

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 20, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Patricia L. Acampora
Maureen F. Harris, abstaining

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

ORDER ON DELIVERY REQUIREMENTS FOR IMPORTS
FROM INTERMITTENT GENERATORS

(Issued and Effective June 28, 2006)

BY THE COMMISSION:

INTRODUCTION

By Order issued September 24, 2004,¹ the Public Service Commission adopted a policy of increasing to at least 25 percent the proportion of electricity derived from renewable resources used by retail consumers in New York State. Consistent with this policy, we also adopted a Renewable Portfolio Standard (RPS) Program. As part of one component of the RPS Program, we established a delivery requirement for non-New York State intermittent resources that allowed these resources to sell their energy into the spot market of the control area in which they are located without simultaneous transmission into the New York Control Area, so long as an equal quantity of energy is

¹ Case 03-E-0188, supra, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) (September 2004 Order).

transmitted out of the affected spot market into the New York Control Area during the same calendar month. This approach is known as "monthly matching." In contrast, New York State resources transmit their energy and are credited for it as it is produced.

In this Order, we replace this monthly matching delivery requirement with a form of "hourly matching" for two reasons. First, hourly matching would enable us to have greater confidence that at any particular hour, the output of an out-of-state intermittent renewable generator with an RPS Program contract will have a direct transmission and commodity effect on the New York electric system. Second, it appears that monthly matching unfairly provides a benefit to out-of-state intermittent resources, which is not available to in-state resources, by providing non-New York resources with an opportunity to avoid most, if not all, of the costs of congestion on their delivery of power into the New York Control Area.

BACKGROUND

In a recent Order in this proceeding,² we discussed parties' comments suggesting that, under monthly matching delivery rules, New Yorkers do not receive the maximum public benefits of the RPS Program.

The comments included the following reasons in support of that conclusion:

- The existing monthly matching requirement for imports is unlikely to ensure that New Yorkers receive the environmental, energy security, price stabilization, and other benefits appropriate to the investment they are making in the program.

² Case 03-E-0188, supra, Order Authorizing Additional Main Tier Solicitations and Directing Program Modifications, issued January 26, 2006 (January 2006 Order).

- The Commission should consider either modifying the import rules to ensure that they provide real value or eliminating the current rule altogether and, instead, focus on other means of ensuring that value is provided to the New York economy from imported supply.
- To ensure that all possible benefits from the New York RPS Program accrue to the State, the Commission should require that renewable energy imports satisfying RPS Program contracts be scheduled on an hourly basis similar to the requirements for imports to qualify for the Massachusetts RPS Program.

These reasons, it is claimed, support a determination that requires out-of-state resources to match their eligible attributes and energy on a daily or hourly basis. As a result of the arguments and concerns and at our request for an expedited review of the delivery issue,³ the Staff of the Department of Public Service (Staff) proposed a change in the RPS Program delivery requirement.

SAPA NOTICE

A notice regarding a possible change to the delivery requirement from monthly to hourly matching was published in the State Register pursuant to State Administrative Procedure Act (SAPA) §202(1) on February 8, 2006. The Notice sought comment on the following proposal:

Renewable generators external to New York State, participating in future Program Main Tier solicitations, must demonstrate that energy in an amount at least equivalent to the renewable generator's hourly output is delivered to the electric energy purchaser in the New York Control Area. Contractual deliveries associated with the out-of-state resource will be recognized in each hour as the lesser of actual hourly metered energy production by the renewable generator or actual hourly

³ January 2006 Order, pp. 56-57.

energy delivered to the electric energy purchaser in the NYISO [New York Independent System Operator, Inc.].

Airtricity, Alliance for Clean Energy New York (ACENY),⁴ Community Energy, Inc. (Community Energy), Horizon Wind Energy (Horizon), HQ Energy Services (U.S.), Inc. (HQ), Joint Utilities,⁵ Multiple Intervenors (MI),⁶ Noble Environmental Power LLC (Noble), Orion Energy LLC (Orion), and Ridgewood Power Management, LLC (Ridgewood) submitted comments.

PARTIES' COMMENTS

Joint Utilities, HQ, MI, and Orion oppose the proposed change, warning that hourly matching could hinder imports and, therefore, could significantly raise program costs and make it more difficult for the RPS Program to achieve its renewable energy development goals. Joint Utilities and MI note that, in the September 2004 Order, we decided to review the monthly matching delivery requirement for out-of-state resources in 2009.⁷ These parties assert that, as the RPS Program is still in its initial stages and has not had time to develop fully, we

⁴ ACENY members include AES-Acciona Energy NY, Airtricity, altPower, American Wind Energy Association, Arcadia Wind Power, AWS Truewind, Babcock & Brown, Bergey Wind Power, Community Energy, Delaney Construction, Ecogen, EverPower Renewables, Horizon Wind Energy, Natural Resources Defense Council, Nixon Peabody, Noble Environmental Power, Pace Energy Project, PPM Energy, Renewable Energy Long Island, Tamarack, TetraTech EC, and UPC Wind Management.

