

**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  
AMERICAN WIND ENERGY ASSOCIATION

On November 10, 2004, the Public Service Commission (Commission) published a Notice of Proposed Rulemaking, SAPA No. 03-E-1088SA3. The Notice is for consideration of “matters pertinent to the implementation of the Retail Renewable Portfolio Standard that was issued on September 24, 2004 in Case 03-E-0188 (Order). In particular, the Commission is considering in this notice facility certification processes and procurement models for Main Tier resources that are most suitable under the specific market conditions created by the one-year extension of the federal Renewable Energy Production Tax Credit...”

These comments address the above-referenced Notice only. The Commission also issued a Proposed Notice of Rulemaking, SAPA No. 03-E-1088SA2, on the broader implementation plan for the RPS. The American Wind Energy Association (AWEA) will submit comments on this second SAPA Notice in a future filing.

The American Wind Energy Association supports the use of an expedited procurement to ensure adequate resources to satisfy the RPS requirements for 2006 while leveraging the financial advantages of the availability of the federal Production Tax Credit. As such, AWEA is aware that decisions made on the appropriate procurement

strategy for this expedited process may very well be different than the strategies employed for subsequent procurements. We will provide more detailed comments on our preferred approaches for subsequent procurements in our filing on SAPA Notice 03-E-1088SA2.

#### Expedited Procurement Provides Benefits to New York

The current federal Production Tax Credit (PTC) expires on December 31, 2005. Any facility wishing to use the PTC must be in commercial operation as of this date. The ten-year stream of tax credits provided by PTC eligibility currently provides a significant revenue source for project financing in the wind energy industry. Fulfillment of New York State's goals under the RPS will be less expensive when the resources used for RPS compliance are receiving tax credits via the PTC, and construction of projects in 2005 will provide economic development benefits to New Yorkers. Fast-track procurement will enable New York State to capture the benefits provided by the PTC by providing the necessary contracts for project financing in a timely enough manner to allow project financing and construction in 2005. Without signed contracts by the end of January 2005, wind energy projects will not be able to contract for the turbines and construction equipment needed for project construction and initial project operation before the end of 2005. While AWEA firmly believes that the PTC has broad and bipartisan support in the United States Congress, there is no guarantee that the PTC will be extended once again without another break in coverage. The use of an expedited procurement for RPS compliance is sound government decision-making, and we urge the Commission and NYSERDA to proceed with such procurement.

### All RPS Eligible and Credible Facilities Should be Allowed to Participate

The Commission's Notice states that it is considering allowing new "Main Tier" facilities that are not eligible for the PTC to participate in the initial solicitation, and to determine if such facilities should be required to be operational before January 1, 2006. AWEA fully supports the inclusion for all other-wise eligible (and credible – see discussion below) technology types, regardless of PTC eligibility, to participate in the initial procurement.

Advanced procurement of resources needed to fulfill the RPS will be required on an ongoing basis because advanced knowledge of revenue streams from signed contracts will be required for project construction. It makes complete sense for NYSERDA to contract for 2006 resources in very early 2005, and for NYSERDA to continue to contract at least a year or two in advance of when energy delivery is expected. Therefore, while the expedited procurement is being done because of possible PTC expiration at the end of 2005, procurement for 2006 resources is necessary regardless. NYSERDA should include all eligible and credible resources in the initial procurement and procure the amount of renewables needed for compliance with the 2006 RPS goals as soon as possible. Procurement for the resources needed to satisfy RPS goals for 2007, in fact, also should be contracted for as soon as possible, and no later than early summer of 2005.

### Only Eligible and Credible Facilities Should be Allowed to Participate in Procurement

Facility certification is essential to ensure that only RPS eligible facilities participate and to ensure that projects are credible. A project is credible if it can

reasonably be expected to enter operation on schedule. Ensuring eligibility and credibility is needed to prevent meaningless and unrealistic bids from projects that are unlikely to come to fruition. The criteria identified on page 3 of SAPA No. 03-E-1088SA3 are appropriate.

Self-certification and provisional certification are acceptable for the expedited procurement. However, the Commission and NYSERDA should make available a list of certification requirements to be used as guidance for self-certification. This would be akin to the “advisory ruling” concept mentioned in SAPA No. 03-E-1088SA3, although it need not be an official ruling (in the interest of time). Criteria to consider include requiring SRIS approval and completed permit approvals (environmental and local) or that such approvals are expected by a specific date (e.g., March 2005).

In addition, the Commission and NYSERDA should impose a bid fee or bond requirement (perhaps on a MW or expected MWh basis) on projects participating in procurements. The requirement to post a security, which can be forfeited or used to pay damages as described in contract language, will help ensure that only projects with every expectation of successful development and operation will be bid into the process. A portion of this security should be forfeited in the event certain milestones, such as permit approvals, are not met. The use of bid fees and bonds has ample precedence in procurements held elsewhere, such as those used in Pennsylvania and California, and as long as the terms are reasonable, will not deter serious developers. The exact amount required should not be set so high as to be a burden on developers, but rather should be set just high enough to indicate a serious and credible commitment to project development.

## Procurement Method

A primary consideration for the procurement process is the methodology used. All three options listed by the Commission (auction, RFP and Standard Offer) have their respective merits, as well as their difficulties. AWEA believes NYSERDA should retain the right to use the methodology it deems most appropriate and to use a variety of methodologies during RPS implementation, if necessary. Experience may be the best guide. However, we believe well-designed auctions will likely provide the most efficient and transparent approach. Combining an auction with use of a strict set of criteria for certification can provide much of the oversight and review associated with an RFP process while preserving the transparency of the more market-based approach inherent in an auction. However, given time constraints under an expedited procurement we realize there may be impediments to use of an auction at this time.

All three procurement options can be used with various pricing options, which are not discussed in detail in the order. In other words, contracts can be awarded with payments made on an as-bid basis, at market-clearing prices, or using a “contract for difference” where the premiums paid by NYSERDA fluctuate dependent upon energy prices (and the contract-for-difference can, in turn, be awarded on an as-bid or market-clearing basis). The option used will have a direct influence on the market-behavior of bidders and on the cost of the program. For example, the use of a “contract-for-difference” means bids are based on the total price needed by a project and the premiums paid represent the difference between the total price and the price of the energy sold. This approach approximates most closely the standard power purchase agreements used

widely in the wind industry. Contracts based on a total price (for energy and environmental attributes) have less risk, which makes project financing less costly resulting in lower priced bids and a lower cost RPS program. While payments on an as-bid basis are generally used for RFPs, the energy market uses market-clearing prices, and this approach should be considered.

### Conclusion

In conclusion, AWEA strongly supports an expedited procurement for resources needed to fulfill RPS goals for 2006 (followed as soon as possible by procurement for 2007 RPS resources). The approaches under consideration all have their merits. The Commission and NYSERDA should choose an approach that ensures only eligible and credible projects are involved in the bid process, and that achieves the desired results in a timely, fair, and transparent manner.

Respectfully submitted,

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