

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail
Renewable Portfolio Standard.

**COMMENTS OF NOBLE ENVIRONMENTAL POWER, LLC IN RESPONSE TO
THE INITIAL FACILITY CERTIFICATION AND PROCUREMENT NOTICE
(SAPA) NO. 03-E-0188SA3, STATE REGISTER, NOVEMBER 10, 2004.**

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Dated: November 23, 2004
Malone, New York

INTRODUCTION

By two notices published in the State Register on November 10, 2004 in the captioned matter, the Commission announced that it would seek comments on the implementation of the retail renewable portfolio standard adopted in its Order Regarding Retail Renewable Portfolio Standard, issued September 24, 2004 (“RPS Order”). The express terms of the two notices were circulated to the RPS Service List via electronic mail on the same day.

The Express Terms for SAPA Notice No. 03-E-0188SA3 noted that the Federal Renewable Electricity Production Credit (“PTC”) had been extended by Congress for eligible projects achieving commercial operation by December 31, 2005, after which it is slated to expire (Express Terms, p.1). The Express Terms stated that, to avoid losing the opportunity to reduce RPS costs to New York ratepayers, “the Commission is considering establishing an expedited or fast-track procurement process aimed at contracting with eligible resources with sufficient lead-time to capture the benefit of substantial PTC leverage for New York ratepayers” (Express Terms, p. 2). The Commission then requested comments on issues relating to the initial facility certification procedures and the possible procurement options, and urged that comments should be submitted as soon as possible because it would consider immediate adoption of such terms on an emergency basis under Section 202(6) of the State Administrative Procedure Act (“SAPA”).

Noble Environmental Power, LLC (“Noble”) is a developer and owner of wind power projects with offices in New York, Connecticut and Michigan. Noble has more than a dozen wind projects comprising more than 1,000 MWs in active development in New York and other States. Noble is also actively pursuing the acquisition of wind projects nationwide. Unlike some wind project developers, Noble intends to retain ownership of the wind projects it develops. Noble is seeking to bring on line one or more wind generation facilities before the end of 2005. Noble, therefore, has a vital interest in this phase of the proceeding.

COMMENTS

I. Eligible Facilities

The Commission is considering whether facilities that qualify for the RPS, but will not qualify for the PTC should be eligible to participate in the initial solicitation. We believe that all RPS-eligible facilities should be able to participate. Given the goal of obtaining renewable capacity quickly, it is not in the best interest of the state to limit participation. Any resource that offers competitive, timely performance should be invited to participate.

II. Facility Certification

The Commission listed the objectives of facility certification by the New York State Energy Research and Development Authority (“NYSERDA”) as a pre-condition for participating in an authorized central procurement solicitation, an optional “advisory ruling” process, or a streamlined self-certification procedure. Whichever method the

Commission chooses, it should require the submission of sufficient information demonstrating that a PTC-eligible project will likely be permitted, financed, constructed, and in commercial operation before the end of 2005. An unacceptable result would be the awarding of contracts to developers that, because of the existence of fatal permitting flaws, absence of financial backing, or lack of project development experience, fail to bring the projects on line in time to capture the PTC benefits. Such projects would likely “wither on the vine,” and the Commission would fall short of its RPS energy production for 2006, necessitating a “catch-up” in later years.

To ensure that only qualified, financially viable projects participate, the Commission should require the payment of a fee in order to respond to the solicitation. Noble suggests that the fee be substantial (i.e. \$25,000 to \$50,000) and would be refunded to non-winning bidders. This will ensure that only serious bids are received.

The Commission should require that the bidder demonstrate financial resources sufficient to complete development and construction the project. We believe that it is not in the State’s best interest for an agency of the State to convey contracts to counter parties that do not have the existing financial resources to meet the State’s policy goals. If contracts are awarded to developers and the developers turn around and use those contracts to obtain financing, the State will not have the largest probability of success, or likelihood of meeting the impending PTC deadline. Furthermore, the Commission should also require that the successful bidders meet certain milestones in order to keep the projects on track for the PTC deadline.

There are companies, such as Noble and several of our competitors that do not need long term contracts with the State in order to finance wind projects. Companies

have options regarding their capital structures. Allowing thinly capitalized companies that at the time they enter into contracts with the State to turn around and subsequently attempt to raise capital may very well be in the best interest of the thinly capitalized company; however, the process of raising the capital to perform is a time consuming and risky undertaking. The State should not expose itself to these risks, nor does the State have to expose itself in this manner.

III. Procurement Models

The Express Terms (pp. 5-11) discuss several procurement approaches, including auctions, requests for proposals (“RFPs”) and standard offers, as well as variants within these solicitation methods. While all of these methods have their advantages and disadvantages, the tight timeframe suggests that a standard offer may be most suitable in this initial solicitation. As noted in the Express Terms, a standard offer “is simpler to administer and less risky for the project applicant than auctions and RFP formats” (p.11). Indeed, standard offers have successfully been used to procure capacity in other states. The current sunset of the PTC for eligible facilities at the end of 2005 suggests that the Commission should propose standard offer terms, including a price that attracts developers with viable projects coming on line before 2006. In this initial solicitation, where an expiring tax credit is the overarching reason for a speedy process, a standard offer is likely to be the best means to achieve the necessary expedited evaluation. On the other hand, the evaluation of varying responses to an RFP will take more time and analysis, and as such, use of an RFP is inconsistent with the goals of this rulemaking. The selection of the procurement method should not set the precedent for future

procurement of RPS resources. A fresh review of solicitation formats should be undertaken in subsequent solicitations.

CONCLUSION

Noble respectfully requests consideration of the comments set out above.

Respectfully submitted,

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