

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 14, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 15-E-0302 - Proceeding on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Standard.

ORDER APPROVING 2020 CLEAN ENERGY STANDARD
ADMINISTRATIVE BUDGET

(Issued and Effective November 14, 2019)

INTRODUCTION

In the Clean Energy Standard (CES) Framework Order,¹ the Public Service Commission (Commission) designated the New York State Energy Research and Development Authority (NYSERDA) as the administrator of both the Renewable Energy Standard (RES) and the Zero-Emissions Credit (ZEC) programs. On August 1, 2019, NYSERDA filed a petition seeking approval of the administrative budgets associated with the RES and the ZEC programs for 2020 CES compliance period (Petition).²

¹ Case 15-E-0302, Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

² The RES and the ZEC programs are on a different program cycle. The 2020 RES compliance period is January 1, 2020 to December 31, 2020; while the 2020 ZEC compliance period is April 1, 2020 to March 31, 2021 (collectively and separately referred to as "the 2020 CES compliance period").

In this Order, the Commission approves NYSERDA's proposed 2020 CES compliance period administrative budgets. As detailed below, the Commission authorizes the reallocation of \$824,791 in remaining administrative funds from the authorized 2018 CES compliance period budgets to cover a portion of the administrative costs for both the RES and the ZEC programs for the 2020 CES compliance period. In addition, the Commission directs the reallocation of additional uncommitted System Benefits Charge (SBC), Energy Efficiency Portfolio Standard (EEPS), and/or Renewable Portfolio Standard (RPS) funds, in the amount of \$12,138,093, to cover the remaining 2020 RES and ZEC administrative costs.

BACKGROUND

The CES Framework Order established a goal, consistent with the 2015 New York State Energy Plan (SEP) and the Reforming the Energy Vision (REV) proceeding, whereby 50 percent of the electricity consumed in New York is generated from renewable sources by 2030, as part of a strategy to reduce statewide greenhouse gas (GHG) emissions by 40 percent by 2030. The CES Framework Order established the RES and the ZEC programs to increase the State's renewable energy supply and preserve New York's existing at-risk zero carbon emission generation, respectively.

Under Tier 1 of the RES, the CES Framework Order requires each New York load serving entity (LSE) serving end-use customers in New York to procure renewable energy credits (RECs) from qualifying Tier 1 renewable generation resources. LSEs are required to purchase RECs in increasing percentages of the total load they serve. LSEs are permitted to meet their RES obligations by either purchasing RECs from NYSERDA, which administers solicitations and procurements of RECs from eligible

generators, or by making Alternative Compliance Payments (ACPs) to NYSERDA. LSEs may also purchase qualifying RECs directly from other sellers.

Under the ZEC program, the CES Framework Order requires each LSE that serves end-use customers in New York to purchase ZECs from NYSERDA in proportion to the load they serve relative to the total statewide load. NYSERDA administers this program by purchasing ZECs from qualifying generators during each compliance year.

On November 17, 2016, the Commission approved the RES and the ZEC program administrative budgets and funding for the 2017 compliance period.³ Additionally, the Commission approved the use of existing uncommitted SBC, EEPS, and/or RPS funds to cover administrative costs related to both the RES and the ZEC programs. The Commission also directed NYSERDA to keep a detailed account of all costs incurred in administering the RES and ZEC programs and report such activities on a quarterly basis. Further, the Commission ordered any unspent administrative funds to be used for future ratepayer benefit.

The Commission approved the 2018 and 2019 CES administrative budgets in two orders issued on March 16, 2018,⁴ and November 16, 2018,⁵ respectively. Each order also approved the reallocation of previously authorized, but unspent, prior period CES administrative funds. The Commission also reallocated additional funds from uncommitted SBC, EEPS, and/or

³ Case 15-E-0302, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016).

⁴ Case 15-E-0302, Order Approving Administrative Budget for 2018 Clean Energy Standard (issued March 16, 2018).

⁵ Case 15-E-0302, Order Approving 2019 Administration Budget (issued November 16, 2018).

RPS balances, to cover NYSERDA's administration of the RES and the ZEC programs.

THE PETITION

The Petition seeks Commission approval of the administrative budgets for the 2020 CES compliance period, to cover the costs and fees needed to administer the RES and the ZEC Programs. NYSERDA requests funds for the CES program operating costs, administrative expenses, system development, RES/ZEC technical and consultant support, on-going implementation of the RES/ZEC programs, development and issuance of procurements, technical evaluation panels to procure Tier 1 eligible resources, as well as other related market development activities such as the administration of the New York Generation Attribute Tracking System (NYGATS) and anticipated revisions to NYGATS, as required by the Final ZEC Implementation Plan that was filed on October 21, 2019.

In the Petition, NYSERDA claims that the RES program has become more administratively complex. As support for this claim, NYSERDA highlights that the 2017 and 2018 CES solicitations resulted in 43 new agreements amounting to approximately \$3 billion in new contract awards. The 2019 solicitation bid proposals, which are currently under evaluation, will result in additional contracts to negotiate and manage. As a result, NYSERDA estimates that its budget will require an additional 4.4 Full Time Equivalents (FTEs) to administer RES program activities involving procurement, contract negotiations, contract management, legal review, and analysis of transmission for large-scale renewable energy projects across New York State. These additional RES and ZEC program staff include 3.5 FTEs in new hires and 0.9 FTEs in existing NYSERDA staff who are performing work on the RES and

ZEC programs, but whose costs are currently recovered through other NYSERDA programs.

In June 2018, NYSERDA formed a new clean energy siting team to support local governments and communities as they navigate the siting of large-scale renewable energy projects. NYSERDA states that many local governments are encountering these projects for the first time and require assistance to efficiently and appropriately manage their development. While the clean energy siting staff outreach activities were initially funded through the Multi-Sector Solutions Chapter of the Clean Energy Fund Investment Plan,⁶ in 2019, the funding source was charged to the NY-Sun and Energy Storage Programs administrative budgets, as the siting team's focus was more closely directed to these programs. The Petition suggests that it is more appropriate that funding for these activities be accounted for as part of the CES administrative budget, beginning with the 2020 CES compliance period. The Petition reports that the siting team will develop long-term relationships between NYSERDA and local governments, conduct frequent travel across the state for one-on-one meetings with host communities, develop and prepare best practices for local governments, manage incoming technical assistance requests from local officials, conduct targeted outreach, and hold regional workshops. NYSERDA estimates that the inclusion of the siting team will result in the addition of 2.6 FTEs to its 2020 CES compliance period budget, including hiring one new FTE and reallocating the costs for 1.6 FTEs associated with current NYSERDA staff that is presently recovered elsewhere.

NYSERDA's petition seeks approval for the use of previously collected ratepayer funds to cover the 2020

⁶ The funding was included with the chapter revision submission of November 1, 2017.

compliance period budgets. NYSERDA seeks authorization to use previously approved, but unspent 2018 compliance period administrative funds, to cover a portion of the costs and fees needed to administer the RES and the ZEC programs for the 2020 compliance period. Further, NYSERDA seeks to use uncommitted SBC, EEPS, and/or RPS funds to fund the remaining 2020 compliance period budgets.

Table 1 illustrates the projected authorized, but unspent balance of the 2018 CES administrative funds. Table 2 presents NYSERDA's approved 2019 CES compliance period budget, while Table 3 presents NYSERDA's proposed 2020 CES compliance period administrative budgets, which includes the use of 2018 unspent administrative funds, to cover 2020 administrative costs for both the RES and the ZEC Programs.

Table 1
Projected Unspent 2018 CES Compliance Period Funds

	2018 Budget	2018 Year End Committed	2018 Unspent Funds
Res Salary and Overhead	\$ 1,822,000	\$ 1,574,949	\$ 247,051
RES NYS Cost Recovery Fee Expenses	\$ 53,000	\$ 38,709	\$ 14,291
ZEC Salary and Overhead	\$ 461,000	\$ 308,889	\$ 152,111
ZEC NYS Cost Recovery Fee Expenses	\$ 4,460,000	\$ 4,152,119	\$ 307,881
RES/ZEC Technical Support	\$ 1,875,000	\$ 1,291,553	\$ 583,447
CES System Development	\$ 350,000	\$ 829,990	\$ (479,990)
Total	\$ 9,021,000	\$ 8,196,209	\$ 824,791

Table 2
Approved 2019 RES and ZEC Compliance Period Budgets

RES Salary and Overhead	\$	1,820,389
RES NYS Cost Recovery Fee Expenses ¹	\$	142,284
ZEC Salary and Overhead	\$	390,025
ZEC NYS Cost Recovery Fee Expenses ¹	\$	4,349,499
RES/ZEC Technical Support	\$	1,475,000
CES System Development	\$	425,000
Total Administrative Costs	\$	8,602,197
Funded from Year 1 Unspent Funds	\$	562,149
Funded through uncommitted SBC/EEPS/RPS Funds	\$	<u>8,040,048</u>

¹ Cost Recovery amounts are estimate only. If actual cost allocations exceed the amounts approved, NYSERDA will request approval for the use of any additional unspent funds.

Table 3
Proposed 2020 CES Compliance Period Budget

	Proposed 2020 Budget	Funded with 2018 Unspent Funds	Funded With Uncommitted SBC/EEPS/RPS Funds
RES Salary and Overhead	\$ 3,927,880	\$ 247,051	\$ 3,680,829
RES NYS Cost Recovery Fee Expenses ¹	\$ 177,894	\$ 14,291	\$ 163,603
ZEC Salary and Overhead	\$ 437,716	\$ 152,111	\$ 285,605
ZEC NYS Cost Recovery Fee Expenses ¹	\$ 4,874,394	\$ 307,881	\$ 4,566,513
RES/ZEC Technical Support	\$ 1,595,000	\$ 103,457	\$ 1,491,543
CES System Development	\$ 1,950,000	\$ -	\$ 1,950,000
Total	\$ 12,962,884	\$ 824,791	\$ 12,138,093

¹ Cost Recovery amounts are estimates only. If actual cost allocations exceed the amounts approved, NYSERDA will request approval for the use of any additional unspent funds.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) regarding NYSERDA's Petition was published in the State Register on August 28, 2019 [SAPA No. 15-E-0302SP40]. Pursuant to the Notice, the time for the submission of comments expired on

October 28, 2019. Comments were received by the Joint Utilities and are discussed below.⁷

SUMMARY OF COMMENTS

In its comments, the Joint Utilities express support for New York State's and the Commission's clean energy goals and recognize that the demand for clean energy resources is increasing. The Joint Utilities note that NYSERDA is proposing to more than double the funding necessary to administer the RES and point out that NYSERDA's administrative costs represent a significant proportion of the total program costs. Moreover, the Joint Utilities comment that the number of ACPs being paid to NYSERDA by LSEs is increasing, and that it expects this trend to continue in the near term. Thus, the Joint Utilities request that the Commission require NYSERDA to develop a spending and investment plan for ACP funds and file such plan for public comment. Alternatively, the Joint Utilities request that ACP funds be returned to customers in a fair and equitable manner.

LEGAL AUTHORITY

The Commission's authority derives from the New York State Public Service Law (PSL), through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of . . . electricity." PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carry

⁷ The Joint Utilities consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying . . . electricity . . . and have power to order such reasonable improvements as well as promote the public interest, preserve the public health and protect those using such gas or electricity. . ."

PSL §4(1) also expressly provides the Commission with "all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]" including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,⁸ environmental stewardship, and the conservation of resources.⁹ Further, PSL §65 provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." The Commission also has authority to prescribe the "safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public" whenever the Commission determines that the

⁸ See *International R. Co. v Public Service Com.*, 264 AD 506, 510 (1942).

⁹ PSL §5(2); see also, *Consolidated Edison Co. v Public Service Commission*, 47 N.Y.2d 94 (1979) (overturned on other grounds) (describing the broad delegation of authority to the Commission and the Legislature's unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5).

utility's existing equipment is "unsafe, inefficient or inadequate."¹⁰ In addition to the PSL, the New York State Energy Law §6-104(5)(b) requires that "[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update."

DISCUSSION AND CONCLUSION

The Commission recognizes the Joint Utilities' concern with ACP funds collected by NYSERDA. The Commission's Order Approving Phase 2 Implementation Plan authorized the use of ACP funds to offset the cost of achieving the RES goals.¹¹ Further, in response to comments raised by Multiple Intervenors, the Commission directed NYSERDA to provide annual reports on RES program revenues and expenses, and any surplus or shortfall on a cumulative basis. Regarding accumulated ACP funds, the Commission established that, if any cumulative surplus is more than 25% of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year, NYSERDA shall propose a use for the excess portion, above 25%, that is in the ratepayers' interest.

According to NYGATS, for the 2017 and 2018 RES program years combined, NYSERDA received payments for approximately 105,000 ACPs with a combined value of approximately \$2 million. Currently, the balance of accumulated ACP funds does not warrant action by NYSERDA. However, NYSERDA should continue to monitor the balance of ACP funds collected from LSEs and, as

¹⁰ PSL §66(5).

¹¹ Case 15-E-0302, Order Approving Phase 2 Implementation Plan (issued November 17, 2017).

appropriate, propose uses in future CES filings in order to avoid the accumulation of such ratepayer provided funds.

NYSERDA's 2020 compliance period budget is approximately \$4.4 million more than the approved 2019 compliance period budget of approximately \$8.6 million. NYSERDA has demonstrated that this administrative request is based on the State's ambitious clean energy goals which will drive the need for significant new long-term efforts, and continued support for existing efforts, in the coming years to responsibly advance large-scale renewable energy projects, as well as to implement the CES requirements.

NYSERDA's budget proposal includes a request to reallocate staff costs from the administration of other NYSERDA programs to CES administration, as well as adding new employees to manage contracts for large-scale renewable energy projects across New York State. NYSERDA reports the proposed staffing level is needed for activities involving procurement, contract negotiations, legal review, contract management and analysis, as well as, market development, and the administration of NYGATS. Additionally, the inclusion of NYSERDA's clean energy siting team in the RES program budget is appropriate. The team's outreach activities will help support local governments and communities in siting large-scale renewable energy projects. Moreover, the 2019 solicitation proposals currently under evaluation will result in additional contracts to be negotiated and managed by NYSERDA staff. Therefore, the Commission approves NYSERDA's request to increase staff to administer the 2020 RES and ZEC programs.

The Petition also requests an increase in the CES System Development budget line. On September 20, 2019, the Commission approved a ZEC Implementation Plan, which modified how each LSE's ZEC obligation is calculated and how ZEC

obligation payments were to be remitted to NYSERDA.¹² In order to implement these changes, additional program modules and other programming changes are required to NYGATS. These changes will allow NYGATS to execute the “pay-as-you-go” approach identified in the ZEC Implementation Plan and enhanced reporting for RES and ZEC programs, as well as other housekeeper updates.

The Commission approves NYSERDA’s total proposed 2020 CES compliance period budget of \$12,962,884. NYSERDA is directed to reallocate \$824,791 that was authorized but unspent from the 2018 CES compliance period administrative funds to cover a portion of the 2020 CES compliance period administrative costs. In addition, the Commission authorizes the reallocation of up to an additional \$12,138,093 of uncommitted SBC, EEPS and/or RPS funds to cover the remaining 2020 CES compliance period administrative costs. Table 4 illustrates the Commission’s approved 2020 compliance period RES and ZEC budget.

Table 4
Approved 2020 RES and ZEC Compliance Period Budgets

RES Salary and Overhead	\$	3,927,880
RES NYS Cost Recovery Fee Expenses ¹	\$	177,894
ZEC Salary and Overhead	\$	437,716
ZEC NYS Cost Recovery Fee Expenses ¹	\$	4,874,394
RES/ZEC Technical Support	\$	1,595,000
CES System Development	\$	1,950,000
Total Administrative Costs	\$	12,962,884
Funded from Year 2 Unspent Funds	\$	824,791
Funded through uncommitted SBC/EEPS/RPS Funds	\$	12,138,093

¹ Cost Recovery amounts are estimates only. If actual cost allocations exceed the amounts approved, NYSERDA will request for approval for the use of any additional unspent funds.

¹² Case 15-E-0302, Order Approving Zero-Emissions Credit Implementation Plan with Modifications (issued September 20, 2019).

The Commission orders:

1. The New York State Energy Research and Development Authority is authorized to expend up to \$12,962,884 for Salary and Overhead, NYS Cost Recovery Fee Expenses, Renewable Energy Standard/Zero-Emission Credit Technical Support, and Clean Energy Standard System Development, as discussed in the body of this Order.

2. The New York State Energy Research and Development Authority is authorized to repurpose \$824,791 of previously authorized, but unspent, 2018 Clean Energy Standard compliance period funding toward the administration of the 2020 Clean Energy Standard compliance period of the Renewable Energy Standard and Zero-Emission Credit programs, as discussed in the body of this Order.

3. The New York State Energy Research and Development Authority is authorized to repurpose up to \$12,138,093 of additional uncommitted System Benefits Charge, Energy Efficiency Portfolio Standard, and/or Renewable Portfolio Standard funds for the administration of the 2020 Clean Energy Standard compliance period of the Renewable Energy Standard and Zero-Emission Credit programs, as discussed in the body of this Order.

4. The New York State Energy Research and Development Authority is directed to identify and quantify any uncommitted 2019 Clean Energy Standard compliance period administrative funds that may become available as part of its 2021 Clean Energy Standard compliance period administrative budget filing. The New York State Energy Research and Development Authority shall continue to file quarterly reports containing itemized expenses associated with administration of the Renewable Energy Standard and Zero-Emission Credit programs.

5. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Acting Secretary