

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

**Petition of Niagara Generation, LLC
for a Restructuring of its RPS
Maintenance Tier Contract.**

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Case No. 12-E-

**VERIFIED PETITION OF NIAGARA GENERATION, LLC
FOR A RESTRUCTURING OF ITS RPS AGREEMENT**

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Dated: April 12, 2012

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Niagara Generation, LLC (“NiGen”) respectfully submits this Petition For Restructuring of its Renewable Portfolio Standard (“RPS”) Agreement pursuant to Rule 3.5 of the Commission’s Procedural Rules, 16 N.Y.C.R.R. § 3.5, and the Commission’s orders issued in the RPS case on August 21, 2009 (the “Main Tier Authorization Order”)¹ and April 2, 2010 (the “Main Tier Issues Order”).²

¹ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Authorizing Additional Main Tier Solicitation And Setting Solicitation Guidelines*, slip op. at 15 (Issued and Effective August 21, 2009)

² Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Resolving Main Tier Issues* (Issued and Effective April 2, 2010).

INTRODUCTION AND BACKGROUND

1. The RPS Program

On September 24, 2004, the Commission issued its landmark order which established New York State's Retail Renewable Portfolio Standard (the "RPS Order").³ In the RPS Order, the Commission adopted a goal of obtaining twenty-five percent (25%) of New York's energy requirements from renewable resources by 2015. To achieve this objective, the RPS Order established two basic programs: (1) a Main Tier program in which the New York Energy Research and Development Authority ("NYSERDA") would act as central procurement agent to contract for the Renewable Energy Credits or attributes ("RECs") associated with sufficient energy from new renewable resources to permit New York State to achieve the Commission's RPS objective; and (2) a Customer Sited Tier to promote the development of smaller scale customer-sited resources. Funding for these programs is provided by a Systems Benefits Charge ("SBC") collected from utility customers.⁴

While this program has been highly successful at attracting new wind generation, other forms of renewable energy have not fared nearly as well. This fact is reflected in the Mid Course Report issued by the Commission's Staff on October 26, 2009, which shows that the 28 RPS contracts currently held by NYSEDA are expected to contribute up to 2,947,000 MWH per year to the RPS Main Tier target.⁵ Of this amount, fully 2,625,237 MWH is from wind generation and only 218,025 MWH is from biomass. This difference is particularly

³ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard* (issued and effective September 24, 2004).

⁴ Case 03-E-0188, *Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard* (issued September 24, 2004).

⁵ New York State Department of Public Service, *The Renewable Portfolio Standard: Mid Course Report* at 14. (dated October 26, 2009).

disappointing in light of the fact that biomass operations generally provide substantial community benefits including employment, reduced landfill requirements, and disposal of waste wood supplies not provided by wind or hydroelectric facilities. In addition to the diversity and other benefits, biomass is one of the few renewable energy sources that can be dispatched on a base load basis.

2. Niagara Generation, LLC (“NiGen”)

NiGen is a majority-owned, indirect subsidiary of U.S. Renewables Group (USRG), one of the largest private equity firms focused exclusively on investments in renewable power, biofuels, and clean technology infrastructure. USRG was founded in 2003 and has mobilized more than \$750 million of capital commitments to invest in renewable projects.

NiGen is the owner and operator of a 51 MW electric generating facility in Niagara Falls, New York (the “Facility”). When fully operational, the Facility contributes to approximately 100 jobs in the region, including the employment of 32 people at the Facility in Niagara Falls, New York, and an estimated 70 people associated with fuel supply, fuel processing, truckers and other vendors and service providers to the Facility. In addition, the Facility also infuses between \$10 and \$15 million into the local economy in Niagara Falls, New York, through its expenditures for payroll, fuel, operating and maintenance costs, and other services.

On April 17, 2007, NiGen signed a RPS Maintenance Tier Contract with NYSERDA, in accordance with Commission requirements in 03-E-0188 (the “RPS Agreement”). While the RPS Agreement initially provided NiGen with sufficient incremental revenues to support conversion of NiGen’s Facility to operate in part on biomass fuel, since 2009, energy markets

have not yielded the prices sufficient to cover NiGen's operations. Therefore, NiGen was forced to suspend Facility operation in March 2010.

NiGen has undertaken a number of innovative actions to respond to these pressures and to improve Facility economics. NiGen has made investments and secured approvals⁶ required to increase the proportion on its fuel that may come from Tire-Derived Fuel ("TDF") from 30% to 40%. NiGen has invested significant funds to improve Facility economics and to prepare the Facility for a return to commercial operations, which occurred in March 2012. NiGen asserts that it is one of the most cost-effective sources of RECs, and alternative sources could easily exceed two times the cost of NiGen's proposed relief of the RPS Agreement restructuring.

3. Summary of Relief Requested

Despite these and other measures, Facility operation economics remain challenging during this period of record low gas prices and correspondingly low electricity prices. To address these financial issues and to permit the Facility to be restarted and to remain in operation, NiGen requests that the Commission authorize NYSERDA to restructure the RPS Agreement to increase the price that NiGen will receive for its RECs in the next three years, in exchange for a reduction in the price that NiGen will receive for the RECs it provides during the remaining term of the RPS Agreement. The goal of this restructuring would be to provide NiGen with additional REC payments during the current period of extremely low electricity prices, without increasing the total payments due to NiGen over the full remaining term of the RPS Agreement. The end result would be no additional cost to New York State and a

⁶ New York State Department of Environmental Conservation, *Permit Review Report*, Permit ID: 9-2911-00152/00025, Renewal Number: 2, dated March 15, 2012.

restructuring which would allow for a “break even” price in the next 3-4 years while power commodity prices stabilize to anticipated and customary levels.

ANALYSIS

I. THE COMMISSION SHOULD AUTHORIZE NYSERDA TO RESTRUCTURE ITS RPS AGREEMENT WITH NIGEN

As previously noted, the Commission’s RPS Implementation Order established a process by which the Commission could allow for price restructuring where a new facility cannot operate under its current rate schedule/contract.⁷ NiGen respectfully requests that this contractual restructuring process be made available it.

A. The Facility Cannot Operate Economically Under Current Conditions

NiGen will incur operating losses at the current prices in Zone A. Power prices received by NiGen have dropped by 40-50% since 2007, with current Location Based Marginal Pricing in Zone A averaging \$28/MW-hr for the remainder of the year.⁸

B. Restructuring NiGen’s RPS Agreement is in the Public Interest

NiGen seeks to revise the RPS Agreement with NYSERDA and allow NiGen to take the total value of the contract over the life of the contract and front-load it. The relief requested will hold the State and its ratepayers harmless. In granting this relief, the Commission would not establish a precedent that will increase pressure on the RPS fund; rather the total amount of the

⁷ See, e.g., Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standards*, Order Authorizing Additional Main Tier Solicitation and Setting Solicitation Guidelines (Issued and Effective August 21, 2009), p. 7.

⁸ Based on April 5, 2012 NYMEX forward curve for Zone A, Peak and Off-Peak prices from April through December 2012.

REC payments that NiGen will receive under its RPS Agreement will not change as a result of the relief requested herein.

In support of its request to restructure its Contract, NiGen will provide detailed data substantiating its assertions regarding its finances and open its books to the Commission, the Department of Public Service Staff, and NYSERDA under appropriate confidentiality rules. It will work cooperatively to develop a proposal that will provide for the continued operation of the Facility on terms that provide NiGen with no more than a reasonable return on its capital.

NiGen asserts that restructuring the RPS Agreement will meet the objectives of the Commission's RPS program and improve the economy of Western New York. The Facility is capable of generating a total of 51 MW gross and 45 MW net of baseload energy with 22.5MW of this total capacity considered RPS eligible. As previously noted, the portfolio of renewable resources obtained under the RPS program to date consists primarily of wind energy with little renewable energy from other sources such as biomass. Restructuring NiGen's RPS Agreement to permit the Facility to continue to operate is one of the few tools available to the Commission to redress this imbalance.

Moreover, operation of the Facility will provide a number of other important benefits to the fragile economy of Western New York State. As noted above, the Facility contributes to approximately 100 jobs in the region, including the employment of 32 people at the Facility and an estimated 70 people associated with fuel supply, fuel processing, truckers and other vendors and service providers to the Facility. The Facility infuses \$10-15 million into the local economy through its expenditures for payroll, fuel, operating and maintenance costs, and other services. Long term closure of the Facility would negatively impact the local economy through the loss of a significant number of jobs as outlined above.

The restructured RPS Agreement will not increase costs to the State of New York or to the RPS program. It is hoped that the front-loading of the benefits already granted under the RPS Agreement will carry the plant until such time as the supply costs and energy revenues stabilize. The RECs requested herein, even at the front end, are less than what the State of New York would have likely spend for new resources under the current RPS program.

In conclusion, the relief requested by NiGen is consistent with Commission precedent and in the public interest because the restructuring will allow a biomass facility to stay open, maintaining RPS and fuel diversity goals. This relief will also maintain jobs and therefore continue to support the economy in Western New York. Unlike petitions which have requested additional funds, the instant relief will not cost any more than the original, approved RPS Agreement sum. Finally, even under restructured agreement, the unit cost of the NiGen RPS Agreement will be substantially less than new fuel sources or RPS participants.

CONCLUSION

WHEREFORE, for the reasons set forth herein, petitioner Niagara Generation, LLC respectfully requests that the Commission issue an Order:

- (i) Directing NYSERDA to work with NiGen to restructure NiGen's RPS Agreement consistent with Appendix A, and in a manner that will permit NiGen to take the total value of the RPS Agreement over the life of the agreement and front-end it in order to continue operating the Facility while earning a reasonable return on its investment; and
- (ii) Granting NiGen such other approvals and consents as are necessary and appropriate.

Respectfully submitted,

/S/

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*Attorneys for Petitioner Niagara Generation,
LLC*

Dated: April 12, 2012

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

STATE OF NEW YORK)
) SS.
COUNTY OF WESTCHESTER)

**VERIFICATION OF
JONATHAN KOCH**

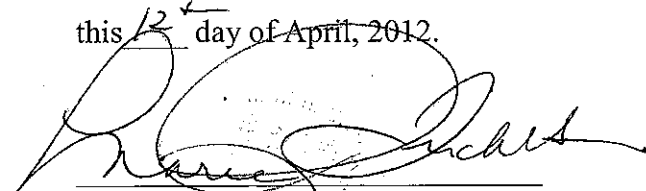
Jonathan Koch, being duly sworn, deposes and says: I am the President of Niagara Generation, LLC ("NiGen"), the Petitioner in this proceeding. I have read the foregoing Petition of Niagara Generation, LLC for a Restructuring of its RPS Agreement, and I know the contents thereof; and the facts stated therein are true to the best of my knowledge, information, and belief.



JONATHAN KOCH

Sworn to and subscribed before me

this 12 day of April, 2012.



Notary Public, State of New York

MARIA R. FISCHETTI
Notary Public, State of New York
No. 01F14914402
Qualified in Nassau County
Commission Expires March 21, 2014