auction for an undetermined number of rounds followed by a final round in which sealed bids are submitted. The limit on number of bidding rounds in the clock auction would be determined when the excess energy bid falls below a threshold amount. This approach is adapted from the Anglo Dutch Hybrid process used in the Netherlands to purchase commodity.

Auction formats are also used in day-ahead energy markets and capacity markets.

Questions to consider in determining whether an auction can be an effective mechanism include:

- Are there sufficient numbers of bidders to make the auction competitive?
- Are the commodities offered by bidders equally valued by the central procurer?
- Is there potential for one or a few bidders to dominate the auction?
- Is there opportunity for collusion among the bidders?
- Are there barriers to entry in the auction?
- Does the structure of the auction give bidders the incentive to accurately reveal their costs?

b. Request For Proposals

RFPs are well suited to situations where multiple factors are to be considered and weighed. This is typically the case where factors other than price are crucial, the commodity is not uniform, development or quantity risk is involved, flexibility is needed on the amount procured, and/or some negotiation with the highest-ranking bidder(s) is contemplated. Note also that RFPs typically include a “pay-as-bid” approach.

RFPs are also applicable to situations where there is substantial

variability in the projects offered. For example, this method is most effective where: different terms and conditions exist; location-based effects are relevant; operating characteristics for competing technologies are quite different; project and technology risks are unique; and developer experience is important.

In the energy business, RFPs have been widely used by utilities that have sought power from a mix of resources, or from resources with different fuels or pricing structures (so as to create a hedged portfolio, for instance), or with respect to contracting with independent power producers (including PURPA Qualifying Facilities) for power from facilities that were, at the time, not yet in service. RFPs were also used extensively in the divesture of generating assets during the implementation of restructuring. In general, those transactions that are longer term or more complex are less amenable to a pure price auction and more amenable to RFP or competitive negotiation formats.

Considerations of an RFP approach, therefore, include:

- The extent to which non-price considerations are to be explicit criteria in evaluation proposals (such as, project type diversity and locational diversity);
- The extent to which alternative or non-standard contract terms and conditions are considered; and
- The extent to which project specific due diligence will be required as part of the bid evaluation to obtain assurance on project viability.

c. Standard Offers

A standard offer approach provides eligible participants the opportunity, for example, to take a contract at a pre-specified price, quantity and duration. Consistent with that year's procurement needs, projects meeting

established threshold requirements would be eligible to obtain the stated price, terms and conditions. In essence, the standard offer approach is a simple format, where the clearing price is administratively set in advance. Once a participant meets the qualification criteria established, the standard contract is awarded. The advantages of a standard offer are simplicity of administration and less risk for the project applicant. Establishing a standard set of terms and conditions that is suitable for most participants and establishing a basis for administratively setting the price level are among the challenges posed by the standard offer format.

Standard offers have been used in a number of contexts. In the power industry, standard offer contracts have been used historically for small qualifying facility contracts under PURPA. A standard offer is also analogous to any number of coupon or rebate programs that offer a fixed price or rebate to a large number of buyers.

4. Product Pricing and Terms

Another critical consideration in procurement and contracting is the form of product pricing employed. Some, but not necessarily all, of the options that the Commission is considering authorizing NYSERDA to use include:

- Fixed single price for entire term;
- Schedule/preset but varied prices over term;
- Indexed pricing; and
- Contracts for difference (i.e., includes variants)

The pricing structure will be critical to supporting project financing,

an objective of the RPS procurement approach. The choice of procurement approach, in turn, should be correlated with the form of pricing to be used, because of their interdependence. Further, any consideration of a particular price structure should include an assessment of its impact on market behaviors. It may be possible that a pricing structure found to be favorable to the financial community could cause unintended negative consequences when used in the markets administered by the New York Independent System Operator, Inc. (NYISO). Such a circumstance must be considered in any evaluation of product pricing and procurement model.

Similarly, there are numerous variants to consider for the term of any contract. Such terms may vary by procurement cycle and perhaps within any one procurement cycle. Some variants to be considered include:

- Single purchase for set number of years;
- Several, varied durations (e.g., three, five, ten years); and
- Term starting “x “number of years out through a set period (e.g., year four through eight)

B. Customer-Sited Tier Procurement

The Commission noted in its Order the importance of accelerating development of emerging technologies, such as photovoltaic systems, fuel cells, customer-sited wind facilities, and similar technologies, because of their environmental benefits and ability to be sited in urban, heavy-load areas. Consequently, the Commission set aside 2% of the total RPS incremental MWh requirement for the customer-sited tier. The Commission is considering measures to implement this requirement.

A key step in the design of the Customer-Sited Tier is creation of a framework to allocate funds to participants in this category. It is anticipated that NYSERDA would take into account the technical and market risks resulting from implementation of each technology. In particular, attention should be paid to the ability of the technology to meet reasonable performance standards for the expected life of the technology. The framework under consideration would involve reviewing the relative costs and benefits of specific projects using criteria such as:

- Cost-effectiveness ($/kW installed compared with $/kWh produced);
- Location in specific load pockets;
- Peak demand reductions (kW);
- Economic development (new jobs, job retention, siting of new companies and manufacturing facilities, increased manufacturing output from existing facilities, emphasis on key emerging technologies, development of workforce skills);
- Impact of tier technologies on fuel diversity;
- Participation by the residential and small business sectors; and
- Environmental benefits and reduction of harmful emissions.

In most instances, these projects are expected to be small-scale. Procurement approaches such as the standard offer for these “behind-the-meter” projects will likely be similar to smaller scale Main Tier projects, described above. In the alternative, incentive-based payment structures similar to those employed by NYSERDA in its current System Benefits Charge (SBC) programs (e.g., photovoltaic and small wind incentive programs) could be employed.

Customized approaches may be appropriate for larger facilities.

Guidance to NYSERDA could include recommending that it establish appropriate metrics and weighting factors to determine how funds will be allocated among projects and technologies. The framework and weighting factors could also provide useful information for considering the addition of new technologies to the existing list of eligible technologies.

The Commission is also considering whether financial incentives should be provided through a combination of mechanisms including buy-down incentives to reduce the capital costs of projects and performance-based incentives to ensure long-term operation of projects. By reducing a portion of their market risk through the long-term commitment of the RPS program, manufacturing, distribution, and installation companies may be more willing to invest in establishing the business structures necessary to support a viable industry. Because the objective of the program is to share the risk of mainstreaming emerging technologies with industry participants rather than absorbing all their risk, this approach could assure the industry incentive support while maintaining flexibility with respect to the amounts and delivery mechanisms for the incentives.

III. PROCESS TO DETERMINE ELIGIBILITY OF ADDITIONAL TECHNOLOGIES

The criteria for evaluating whether an additional or modified technology should receive RPS support in either the Main Tier or the Customer-Sited Tier might include the origin and composition of the generation fuel, the nature of the process transforming that fuel into electricity, the totality of the

environmental and other impacts of the generation process, such as air emissions and waste products, the degree of development of the technology, and the probable cost of providing RPS support for that technology. Just as the Commission determined in the Order those technologies currently eligible for RPS support either in the Main Tier or in the Customer-Sited Tier, it is anticipated that a decision to include additional or modified technologies in either tier, or moving a technology from one tier to another, would also be made by the Commission upon submission of a petition. The Commission, on its own motion or upon request from its Staff, might also initiate the process to consider an additional or modified technology.

IV. CRITERIA AND PROCESS FOR DETERMINING ELIGIBILITY OF CERTAIN EXISTING FACILITIES

The Commission is considering the criteria for evaluating a petition filed by: (i) existing hydroelectric facilities of five megawatts or less; (ii) existing direct combustion biomass facilities; or (iii) existing wind facilities, currently included in the baseline, that it would apply in assessing a petitioner's assertions that it requires RPS support to remain financially viable. The criteria under consideration include, but are not limited to:

1. An examination of relevant portions of the books and records of the facility (including a documented after-tax cash flow forecast) and, possibly, of the facility owner/operator and any affiliates;

2. The basis for and reasonableness of expected operating and capital costs. This evaluation may include, among other things, a comparison to prior years' costs and a comparison to costs of like generation;

3. Any other sources of cash available to the facility, such as:

a. tax benefits
b. subsidies
c. contracts
d. other sources, including restructuring financing;

4. Whether market rules are increasing the costs of the facility and, if so, whether any steps can be taken to reduce such costs;

5. Whether the facility's real property tax assessment is consistent with the assessments imposed in similarly situated facilities elsewhere, and if not, what action has been taken to address this matter;

6. Whether the facility is required to operate as part of a package of assets that is financially viable as a whole;

7. Whether the facility generates enough revenue, based on expected output, to cover its operating costs;

8. Whether the facility generates enough revenue to make necessary capital improvements; and

9. Whether the facility generates enough revenue to cover its fixed costs, including:

a. debt service
b. property taxes
c. security costs
d. other costs

V. DESIGN OF ON-GOING MONITORING AND EVALUATION PROGRAM

The Order directs that the RPS program's administration be transparent, efficient, and verifiable, and that NYSERDA establish a monitoring and evaluation (M&E) program to help accomplish that directive. The M&E program under consideration may be similar to the evaluation model and framework used for the **New York Energy $mart**[SM] SBC program, which would allow NYSERDA to use existing monitoring and evaluation

contractors to ensure that RPS program protocols and data are collected, analyzed, and reported consistent with and comparable to SBC program protocols and metrics. Using existing evaluation infrastructure avoids duplicative efforts and is efficient and cost effective. It is expected that consistent data gathering will be especially important for the Customer-Sited Tier.

The Commission is considering whether the M&E program should include year-end reports, an expanded report in 2009, discussed below, and a final report in 2013 (the last year of the current procurement schedule). Consistent with the SBC program evaluation model and framework, reporting could include process evaluations (e.g., contract monitoring), measurement and verification (e.g., counting kWh and kW), and market assessments (e.g., success of green power marketers).

The Commission, moreover, is considering other M&E activities, such as requesting NYSERDA to:

- Analyze the complementary role of future demand side management and energy efficiency initiatives to reduce statewide electric load and the impact of reduced load on the amount of new renewable generation necessary to meet RPS program goals and the amount of funding collected for the program;

- Examine the interaction of the RPS with the Regional Greenhouse Gas Initiative as the latter is implemented and monitor how the RPS program will improve New York's environment by reducing air emissions, including greenhouse gas emissions, and mitigating other adverse environmental impacts;

- Measure environmental and other impacts of the RPS on underserved communities;

- Compare the progress of New York's RPS program with the progress of programs in other states;

- Assess program costs and benefits;

- Assess the development, implementation, and contributions to RPS goals of the Customer-Sited Tier;

- Identify macroeconomic benefits accruing to New York as a result of implementation of the RPS and improvements in New York's environment as a result of increased use of renewably generated power. Explore the extent to which the RPS program has advanced renewable resource technologies and attracted jobs and renewable resource generators, manufacturers, and installers to New York State;

- Measure the contribution of voluntary efforts toward meeting RPS goals, to the extent that data are available;

- Report and analyze responses from stakeholders; and

- Monitor each procurement solicitation issued by NYSERDA including the status of contracts, construction, and disbursement of funds.

VI. POTENTIAL MODIFICATIONS TO THE ENVIRONMENTAL DISCLOSURE PROGRAM AND MECHANISM TO ENSURE ALLOCATION AND DISCLOSURE OF RENEWABLE POWER

The Commission is considering the compatibility of the Environmental Disclosure Program (EDP)[4] with the RPS Program and the need to modify the EDP.[5] The EDP requires every load serving entity (LSE) in New York to disclose to its customers the average fuel mix and average emissions

[4] Case 94-E-0952, Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism (issued December 15, 1998).

[5] The Order deferred to the 2009 Review discussion of a process to transition to a regionally compatible certificate accounting and verification system under the RPS program, which would also support voluntary green markets. The Commission, however, is considering launching that discussion sooner, perhaps in early 2005.

rates for the generation sources it has used to meet its energy supply requirements. Department of Public Service Staff acts as the Administrator of the EDP.

The Commission is considering interim changes to the EDP, including, but not limited to:

a. Providing the Administrator of the environmental disclosure program with authority to allocate, for environmental disclosure purposes, RPS-eligible energy and associated emissions characteristics to each LSE, based on its proportion of commodity sales to customers from whom RPS charges are collected;

b. Providing that LSEs accurately disclose to their retail customers the fuel type and emissions characteristics of those customers' share of RPS-related energy based on their proportion of commodity sales to customers from whom RPS charges are collected;

c. Providing for RPS-related energy to be disclosed to customers on a state-wide basis as a percentage of total state energy requirements;

d. Providing a tracking and accounting mechanism for purposes of determining the effectiveness of the RPS program in meeting the renewable resource goal;

e. Providing a tracking and accounting mechanism for transactions of renewable energy across neighboring regions;

f. Providing for the collection of information regarding each LSE’s customers’ respective contribution to the RPS charge; and

g. Other matters necessary for the allocation and disclosure of renewable energy under the RPS program in an accurate and effective manner.

VII. PROCESS AND ISSUES APPROPRIATE FOR THE 2009 REVIEW OF THE RPS

The Commission expects that year-end reports will constitute a key component of NYSERDA's M&E function. In 2009, an expanded year-end report would be prepared that will include the following additional issues specified in the Order and such other issues as the DPS and PSC may request:

- Program costs and benefits to date;
- Recommended modifications to the list of eligible resources;
- Discussion of necessary modifications to the delivery requirement;
- Recommended next steps for transitioning the RPS program to a market-based system; and
- Options for developing a regionally compatible certificate tracking and trading system, if necessary

The Commission is considering a schedule and process whereby the 2009 program review could begin in the fourth quarter of 2008. This would allow adequate time for collection and analysis of much critical data from the first three calendar years of the RPS program. The Commission is considering requesting NYSERDA, in cooperation with DPS, to prepare a report that would provide, at a minimum, (a) an overview of program achievements; (b) an assessment of success in achieving program goals and objectives; (c) program costs and benefits, including calculating cost/benefits ratios as appropriate; (d) any suggested modifications to the list of eligible resources; (e) the appropriateness of continuing the delivery requirement; (f) a proposal on how to transition to a more market-based system and; (g) any other recommendations to further improve upon the RPS program.

The report would be released in the first quarter of 2009, followed by a period for public comment. Meetings with interested parties would be held as appropriate. DPS Staff would then prepare a final report, with specific recommendations, for Commission review and action in the summer of 2009.

VIII. RPS ADMINISTRATIVE COSTS

The Order provides that NYSERDA shall be compensated for actual, reasonable, and necessary administrative costs in fulfillment of its responsibilities as the administrator of the central procurement component of the RPS program, and that the Commission shall determine the appropriate administrative fee. The Commission is considering whether the fee should reflect such factors as: the cost of the design; development and implementation of the central procurement framework and related infrastructure, including the Customer-Sited Tier; costs of service for implementation of the central procurement component; and measurement, verification, monitoring, evaluation, and auditing requirements. The administrative fee might also include all expenses incurred for contractor assistance in design, development, data gathering, analysis, and compliance monitoring to the extent that such costs are not already recovered under other programs administered by NYSERDA for which compensation is or has been provided. The Commission is also considering whether, in the proposed budget, NYSERDA should differentiate between personal and non-personal services costs of implementing NYSERDA's responsibilities in administering the RPS programs.

IX. CONCLUSION

The Commission is seeking comment on all of the issues and options regarding the RPS implementation plan discussed above as well as any other matters relevant to the RPS program.