⁵ Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation comprise the Joint Utilities.

⁶ Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State.

⁷ September 2004 Order, p. 61.

should not change the delivery requirement, and claim that no evidence has been produced that justifies reversing the Commission's 2004 decision.

Joint Utilities, HQ, MI, and Orion claim that hourly matching is likely to result in New York ratepayers paying more for clean energy resources. This is so, they assert, because a risk premium is imposed for intermittent renewable power suppliers that are unable to fulfill scheduling commitments unless the renewable energy generated outside of New York is actually delivered into the New York Control Area. Adopting the proposed new delivery requirement at this time, these parties continue, could result in decreased participation in the RPS Program by out-of-state generators and fewer out-of-state bidders in the next solicitation. Thus, these parties conclude that the change to the delivery requirement would drive up energy prices in New York State, which would have a negative impact on the State.

Orion points out that the proposed change to the delivery requirement is at odds with the Commission's long-term commitment to reduce restrictions on the flow of renewable resources throughout the region, and encourage development of a regional market for renewable energy. It asserts that a monthly matching requirement encourages the development of a regional market for renewable energy and allows ratepayers in New York to enjoy the benefits from the most competitively priced renewable energy resources in New York as well as the greater regional market. Orion states that hourly matching could be viewed as economic protectionism that would ultimately result in higher costs to New York ratepayers.

In contrast, Airtricity, ACENY, Community, Horizon, Noble, and Ridgewood state that monthly matching unfairly disadvantages in-state resources, which results in failure to produce for New Yorkers the full benefits of the renewable resources receiving RPS Program funds. Airtricity, ACENY,

Horizon, and Noble argue that monthly matching creates an unfair advantage for out-of-state renewable generators that can unbundle their energy and attributes, take advantage of easier and less costly project development costs, and use financial contracts with pre-existing cross-border power flows to fulfill RPS Program delivery requirements. The end result, they continue, is few or no benefits to New Yorkers from economic development or reductions in wholesale power prices, and environmental and potential loss or reduction of public health benefits for New Yorkers, depending on the location of the out-of-state resource and the type of energy source it displaces.

From these parties' perspective, an hourly matching requirement, on the contrary, may help to level the playing field by ensuring that the generation is supplied to the New York Control Area in almost real time just as it would be if it were, in fact, located in New York. They assert that hourly matching would require out-of-state generators to factor into their development and business plans the costs of transmission, congestion, and losses, thereby making their RPS Program bids more commensurate with those of New York generation resources and the costs they must bear.

Horizon states that the monthly matching criterion for importing renewable generation allows out-of-state generators to sell their energy into the spot market of the control area in their location without simultaneous transmission in the New York Control Area, so long as an equal quantity of energy is transmitted out of the affected spot market into the New York Control Area during the same calendar month. This approach, it suggests, prevents New York ratepayers from gaining the maximum possible benefits from the RPS Program, and is not consistent with the RPS Program's stated goals of fuel diversity, economic development, and direct environmental benefits for New York.

ACENY, Community Energy, Noble, and Horizon state that construction of renewable energy projects in New York results in substantial local economic benefits, including an increased tax base, landowner lease payments, and the creation of short and long-term jobs related to the construction, operation, and maintenance of the projects. Noble states that its New York wind parks represent more than \$1.5 billion in direct investment in rural communities in the North Country and Western New York. Each wind park is expected to generate approximately \$2.85 million per year in local economic benefits (and more than \$450 million over a 20-year period). Noble asserts that each of its wind parks will create hundreds of jobs during the construction phase, and dozens more highly paid permanent jobs once operational.

According to Horizon, it has provided significant economic benefits (over \$10/MWh) in a defined region within the State resulting from royalties, Payment In Lieu Of Taxes (PILOT) payments, new construction and operating jobs, and the purchase of local goods and services that result from wind energy projects in that region. Community Energy points out that, in nearby regions such as Quebec and Pennsylvania, government support of in-state wind energy projects can create incentives for manufacturers to site sizable facilities locally. Models developed for Noble, that company reports, suggest that the savings due to lower wholesale electricity prices resulting from renewable energy projects developed in-state to meet the procurement targets of the RPS Program are greater than the cost of the RPS Program. Noble asserts that, because the cost of electricity from wind parks is not affected by rising fuel prices, its eight New York wind parks will save New York ratepayers an estimated \$40 million a year.

Noble and ACENY point out that renewable energy generators located in New York create the greatest benefit to New Yorkers in terms of human health and the environment, and that

these benefits are diminished if renewable generation is located outside of New York. Noble asserts that changing from monthly matching to hourly matching helps ensure that energy imports into New York are actually affected and, therefore, that these lower energy costs are captured for the benefit of New York ratepayers.

ACENY explains that a decrease in imports to satisfy RPS Program requirements at this time is unlikely to have a major impact on RPS Program costs or energy costs in New York. Given the competitive structure of the RPS Program, the early years will see the least-cost resources developed first. This is all the more reason, it argues, to ensure that in-state resources have at least an equal chance to be awarded RPS Program contracts because the cost of attributes may be lower in the early years.

Airtricity proposes that we insist upon reciprocity in the treatment of New York-based renewable energy projects by other states and transmission grids. Airtricity disagrees with our prior conclusion that reciprocity "would create a cumbersome barrier against imports" and "would diminish New York's ability to acquire resources sufficient to meet our goals at least cost." It explains that, as long as discriminatory barriers continue to be maintained by other jurisdictions, fairness in competition is not possible.

ACENY, Community, and Horizon assert that the hourly matching proposal is similar to the import rules found in other states in the Northeast and Mid-Atlantic. They state that Massachusetts, Pennsylvania, Delaware, and Connecticut have found it prudent to restrict the imports that are eligible for their RPS programs via geographic eligibility restrictions or delivery requirements.

Community points out that, because neither the existing monthly match rule nor the proposed hourly match rule requires that the actual energy from the renewable source be simultaneously scheduled into the New York Control Area, there is no guarantee that either will add real value to the New York

electric system or economy. Instead, this party recommends that we require a firm transmission contract from the source to the New York wholesale market (sink). Community asserts that this type of import rule, which, it notes, is part of renewable energy programs in Massachusetts, Rhode Island, New Jersey, and Connecticut, and is under consideration in Pennsylvania, would ensure that the projects provide real value to the State of New York.⁸

Ridgewood and Noble assert that by requiring that the energy imported from outside of New York State come only from renewable generators located in an adjacent control area, New York consumers would receive the intended environmental and reliability benefits of the RPS Program. Ridgewood, supported by Noble, suggests addition of the following language to the end of the proposed delivery requirement:

Further, the delivery of energy from a renewable generator from an adjacent control area to a purchaser in the New York Control Area must be verified by:

1. a unit-specific bilateral contract for the sale and delivery of such energy in the New York Control Area;
2. confirmation from the NYISO that the renewable energy was actually settled in its Market Information System; and
3. confirmation through: (a) the North American Electric Reliability Council (NERC) tagging system that the import of the energy into the New York Control Area actually occurred; or (b) any such other requirement the Public Service Commission deems appropriate.

⁸ Ridgewood refers to this as a "strict" delivery standard and states that it is employed in Rhode Island, Massachusetts, Maine, New Jersey, and Pennsylvania.

The suggested language, Ridgewood asserts, mirrors language adopted by Rhode Island in its rules implementing its renewable energy program.

Noble notes that New York needs more generation capacity, and therefore New York ratepayer money collected under the RPS Program should not inadvertently create an incentive to develop generation capacity in other states instead of New York. Finally, Orion, Airtricity, ACENY, and Horizon support our commitment to work with NYSERDA, the NYISO, and officials from surrounding states and Canadian provinces to eliminate restrictions on the regional flow of energy from renewable resources and to encourage the development of a regional market for renewable energy.

DISCUSSION

It is our determination to replace the RPS Program's current monthly matching delivery requirement with an hourly matching delivery requirement. Hourly matching would enable us to have greater confidence that at any particular hour, the output of an out-of-state intermittent renewable generator with a RPS Program contract will have a direct transmission and commodity effect on the New York electric system. It also creates a rough equivalence between in- and out-of-state generators. In contrast, monthly matching appears to unfairly advantage out-of-state intermittent resources by providing them with an opportunity to avoid most of the costs of congestion on their delivery of power into the New York Control Area.

Our determination would not impose the more stringent requirements established by some neighboring states for RPS Program participation. Massachusetts implemented strict (source to sink) delivery and Pennsylvania established location requirements. In Massachusetts, the delivery standard requires the renewable energy output of a generator outside of the New England Control Area to: (a) execute an external unit contract

with an electric energy purchaser located in the Independent System Operator - New England (ISO-NE) Control Area, and (b) provide documentation that: (i) the electricity delivered under the unit contract was settled in the ISO-NE Market Settlement System; (ii) the generator produced the amount of energy claimed, as verified by the New England Generation Information System; (iii) the generation received a North American Electricity Reliability Council Tag confirming transmission from the originating control area to the ISO-NE Control Area, and (iv) the related attributes have not been used to satisfy other obligations. In Pennsylvania, only energy derived from alternative energy sources located inside the geographic boundaries of the State or within the service territory of any regional transmission organization that manages the transmission system in any part of Pennsylvania is eligible.

The parties opposing hourly matching point out a valid concern: the possibility that the hourly matching requirement may increase the cost for the renewable attributes. However, it is important to note that, since our first solicitation in January 2005, 34 proposed wind projects, totaling over 3,946 megawatts of additional capacity, entered the NYISO's interconnection queue, more than tripling the number and capacity of proposed wind projects in the queue. Although hourly matching may pose a risk of decreasing the number of out-of-state generators willing to participate in the New York RPS Program, it is possible, given our experience with bidding to date, that additional in-state generators will participate in the next solicitation, resulting in a strong competitive bidding process and favorable prices. Further, it is necessary for us to balance these concerns against the State's interest in ensuring that New York electricity consumers fully realize the energy, environmental, and economic benefits that they are paying for through the RPS Program and in establishing a level playing field for in-state and out-of-state renewable generators by restricting

the ability of generators located outside New York to avoid congestion costs.

In-state renewable generators are delivering electricity into the New York grid as it is generated, while out-of-state generators currently need not schedule transmission of their energy into the New York Control Area at the time it is produced. Instead, an out-of-state generator can wait to schedule an equivalent amount of energy (not necessarily produced by a renewable resource, coal, for example) for transmission at a time when there are little or no congestion costs. Energy produced from both in- and out-of-state generators is reported monthly to NYSERDA for payment of RPS Program funds, but in the case of in-state generators, that measurement reflects actual hourly deliveries as recorded by the NYISO and in the case of out-of-state generators it reflects the ability to schedule delivery at the most economical time within a month and not when a plant actually operates in that month. This option gives rise to a valid concern that New York is not receiving the full benefits of renewable energy from out-of-state producers.

Hourly matching would, of course, markedly reduce the ability of an out-of-state renewable facility to avoid costs associated with congestion. While such flexibility may reduce costs, it results in incorrect price signals for operation of renewable generators and provides benefits unavailable to New York market participants. As such, the loss of flexibility does not provide a reason against adoption of hourly matching. Hourly matching, moreover, would provide more assurance that the output of the generator will have a more direct effect on transmission and commodity within the New York electric system.

Other states have addressed the problems of ensuring environmental benefits, while equalizing the treatment of in- and out-of-state generators, by adopting a source to sink approach or a locational requirement. We find that there is no compelling need at this time to adopt such approaches. Based on the

comments received, hourly matching for out-of-state generators appropriately balances minimizing program costs, giving ratepayers assurances that they receive the benefits of renewable out-of-state generation, and providing equivalent treatment for in-state and out-of-state generators. In contrast, the policies of neighboring states may result in increasing the purchase cost of renewable attributes because they seem not to provide adequate flexibility for generators. As we gain further experience with the RPS Program, we may revisit this issue in the context of the 2009 review.

CONCLUSION

For the reasons discussed above, we determine that the hourly matching delivery requirement would result in a fair and equitable treatment of in-state and out-of-state intermittent renewable energy generators.

The Commission orders:

1. Out-of-state intermittent renewable generators that participate in future Renewable Portfolio Standard Program Main Tier solicitations may sell and transmit energy as it is generated into the spot market of the control area of its location without simultaneous transmission into the New York Control Area, so long as an equal quantity of energy is transmitted out of the affected spot market into the New York Control Area for end-use during the same hour as the renewable generation is produced (hourly matching). Contractual deliveries associated with the out-of-state resource shall be recognized in each hour as the lesser of actual hourly metered energy production by the renewable generator or actual hourly energy delivered to the electric energy purchaser in the New York Control Area for end-use. In addition, if the control area of origin has an attributes accounting and tracking system or an environmental disclosure program, it is required that such system

and/or program recognize hourly matched transactions without double counting the attributes in any jurisdiction.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary