

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 13, 2020

COMMISSIONERS PRESENT:

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

CASE 15-E-0302 - Proceeding to Implement a Large-Scale Renewable
Program and a Clean Energy Standard.

ORDER APPROVING PHASE 4 IMPLEMENTATION PLAN

(Issued and Effective August 13, 2020)

BY THE COMMISSION:

INTRODUCTION

On August 1, 2016, the Public Service Commission (Commission) adopted a Clean Energy Standard (CES) comprised of a Renewable Energy Standard (RES) and a Zero-Emissions Credit (ZEC) requirement.¹ The CES Framework Order adopted a goal whereby 50% of electricity consumed in New York by 2030 would be generated by renewable energy sources (referred to as the "50 by 30" goal). The Commission anticipated additional measures would be needed to fully implement the CES and instituted an implementation phase to address issues and approve changes as necessary.

The Phase 1 Implementation Plan included details and processes regarding the RES eligibility, certification, the

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

long-term procurement of Renewable Energy Certificates (RECs), Load Serving Entity (LSE) demonstration of compliance, and other reporting requirements.² The Phase 2 Implementation Plan included modifications to the annual targets for LSE obligations for 2018 through 2021, clarification of the treatment of voluntary purchases and baseline resources in determining progress toward CES goals, and protocols for the application of an annual divergence test.³ Additionally, the Phase 2 Implementation Plan included revised program design and procedures for the sale in 2018 of Tier 1 RECs procured by the New York State Energy Research and Development Authority (NYSERDA) under long-term contracts, direction for post-2018 design modifications, establishment of a method to calculate the alternative compliance payment (ACP) for 2018, and a description of how NYSEDA would utilize any ACPs received. The Phase 3 Implementation Plan clarified how load subject to the various CES obligations is calculated, provided a certification process for Value of Distributed Energy Resources (VDER) resources, extended the commercial operation milestone date for Tier 1 procurements, and provided design and procedures for the sale in 2019 and beyond of Tier 1 RECs procured by NYSEDA.⁴

On April 16, 2020, NYSEDA and Department of Public Service Staff (Staff) submitted the CES Phase 4 Implementation Plan proposal (Phase 4 Plan Proposal or Filing). The Phase 4 Plan Proposal addresses further implementation procedures for the CES, which are primarily focused on impacts to pricing and

² Case 15-E-0302, Order Approving Phase 1 Implementation Plan (issued February 22, 2017).

³ Case 15-E-0302, Order Approving Phase 2 Implementation Plan (issued November 17, 2017) (Phase 2 Order).

⁴ Case 15-E-0302, Order Approving Phase 3 Implementation Plan (issued December 4, 2018) (Phase 3 Order).

disposition of the Tier 1 RECs that NYSERDA procures under an Indexed REC structure. In this Order, the Commission approves the Phase 4 Plan Proposal, with modifications.

THE FILING

The Phase 4 Plan Proposal addresses several implementation steps identified by the Commission's Indexed REC Order, issued in January 2020, which authorizes NYSERDA to employ an indexed pricing structure in its future Tier 1 solicitations, while maintaining the option for fixed-priced RECs.⁵ Specifically, the Phase 4 Plan Proposal addresses, among other things, changes to: the performance of auctions and management of REC vintages; the current process of setting market prices; and, changes to the calculation of ACPs.

The CES Framework Order tasked NYSERDA with selling Tier 1 RECs procured through Renewable Portfolio Standard Main Tier (RPS) central procurements and Tier 1 RES procurements to RES-obligated LSEs. The Phase 2 Order modified the process for 2018 and beyond to employ four quarterly Tier 1 REC sale events during which NYSERDA offers for sale to LSEs the actual number of Tier 1 RECs in NYSERDA's New York Generation Attribute Tracking System (NYGATS) account at the time of each sale. NYSERDA has continued to offer quarterly Tier 1 REC sales to LSEs using the approach reflected in the Phase 2 Order. For the 2020 compliance period, on December 27, 2019, NYSERDA filed its vintage 2020 Tier 1 REC sale price which was based on the projected weighted average cost per megawatt hour that NYSERDA anticipated paying to acquire all the vintage 2020 Tier 1 RECs projected to be sold in 2020. The Phase 3 Order confirmed that Tier 1 REC sales to LSEs by NYSERDA are allocated on a first in,

⁵ Case 15-E-0302, Order Modifying Tier 1 Renewable Procurements (issued January 16, 2020) (Indexed REC Order).

first out basis using the vintage date for NYGATS certificates in NYSERDA's NYGATS account to ensure transparency and consistency in the REC inventory clearance process. Under the Phase 3 Order, NYSERDA may adjust the sale price for any banked Tier 1 RECs to match the current year's Tier 1 REC price if the price of the banked Tier 1 RECs exceeds the current year's ACP price.

Sale and Frequency

Under the Phase 4 Plan Proposal, NYSERDA and Staff propose to continue to offer quarterly Tier 1 REC sales to LSEs using the approach adopted in the Phase 2 Order. Further, NYSERDA and Staff propose to expand the sale window to approximately 30 days, during which NYSERDA would announce the quarterly Tier 1 REC sale to provide sufficient time to determine the price of Tier 1 RECs procured under contracts for indexed RECs. NYSERDA and Staff propose to incorporate this change in 2021 and to follow the same methodology of announcing and concluding the sale in subsequent years.

Sale Pricing and Inventory

The Filing proposes changes to the current process of pricing Tier 1 RECs for sale to LSEs. According to NYSERDA and Staff, the inclusion of indexed priced Tier 1 RECs will introduce increased price uncertainty and price risk into the current process. Therefore, NYSERDA and Staff propose to set a Tier 1 REC price for each individual quarterly sale, rather than set an annual REC price based on the projected weighted average cost of Tier 1 RECs, as is currently done. The Filing proposes that prior to each quarterly Tier 1 REC sale, NYSERDA would determine the actual average Tier 1 REC price NYSERDA paid to the generators for all Tier 1 RECs (fixed-price or indexed method) being offered during that quarterly sale. Unsold RECs from previous quarters would be factored into the quarterly

weighted average cost of the Tier 1 RECs at the price NYSERDA purchased them. Additionally, under this proposal, the price NYSERDA charges for Tier 1 RECs would no longer be tied to vintage. The Tier 1 REC price could vary each quarter depending upon the fluctuations of the indexed REC payments and the number of Tier 1 RECs purchased through indexed REC contracts. NYSERDA anticipates relatively minor variations in the initial years due to the relatively high-volume of fixed-price REC contracts versus indexed REC contracts. The continued use of the quarterly sale process will help mitigate that volatility by using a weighted average price for all Tier 1 RECs being offered during a given quarterly Tier 1 REC sale.

Inventory Management and Banking

Similar to the current process, the Filing proposes that for 2021 and beyond, any unsold Tier 1 RECs from a quarterly Tier 1 REC sale would be included in the following quarterly Tier 1 REC sale. NYSERDA would continue to allocate Tier 1 RECs on a first in, first out basis, using the vintage date for NYGATS certificates in NYSERDA's NYGATS' account. According to NYSERDA and Staff, this approach maximizes the two-year lifespan of the Tier 1 RECs and provides flexibility to LSEs when managing their RES obligations. The Phase 4 Plan Proposal does not propose any changes to the current Tier 1 banking rules.

Tier 1 REC Solicitation

The Filing proposes that NYSERDA continue the publication of a levelized net weighted average awarded bid price, as was provided at the conclusion of the first Offshore Wind solicitation. Similarly, NYSERDA and Staff propose that NYSERDA publish the levelized net weighted average bid price for the projects that are selected in Tier 1 solicitations.

Alternative Compliance Payments

NYSERDA and Staff propose to set the price of the ACP as the net weighted average cost for the Tier 1 RECs projected to be delivered during the compliance year, plus 15% percent and any Commission-approved administrative adder. The proposed increase in percentage is meant to accommodate the increased price variability inherent in an indexed REC price structure, and to ensure that the ACP price is set at a level that does not undercut NYSERDA's quarterly Tier 1 price. The Filing also requests the ability to review and adjust the ACP calculation methodology during the annual Divergence Test to ensure that the ACP is not punitive or burdensome as experience with this new payment methodology increases.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on May 13, 2020 [SAPA No. 15-E-0302SP42]. The time for submission of comments pursuant to the Notice expired on July 13, 2020. Comments were received by the Joint Utilities,⁶ Multiple Intervenors, and the New York Municipal Power Agency (NYMPA), and are summarized below.

COMMENTS

Joint Utilities (JU)

The JU support the proposal to continue to use quarterly auctions with an expanded sales window. However, the JU recommend that the Commission either reject or modify the ACP

⁶ The Joint Utilities include: Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

proposal. The JU request that the Commission provide guidance and transparency on the use of ACP funds collected from customers. The JU believe that there is a legitimate concern that ACPs may form a sizable portion of continuing LSE compliance in the near term and argue that the Commission should take a measured approach to the calculation of ACPs since they will likely feature prominently in compliance obligations in the coming years. The JU argue that the Commission should take steps to ensure that the ACP funds collected are used to benefit customers, such as paying down the cost of future RECs. Additionally, the JU state that if ACPs funds are used to support other CES goals, instead of paying down RECs, that action would raise future RECs prices without corresponding societal value. Customers would be paying twice for the same environmental benefit if ACPs are used for other purposes, According to the JU.

The JU note that the 15% increase in the ACP adder, according to the Filing, is meant to accommodate the variability with indexed REC prices. However, the JU point out that NYSERDA expects minimal variability in the cost in the initial years. Therefore, the JU argue that is not necessary to address price volatility now, while placing a greater burden on customers. Instead, the JU recommend postponing a decision to impose the increased ACP adder until a comprehensive review of the new regulatory framework proposed in the CES Whitepaper⁷ can assess the entirety of the costs of the CES programs. The JU urge the Commission to consider several recommendations in the interim such as using the highest REC value for the ACP value at year-

⁷ Case 15-E-0302, Whitepaper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act (filed June 18, 2020) (CES Whitepaper).

end with a potentially smaller adder. Alternatively, the JU recommend placing ACP collections in a restricted fund that either automatically disburses to customers if the backstop is not used, or is used to pay down the cost of future RECs, or reduce ACP payments, including eliminating the ACP adder. Additionally, the JU request that NYSERDA include, in its financial reports, the use of ACP funds and identify the portion of compliance obligations met with ACPs, including a two-year projection of the proportion of REC to ACP payments.

The JU oppose the elimination of the Triennial review and believe that continuing the triennial review process could provide insight into the success of CES procurements and draw out discussion that could benefit from stakeholder input. The JU propose that information and conclusions from the 2020 Triennial Review be part of the review of the CES Whitepaper.

Multiple Intervenors (MI)

MI urges the Commission to evaluate and monitor the implementation of the RES component of the CES. MI believes that it is crucial that the RES program is administered in a cost-effective manner that does not force customers to pay more than necessary. MI argues that these cost-related concerns are particularly heightened now, as customers grapple with a severe economic downturn caused by the COVID-19 pandemic.

MI is concerned about the methodology proposed by Staff and NYSERDA for calculating the price at which Tier 1 RECs would be sold to LSEs. MI states that the Filing's proposed methodology could allow NYSERDA to more closely match the Tier 1 REC price to its actual costs for procuring RECs, but MI is concerned that it would introduce increased uncertainty and risk into the current process.

MI states that the risks associated with REC price volatility would be passed on to the LSEs that are required to

comply with the RES, and in turn, to customers. MI believes that the Commission should carefully consider whether a Tier 1 REC price that changes on a quarterly basis could affect LSEs' CES compliance costs, particularly when they have to account for REC price volatility multiple times in a year.

MI states that the Phase 4 Plan Proposal provides no details regarding the increase in the ACP premium over the Tier 1 REC price, from 10 percent to 15 percent. MI notes that increasing the ACP price premium is inconsistent with prior claims that the move to indexed price RECs would save customers money. Additionally, MI believes that increasing the ACP price in the near-term almost certainly would result in increased costs for customers, because LSEs have no choice but to pay the ACP when there are inadequate Tier 1 RECs available in the market for RES compliance purposes.

MI states that NYSERDA has not provided any data that the increase of ACP price would, in fact, reduce the number of ACPs made by LSEs in compliance with RES Tier 1. With the COVID-19 pandemic and delays in the development of new renewable facilities possessing RES Tier 1 contracts, MI believes that now is not the time for the Commission to be raising ACP prices and making the CES even more expensive for customers.

New York Municipal Power Agency (NYMPA)

NYMPA states that it is concerned that the Phase 4 Plan Proposal would increase costs for its members' customers, especially when its systems are already meeting their electric needs with 100% carbon free energy. NYMPA argues that the Phase 4 Plan Proposal may increase costs without providing corresponding benefits. NYMPA states that 50% of NYMPA's 2019 obligation was met with ACPs. NYMPA points out that the CES Whitepaper reduces LSE obligations for 2021 and 2022, and if adopted these targets would be lower than the 2020 obligation,

despite a projected 90% shortfall. NYMPA thus believes that LSEs will have no choice but to satisfy their obligations with ACPs. NYMPA claims that there is no justification for charging LSEs any amount above what NYSERDA spends to purchase RECs, when the use of ACPs is unavoidable. NYMPA sees no tangible benefits of ACPs such as accelerating renewable development to encourage creation of more RECs. NYMPA states that NYSERDA banks the ACP funds for a potential backstop solution, collecting funds from ratepayers now for use later. NYMPA argues that ratepayers are being penalized because of this.

NYMPA states that the LSE obligations should be adjusted to the number of RECs available for sale. Further, NYMPA supports mandatory reconciliation of ACPs. NYMPA supports the proposal to set REC prices quarterly because it will ensure that REC prices resold to LSEs are priced at cost. However, NYMPA recommends reconciliation of the ACP price to the actual cost of the REC procurement, unless and until sufficient RECs are available in the market to meet LSE obligations. At a minimum, NYMPA recommends that ACP prices should not be artificially increased further to account for uncertainty when a reconciliation mechanism could eliminate that uncertainty.

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 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."

In addition, 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 will best promote the public interest, preserve the public health and protect those using such . . . electricity." Further, PSL §65(1) 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." 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 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

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

⁹ PSL §5(2); see also, Consolidated Edison Co. v Public Service Commission, 47 NY2d 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).

strategies contained in the plan, including its most recent update."

DICUSSION AND CONCLUSION

Tier 1 Disposition

In their comments, MI expresses concern with the methodology proposed in the Phase 4 Plan Proposal regarding the calculation of Tier 1 RECs. MI believes that as more indexed RECs are available for purchase, LSEs could face increased risks due to volatility in REC price. MI states that the Phase 4 Plan Proposal changes to the Tier 1 quarterly sale approach introduces uncertainty that NYSERDA would be selling Tier 1 RECs at a price significantly divergent than the Tier 1 REC cost. MI suggests that the Commission should consider whether a Tier 1 REC price that changes on a quarterly basis could affect LSE's compliance costs, and in-turn, impose higher costs on customers. However, as MI acknowledges, the proposed methodology could allow the Tier 1 price to be more closely matched to its actual costs to procure, instead of using a projected REC price for the entire year.

The Phase 4 Plan Proposal states that if "the current process remains unchanged, this uncertainty would increase the possibility that NYSERDA would be selling Tier 1 RECs for a price that significantly diverges from the actual Tier 1 purchase price."¹⁰ The Commission finds that the proposed quarterly sale process will help mitigate volatility by using a weighted average price for all Tier 1 RECs, regardless of vintage. Moreover, as the Commission stated in the Indexed REC Order, developers anticipate that over the contract term, price fluctuations in indexed REC prices would be accompanied by the

¹⁰ Phase 4 Plan Proposal, p. 4.

opposite impact on ratepayer's energy bills.¹¹ Accordingly, the Commission approves the proposed quarterly sale process.

Alternative Compliance Payments (ACPs)

A. Calculation of ACPs

In their comments, MI asks the Commission to consider an ACP calculation methodology this is more closely aligned with the REC sale price methodology described in the Phase 4 Plan Proposal. NYMPA recommends that ACPs should be subject to an annual reconciliation to the actual price of the RECs procurement, unless and until sufficient RECs are available in the market to meet LSE obligations.

As adopted in the Phase 2 Order, the ACP price is calculated and posted on NYSERDA's website in December for the following compliance year and is to remain constant throughout the compliance year. In addition to a form of compliance, the ACP also acts as a benchmark which LSEs may use to weigh against their purchase of RECs to comply with annual obligations. A fluctuating ACP price would eliminate that benchmark and cause confusion among LSEs as to whether to pay ACPs or buy RECs from Tier 1 eligible third parties. The Commission believes that LSEs benefit from long-term visibility into the ACP cost, which allows them to make rational retail pricing, REC procurements, and REC banking or withdrawal decisions. The ACP price calculation methodology was set in the CES Phase 2 Order and it has worked successfully for three subsequent compliance periods; the Commission sees no justification to change the current approach.

B. ACP Adder

All parties generally oppose the increase in the ACP adder from 10% to 15%. The JU oppose increasing the adder at a

¹¹ Indexed REC Order, pp 14-16.

time when there are very few indexed RECs available and, therefore, not necessary to address the variability in REC prices in the near term. NYMPA sees no justification for charging LSEs any amount above what NYSERDA spends to purchase RECs, especially when the use of ACPs has been made unavoidable because of the lack of RECs to purchase. MI opposes the increase in the ACP price because NYSERDA provided no details demonstrating that the current ACP price is insufficient, particularly near term when there are few indexed REC contracts. Additionally, MI points out that NYSERDA is proposing the increase at a time when there is an inadequate number of RECs available for LSEs to purchase.

The Commission agrees with these comments that this is not the appropriate time to increase the ACP price premium from 10% to 15%. NYSERDA indicates that the need to increase the ACP price is to accommodate increased price variability inherent with an indexed REC structure and ensure the ACP price does not undercut the Tier 1 quarterly price. However, as MI and the JU argue, NYSERDA does not expect much volatility in REC prices in the near term due to lack of indexed RECs available for purchase. Because Tier 1 indexed REC contracts have yet to be procured, variability in the REC price should not occur for several years. As laid out in the CES Framework Order, Tier 1 eligible RECs may be acquired from third-party providers, in addition to NYSERDA. The use of some level of premium in setting the ACP, above the weighted average Tier 1 REC price is critical and is designed to encourage LSEs to seek out Tier 1-eligible third-party generators to acquire such RECs and is not intended to serve as a penalty. Therefore, the Commission directs NYSERDA to maintain the current 10% premium when setting ACPs.

C. Use of ACP funds

In their comments, the JU recommend that the Commission reject or modify the ACP proposal and provide guidance and transparency on the use of ACP funds collected from customers. Additionally, the JU recommend that ACP funds be used to pay down the cost of future RECs. Further, the JU propose that the use of the ACP funds should be included in NYSERDA's annual financial reports.

The Commission notes that the CES Whitepaper addresses the use of ACP funds for future administrative costs. The CES Whitepaper proposes that the administrative funding for all CES programs be combined into one comprehensive annual funding request. Further, the CES Whitepaper proposes that the administrative adder would "reflect the approved administrative costs for 12 months, shortfall or surplus from previous years and would be reduced by any revenues received in the previous years including bid fees, alternative compliance payments received, and interest income."¹² It is more appropriate for parties to comment in the CES Whitepaper proceeding regarding the future use of ACP funds.

The JU request that NYSERDA publish the portion of compliance obligations met with ACPs versus RECs and publish a two-year projection of the portion of RECs versus ACPs. The Commission notes that the CES Progress Report includes the ACP payments collected and cumulative program surplus or shortfall.¹³ A process is also currently in place to project the number of Tier 1 RECs available for the coming years. The CES Divergence Test is an annual process designed to determine the adequacy, or potential inadequacy, of renewable energy supplies to meet the

¹² CES Whitepaper, p. 70.

¹³ Case 15-E-0302, Clean Energy Standard Annual Progress Report: 2018 Compliance Year (filed December 31, 2019).

RES Tier 1 LSE obligation by assessing the current and anticipated quantity of available RES Tier 1-eligible RECs compared to the LSE obligation targets for the coming years. Therefore, the JU's request for a two-year projection of RECs versus ACPs in its financial report is denied as unnecessary.

LSE Obligations

NYMPA suggests that the LSE obligations should be adjusted to the number of RECs available for sale. Should the Commission maintain current targets, NYMPA recommends an ACP annual reconciliation. Revising LSE obligations, as NYMPA suggests, is beyond the scope of this filing. The Commission notes that the CES Whitepaper identifies targets for 2021 through 2022 and intends to address comments on the future LSE obligation targets in considering the CES Whitepaper.

CONCLUSION

The Phase 4 Plan Proposal is adopted, with the modifications discussed above. NYSERDA and Staff are required to file a final Phase 4 Implementation Plan within 30 days of issuance of this order.

The Commission orders:

1. The Clean Energy Standard Phase 4 Implementation Plan (Plan) submitted by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (Staff) is approved, as modified and in accordance with the discussion in the body of this Order.

2. NYSERDA and Staff shall, within 30 days of the issuance of this Order, file a final phase 4 implementation plan, making the necessary revisions discussed in the body of this Order.

3. In the Secretary's sole discretion, the deadline set forth in Ordering Clause No. 2 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 three days prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary