

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 15, 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 on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Standard.

ORDER APPROVING BUILD-READY PROGRAM

(Issued and Effective October 15, 2020)

BY THE COMMISSION:

INTRODUCTION

On June 5, 2020, the New York State Energy Research and Development Authority (NYSERDA) filed a petition to implement a proposed Clean Energy Resources Development and Incentives Program (Build-Ready Program or Program) to facilitate the development of renewable generation in New York (Petition). As part of the proposed Build-Ready Program, NYSERDA would survey the State for potentially suitable sites, acquire interests in real property for sites that appear promising, and then conduct site-by-site reviews of siting feasibility, including environmental review and interconnection options. NYSERDA would seek the permits necessary for authorization to construct a renewable energy facility. NYSERDA would then competitively offer these sites to private renewable energy developers, bundled with a long-term contract for Renewable Energy Certificates (REC), akin to those offered

through NYSEERDA's annual Tier 1 Clean Energy Standard (CES) solicitations authorized in the CES Order.¹ The bids from private developers would be evaluated using criteria similar to those used in Tier 1 CES solicitations. By this Order, the Public Service Commission (Commission) adopts the proposed Build-Ready Program.

BACKGROUND

In July 2019, the Climate Leadership and Community Protection Act (CLCPA) was enacted, mandating, in part, that 70% of statewide load be served by renewable energy resources by the year 2030.² In April 2020, the Accelerated Renewable Energy Growth and Community Benefit Act (the Act) was passed into law as part of the fiscal year 2020-2021 State budget.³ The stated public policy purposes of the Act include advancing the goals of the CLCPA by "expediting the regulatory review for the siting of major renewable energy facilities and transmission infrastructure" and "making available to developers of clean generation resources build-ready sites for the construction and operation of such renewable energy facilities." The Act advances New York State clean energy and climate goals included in the CLCPA through a series of measures designed to fast track the regulatory review and siting process for renewable energy and transmission facilities, maintain cost-effectiveness, and minimize impacts to the environment while providing immense benefits to host communities. The Act ensures that the

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

² Ch. 106 of the Laws of 2019 (codified in Public Service Law §66-p(2)).

³ Ch. 58 (Part JJJ) of the Laws of 2020.

renewable energy projects developed on these sites will deliver benefits to the local communities where they are built.

Under the Act, NYSERDA is tasked with implementing the Build-Ready Program wherein NYSERDA will work with other State agencies, Authorities, private developers, and local communities to advance property sites that may be suitable for renewable energy and transmission facilities. Property sites to be prioritized include existing or abandoned commercial or industrial locations, brownfields, landfills, and dormant electric generating sites. Once the Build-Ready sites are prepared for facility advancement, NYSERDA will competitively auction the sites to private developers.

The Act directs NYSERDA to submit a petition to the Commission describing the activities that it has taken and plans to undertake in furtherance of the stated policy objectives, along with a request for funding, as may be appropriate, to support the activities for at least five years. Pursuant to the Act, the Commission must then issue an order within four months from the submission of the petition.

THE PETITION

NYSERDA filed the Petition in accordance with the directives of the Act with the objective of accelerating siting and development of renewable energy facilities consistent with the CLCPA. The Petition summarizes an innovative framework to hasten the construction of renewable energy projects which would contribute to CLCPA goals. The proposed Build-Ready Program would obtain land available for redevelopment and prepare it for the construction of renewable energy projects that will ultimately become available for competitive auction to private developers. The Build-Ready sites will be bundled with a 20-

year REC contract similar those offered as part of Tier 1 solicitations.

NYSERDA states that it has already undertaken preliminary actions to identify several previously developed or underutilized sites that are potentially acceptable for construction of renewable facilities, demonstrating the Program's potential to contribute to CLCPA goals. In determining cost effective site suitability, NYSERDA considered the following factors: (1) NYSERDA's ability to recover funds invested; (2) the site's natural environment; (3) current and previous land use; (4) the availability of the site; (5) the type of transmission or distribution facilities on or near the site, and any constraints on such facilities; (6) the potential for compatible energy storage development; (7) the impact of development on environmental justice communities;⁴ and, (8) developer interest in the site. NYSERDA estimates that the Build Ready Program can sustain the competitive disposition of approximately six largescale renewable projects annually, starting in 2022 or 2023.

In order to ensure that the sites will be beneficial to the communities where the facilities are being built, the proposed Build-Ready Program would provide communities with tangible benefits and incentives for hosting a renewable energy facility in terms of restoring and protecting the value of taxable land. The Petition also notes that host community

⁴ NYSERDA shall conduct a preliminary screening process in consultation with the Department of Environmental Conservation to determine whether the potential Build-Ready site is located in or near an environmental justice area and whether an environmental justice area would be adversely affected by development of a Build-Ready site.

benefits would be a key component in advancing projects with local communities.⁵

NYSERDA anticipates that total Program spending through 2025 will be approximately \$71.8 million. This budget includes the cost of NYSERDA salaries and overhead, technical, consultant, and legal support, system development, and NYS Cost Recovery Fee Expense. Included as part of technical, consultant, and legal support, are NYSERDA's site evaluation and lease option agreement costs. NYSERDA anticipates that the project budget of \$71.8 million will not need to be fully funded, as the Build Ready Program will begin to receive a return on its investments in later years. Initially, NYSERDA expects that the Build-Ready Program budget will require \$10-\$15 million per year before collecting on any proceeds from site auctions and the Program becomes fiscally self-sustaining.

Therefore, NYSERDA is petitioning to commence the Build-Ready Program with \$50 million obtained from the Clean Energy Fund (CEF) cash balances. NYSERDA proposes that any payments could use cash balances in the CEF until such funds are restored through repayment or through a financial backstop collection mechanism collected through the electric distribution companies. NYSERDA proposes the Program surpluses, after CEF funds have been restored, be retained for future ratepayer benefit, subject to Commission approval.

⁵ The Act calls for the Commission to develop a host community benefit program to "provide a discount or credit on the utility bills of the utility's customers in a renewable host community, or a compensatory or environmental benefit to such customers." The Commission has initiated a proceeding to address this program. See, Case 20-E-0249, Renewable Energy Facility Host Community Benefit Program, Notice Soliciting Comments (issued May 29, 2020).

Additionally, on August 28, 2020, NYSERDA filed a supplement to its Petition which includes guidance regarding NYSERDA's intended engagement with site owners and private developers designed to mitigate any competition with private developers.⁶

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on June 24, 2020 [SAPA No. 15-E-0302SP43]. The time for submission of comments pursuant to the Notice expired on August 24, 2020. Comments were received from Alliance for Clean Energy New York (ACE NY), Consumer Energy Alliance (CEA), EDF Renewables North America (EDFR), the Joint Utilities (JU),⁷ and Multiple Intervenors (MI), and are addressed below.

COMMENTS

ACE NY supports NYSERDA's Petition and states that Program design should involve private developers early in the process. ACE NY asserts that there should be no competition between private developers and NYSERDA. ACE NY provided several questions and project criteria for NYSERDA to consider while designing the Build-Ready Program so that a competitive market is maintained. Additionally, ACE NY suggests that NYSERDA involve private sector parties early in the project development

⁶ Case 15-E-0302, Supplement to the Petition - Build-Ready Fact Sheet for Commercial Developers (filed August 28, 2020).

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

process, so that developers can begin to establish a relationship with the nearby communities. ACE NY proposes pre-qualifying developers through a bidding process on a more frequent basis than an annual property auction. Pre-qualifying developers, ACY NY continues, may accelerate renewable energy and energy storage development. Finally, ACE NY recommends NYSERDA develop a process where a developer can propose a project that meets threshold and criteria requirements and qualifies for the Build-Ready Program.

CEA supports expanding offshore wind, removing regulatory barriers to large-scale renewables, energy diversity, and emissions reductions. CEA did not specifically comment on the Build-Ready Program but lists some topics that it maintains should be raised in the proceeding, including: transmission, treatment of biogas and renewable natural gas, creation and treatment of Tier 4 RECs, supply chain needs, land use and recycling considerations, and cost considerations.

EDFR is supportive of the Build-Ready Program but urges NYSERDA to identify existing gaps between the location and the size of the renewable energy projects to ensure that the State creates new, additional opportunities for renewable energy development without detriment to private sector investors. EDFR stresses that NYSERDA's emphasis should be with sites that have been historically ignored, have physical constraints, or have been deemed either too large, too small, or generally unacceptable to private sector development. EDFR encourages NYSERDA, prior to site auction, to provide for the early involvement of developers and private investors as this will bolster familiarity with the Build-Ready Program sites as well as the uniqueness of the nearby community.

The JU support the Build-Ready Program's consideration of available transmission and distribution facilities as

criteria in site selection as well as the Program's goals of self-sustainability and retention of any excess funds for future ratepayer benefits. The JU express concern with Program design including the lack of details related to procedures and protocols for funding of Build-Ready sites, as well as the lack of eligibility and evaluation criteria for site selection. Specifically, the JU question how the Build-Ready team will execute interconnection agreements prior to disposition of the site, as interconnection costs are speculative, and cost-effectiveness is undetermined at that stage of a project. The JU urge NYSERDA to coordinate and maintain regular contact with the JU in the grid planning process, as the JU's knowledge of their systems would be beneficial in assisting with site selection and cost reduction.

The JU further request that NYSERDA conduct a risk analysis prior to acquiring a build-ready site to determine its cost effectiveness and to develop guidelines to determine whether to continue with the completion of a project. The JU support the competitive auctions to acquire interest in and dispose of sites. The JU further request additional detail on how the Build-Ready Program will be self-sustaining and recommends using the NY Green Bank to reduce the potential need for a backstop. The JU express concern about the use of a customer-funded utility backstop as it exposes ratepayers to financial risks that are normally experienced by project developers and asks that the Commission reject this aspect of the proposal. Lastly, the JU requests that, rather than wait five years for a post-Program evaluation, the Commission require regular and timely reviews of the Build-Ready Program.

MI expresses concern with several aspects of the Petition including the structure of Tier 1 REC contracts, the apportioning of Program surpluses or shortfalls, and the

possibility of stifling market competition. Regarding the structure of Tier 1 RECs under the Build-Ready Program, MI states that the lack of details can create additional costs to customers. MI argues that the Tier 1 RECs offered to successful bidders of Build-Ready sites may not be a truly competitive process and raises concerns that: (1) a developer could win the property bid with a high bid and compensate by recouping the costs in the form of a higher REC price; (2) NYSERDA may accept a higher REC bid to dispose of a brownfield site; and, (3) purchasing a site from NYSERDA could negate a competitive REC procurement process that other developers must participate in. MI also expresses apprehension with how NYSERDA proposed to treat Program surpluses or shortfalls, including the retention of lifetime surplus for future customer benefit and the collection from customers if a shortfall ensues. MI states that the CEF currently has unspent funds of \$1.36 billion and recommends using these funds if a shortfall occurs rather than collecting it from ratepayers. If a surplus occurs, MI continues, the funds should be returned to customers, instead of being retained for future use. MI also supports a Program design that is self-sustaining by using revenues from auctions to offset future program expenses.

MI states its apprehensions that the market may become uncompetitive if NYSERDA is in competition with private developers, specifically because NYSERDA's proposal does not rule out sites that may be of interest to private developers (e.g., greenfield sites). MI claims that interfering with the private generation market may shift investment risks and costs back to ratepayers as well as curb private development. Therefore, MI recommends that greenfield sites should not be considered by NYSERDA, which should instead focus on brownfield and underutilized sites as mandated by the Act.

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

Furthermore, the Act authorizes the Commission to review NYSERDA's Build-Ready Program, including "the activities it has taken and plans to undertake in furtherance of the policy," including any "request for funding to allow such activities to proceed promptly and for a period of at least five years." The Commission is required to issue an order addressing the Program within four months following NYSERDA's submission of a petition.

STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8), state agencies are required to determine whether the actions they are requested to approve would result in a significant impact on the environment. Actions are classified as either "Type I", "Type II" or "Unlisted." Type I actions are those that exceed certain thresholds applicable statewide set forth in a list in the SEQRA

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 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).

regulations or in regulations promulgated by the individual agency making the decision. If an action is a Type I action, there is a rebuttable presumption that the action will likely cause a significant environmental impact. Type II actions are predefined in a list in the SEQRA regulations applicable statewide or in regulations promulgated by the individual agency making the decision and require no further review under SEQRA. Lastly, actions that do not meet the definition of either Type I or Type II actions are classified as an "unlisted" action requiring SEQRA review.

The approval of the Build-Ready Program, including a funding mechanism, does not meet the definition of either a Type I or Type II action, and thus is an unlisted action. Accordingly, SEQRA review is required. Other than our approvals of the above actions, no additional State or Local permits are required at this time, so a coordinated review under SEQRA is not necessary. The Commission will assume Lead Agency Status under SEQRA and conduct an environmental assessment.

An Environmental Assessment Form (EAF) regarding the action was prepared by Department of Public Service Staff for the Commission's consideration.¹⁰ After considering the EAF, the record in this proceeding, and the criteria for determining significance¹¹ it is concluded that the action of approving a generic program and funding mechanism to identify potential sites for future development will not have a significant adverse impact on the environment. Once a specific site has been identified for potential development, the necessary regulatory and environmental reviews will be conducted. The proposed action and funding approved here does not encompass the

¹⁰ 6 NYCRR §617.6(a)(3).

¹¹ 6 NYCRR §617.7(c).

potential future development and construction of facilities on such sites. Accordingly, we adopt a negative declaration pursuant to SEQRA. A Notice of Determination of Significance for this unlisted action is attached. Because no adverse environmental impacts were found, no public notice is required or will be issued. The completed EAF will be retained in our files.

DISCUSSION

Distributed energy resources are a vital component of New York's renewable and clean energy generation system. As the CLCPA targets a significant expansion of distributed energy in New York, it is appropriate to expand the penetration of clean energy resources by accelerating the siting process and facilitating the development of such facilities. The Build-Ready Program will advance clean energy development by preparing sites that are not otherwise attractive for private development to become available for large scale renewables development. NYSERDA's participation in preparing these properties for development can remove major hurdles for interested clean energy developers.

Site Selection

NYSERDA will focus on obtaining sites that may have potential impediments for development. NYSERDA shall work closely with Staff in identifying and selecting potential sites, including, but not limited to, previously developed, existing or abandoned commercial sites, brownfields,¹² landfills, former commercial or industrial sites, and dormant electric generating

¹² NYSERDA shall coordinate with Department of Environmental Conservation (DEC) early in the site selection process to identify brownfield sites and assess the risks associated with environmental remediation. This coordination shall seek ways to limit or eliminate prospective developer liability.

sites. The Commission encourages the investment and revitalization of such properties because the redevelopment of these sites may diminish the environmental impact on nearby communities as well as make it more attractive to clean energy developers. In addition, when the property becomes successfully converted, the surrounding community may benefit from the property restoration in the form of increases in property assessment values and tax base.

The Commission agrees with several commenters that NYSERDA should not be competing with private developers, which would have a dampening effect on the renewable energy development market. Instead, NYSERDA's program design shall focus on developing properties which are fundamentally different than those which private developers would typically consider for investment. Furthermore, NYSERDA shall safeguard against competition with private developers at the initial stages of site identification by conducting in-depth due diligence to determine whether any commercial renewable energy developers have expressed a prior or ongoing material interest in the site. If, as part of this due-diligence, NYSERDA determines that there is ongoing active development by a commercial developer at a prospective site, NYSERDA shall withdraw from further interaction to allow both the site owner and commercial developer(s) to advance development of the site.¹³

Moreover, NYSERDA has filed "rules of engagement" which provide guidance regarding its intended engagement with

¹³ NYSERDA may periodically reach out to the site owner and commercial developer(s) to assess development progress and in the event the developer interest diminishes, NYSERDA may engage the site owner and commercial developer(s) to determine whether there is a benefit in the site being developed as part of the Build-Ready Program.

site owners and private developers designed to mitigate any competition with private developers.¹⁴ NYSERDA shall reach out to stakeholders early in the siting process. This includes, but is not limited to, reaching out to utilities, private companies, as well as State, regional and local agencies, communities, and elected officials. As recognized by the JU, early involvement with utilities may assist with site prospecting and initiate the grid interconnection planning processes needed to advance renewable energy projects. Additionally, NYSERDA's engagement with private developers can facilitate the identification of additional Build-Ready sites.

The Commission declines to adopt the ACE NY proposal to create a formal mechanism whereby developers can propose potential Build-Ready sites to NYSERDA as doing so would add additional complexity to the site selection process and does not appear to be necessary at this time. However, NYSERDA is encouraged to utilize private developer's experience with renewable generation site identification in identifying potential Build-Ready sites, with NYSERDA retaining the necessary flexibility in evaluating such sites. Involving other stakeholders early in the process will also serve to minimize any resistance to energy infrastructure development. Maintaining transparency and an open exchange of information will likely increase the level of stakeholder acceptance and the viability of future projects.

Site Development

NYSERDA will screen potential sites to determine if they are suitable for further consideration, including the ability to recover any invested funds if the property is progressed through the Program. Properties that pass the

¹⁴ Case 15-E-0302, Supplement to the Petition - Build-Ready Fact Sheet for Commercial Developers (filed August 28, 2020).

initial screening will advance to a preliminary resource and design assessment phase that will require the services of professional consultants, especially with properties that might have been environmentally compromised. After a property has been cleared to move forward, NYSERDA will form and execute plans for development by obtaining necessary permits as described in the Act through the Office of Renewable Energy Siting or State Environmental Quality Review Act processes, as appropriate, for authorization to construct a renewable energy facility.

It is essential that NYSERDA remain in control of the activities completed at each stage of site evaluation – from site screening to acquisition to disposition – with the result of creating a property that is economically attractive to renewable energy developers. Investments from NYSERDA shall be carefully considered, contain only moderate risks, and provide benefits to the broader community. The effort put in by NYSERDA prior to site disposition should not overtake the competitive market value of the property.

Site Disposition

NYSERDA proposes to competitively offer Build-Ready sites to renewable energy developers, bundled with long-term REC contracts similar to those offered through NYSERDA's annual CES Tier 1 solicitations, applying similar evaluation criteria used in those procurements. MI expresses concern over the proposal to award Tier 1 REC contracts to successful bidders, stating that merging the Competitive Tier 1 REC solicitations with the Build-Ready Program can create additional costs for ratepayers. However, while NYSERDA proposes to offer REC contracts to Build-Ready bidders that are substantially similar to Tier 1 REC contracts, it does not propose to merge the Build-Ready program into the Tier 1 solicitation process. In other words, requests

for proposals (RFPs) will be issued for Build-Ready sites, separate and apart from the annual competitive CES Tier 1 solicitations. NYSERDA shall offer the Build-Ready sites themselves at their assessed value and developers will compete with respect to the REC price included in their bids. Those REC prices will take into consideration the cost to advance a renewable energy project at the site, and any Build-Ready development already completed by NYSERDA. Thus, contrary to MI's concerns, the willingness of a developer to purchase a Build-Ready site from NYSERDA does not eliminate the competitive REC procurement process. Similar to bid evaluation under CES Tier 1 solicitations, NYSERDA shall coordinate review and evaluation of bids submitted in response to a Build-Ready RFP with Staff and shall have the authority to reject any bid or all bids.

The Commission notes that long-term REC contracts awarded through Build-Ready solicitations may provide a REC price that exceeds the current average price for Tier 1 RECs awarded in a competitive CES Tier 1 solicitation. This is appropriate given that developers may place a premium of the environmental attributes given the nature of the sites being developed - sites that were otherwise not suitable for development due to increased costs, associated environmental risks, and other detrimental factors that cause these sites to be undeveloped or underutilized. While NYSERDA will mitigate these concerns through its Build-Ready activities, developing renewable energy projects on these types of sites may require that REC prices paid to developers to exceed Tier 1 REC prices. Nevertheless, competition in the Build-Ready site solicitation process is expected to exert downward pressure on REC prices.

It is important that NYSERDA retain the flexibility to dispose of a Build-Ready site in a manner that allows NYSERDA to

recoup its financial investments while ensuring that the site is ultimately developed. This flexibility will be required so NYSERDA can sell a site as early as it becomes economically viable for third party development, therefore making it unnecessary for NYSERDA to continue to expend resources to further develop the site. NYSERDA could auction sites in initial stages of the Program, without a REC contract, recoup its initial investment costs, and focus its resources on developing additional Build-Ready sites. This flexibility would also help to promote commercial competition because releasing a project early in the Build-Ready process will minimize conflicts between NYSERDA and private developers by putting projects back in the commercial market sooner to seek competitive RECs.

Regarding the timing of Build-Ready site solicitations, NYSERDA's proposal to conduct annual auctions for sites developed under the Program is adopted. Auctions could commence as early as 2022 provided sites are ready for auction. While ACE NY recommends pre-qualifying developers and offering sites on a more frequent basis, this proposal could add to the administrative complexity of the Program, increasing the Program's budget, and potentially decreasing competition within site solicitations. Given NYSERDA's goal of advancing six sites per year, annual solicitations are appropriate. Monthly or quarterly solicitations will increase Program costs and may reduce the number of potential bidders in a given solicitation which can result in less competition amongst bidders and higher REC prices. Nevertheless, NYSERDA shall have the flexibility to conduct site auctions on a more or less frequent basis if doing so would result in cost effective disposition of Build-Ready sites.

Program Budget and Funding

NYSERDA proposes an estimated program budget of \$71.8 million through 2025. The estimated budget includes: salaries and overhead (\$13.5); technical, consultant and legal support (\$56.5); system development (\$1.0); and New York State cost recovery fee expense (\$0.8). NYSERDA expects that the program will become financially viable once projects become available for auction. Proceeds from auctioned sites will be reinvested by NYSERDA, after repayment of CEF funds, to support the advancement of additional sites through the Program. However, to initiate the Program, NYSERDA is requesting \$50 million to be obtained from the CEF, subject to repayment. In addition to employing skilled consultants, the estimated budget includes the salaries of an additional six full time employees (FTEs) to form a professional and technical team that will apply their expertise in such areas as project management, prospecting, project development, permitting, and legal support.

The Commission has reviewed the funding proposed in the Petition for the first five years of the Program and finds it reasonable. NYSERDA has provided sufficient information to justify the need to utilize the CEF funds, which will avoid additional ratepayer collections. The six FTEs will be needed as the task of advancing a site from the initial site assessment phase to auction quickly will take considerable effort.

Given the nature of the Build-Ready Program, total expenditures and proceeds from property sales will be intermittent, and the advancement of this Program is dependent on NYSERDA's ability to access funding. While the program should eventually become financially self-sustaining, there may be occasional instances that require an additional infusion of operating funds. NYSERDA will provide careful financial management of Program funding and any cash flow issues would be

a result of timing and not the result of the loss of the initial investment; thus, the cash flow does not pose a financial risk to ratepayers. The Commission has previously authorized NYSERDA to utilize uncommitted funds, on a temporary basis and subject to repayment, to meet program cash flow needs for the Zero-Emissions Credit (ZEC) and REC programs.¹⁵ Similarly, NYSERDA is authorized to use any cash balances in the CEF through the Bill as You Go funding mechanism to satisfy Build-Ready Program cash payments until such funds are replenished and restored to the CEF through ongoing Build-Ready site disposition.

Additionally, the financial backstop guarantee mechanism already established in this proceeding should also be utilized here to address any cash shortfalls and allow for timely payments.¹⁶ The financial backstop guarantee mechanism would be invoked if aggregate shortfalls exceeded the amounts that could be covered in the short term from CEF cash balances, with CEF cash balances restored through this same mechanism. The Commission understands the concerns expressed by the JU regarding such a backstop mechanism and notes that this mechanism shall only be used in limited instances where necessary to ensure short term cash flows are available. Additionally, the Commission encourages NYSERDA to explore alternative funding sources other than additional ratepayer funding, such as considering backing from NY Green Bank. Finally, any proceeds in excess of program expenses and administration shall be retained for future ratepayer benefit, as approved by the Commission.

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

¹⁶ Id.

Reporting

The Commission supports the reporting requirements proposed by NYSERDA and required by the Act. NYSERDA shall, beginning April 1, 2021, and annually by that date thereafter, issue a report providing: (1) achievements in the prior year versus planned achievements; (2) plans for the coming year; (3) an accounting of proceeds, less program and administration expenses, earned; (4) a status update on the use and status of the CEF cash balances; (5) a status update on the portfolio of projects under development; (6) a list of the sites auctioned for development and the identity of the winning bidders; (7) the amount of renewable energy production from the auctioned sites; and, (8) the amount and type of host community benefits provided.

Additionally, prior to the conclusion of the first five years of the program, and no later than April 1, 2025, NYSERDA shall conduct a review of the Build-Ready Program that provides an assessment of the Build-Ready Program's progress in meeting the State's clean energy goals. This report shall be filed for public comment and will, in part, be the basis upon which future Program advancement will be considered. This report shall come before the Commission for decision regarding the continuation and/or modification to the Program, including any necessary funding after the initial five years. The JU propose that rather than wait five years for a post-Program evaluation, the Commission should require regular and timely reviews of the Build-Ready Program. The Commission finds that the annual reports discussed above will satisfy the needs for periodic reviews prior to the five-year Program evaluation.

Finally, the Act directed that NYSERDA develop procedures and protocols for establishment and transfer of Build-Ready sites which include procedures for notifying

municipalities when a Build-Ready site has been identified, and a process to determine whether the potential site is located in or near an environmental justice area and whether an environmental justice area would be adversely affected by development the site. NYSERDA shall consult with Staff and file such procedures and protocols as part of an implementation plan to be filed within 90 days of the effective date of this Order. Additionally, this implementation plan shall include the criteria utilized by NYSERDA for Build-Ready site selection, procedures for coordination with other State agencies in the site selection process, procedures to be followed in the site disposition process, and scoring criteria for the evaluation of bids submitted in response to a Build-Ready RFP.

CONCLUSION

Accelerating the development of renewable energy resources will be essential for New York to meet its ambitious clean energy goals established in the CLCPA. NYSERDA, as a State actor, is well suited to pursue these goals by undertaking the Build Ready Program and to assess State and local needs in determining where generation and transmission would be most cost effective while providing benefits to renewable energy project host communities. The Commission accordingly approves the Build Ready Program as discussed above.

The Commission orders:

1. The Clean Energy Resources Development and Incentives Program (Build Ready Program) proposed by the New York State Energy Research and Development Authority (NYSERDA), including the proposed funding mechanism, is approved as discussed in the body of this Order.

2. NYSERDA shall, within 90 days of the issuance of this Order, file an implementation plan that includes the procedures and protocols for establishment and transfer of Build-Ready sites, as discussed in the body of this Order.

3. On April 1, 2021, and annually thereafter, NYSERDA shall issue a report describing its achievements in the prior year versus planned achievements, plans for the coming year, an accounting of net proceeds, status of the CEF balances, status on the portfolio of projects under development, a list of sites auctioned for development and the identify of winning bidders, amount of renewable energy production form the auctioned sites, and the amount and type of host community benefits provided.

4. NYSERDA shall conduct a Build-Ready Program review and report no later than April 1, 2025, which shall be made available for public comment. This review will provide an analytical assessment of the Build-Ready Program's progress in meeting the State's clean energy goals.

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 three days prior to the affected deadline.

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the New York State Public Service Commission's (Commission) action to approve a generic program and funding mechanism to identify potential sites for future development. This determination is based on the Commission's finding, pursuant to regulations implementing Article 8 of the Environmental Conservation Law contained in 6 NYCRR Part 617, that such action will not have a significant adverse effect on the environment. The action contemplated is an "Unlisted Action" as defined in 6 NYCRR §617.2.

Based on the Commission's review of the record, the Commission finds that the proposed action, which approves the proposed Clean Energy Resources Development and Incentives Program (Build-Ready Program), including a funding mechanism, will not have significant adverse environmental impacts. Once a specific site has been identified for potential development under the Build-Ready Program, the necessary regulatory and environmental reviews will be conducted.

The address of the Commission, the lead agency for purposes of environmental quality review of this action, is 3 Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Francis Dwyer at (518)474-5366, by email at

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francis.dwyer@dps.ny.gov, or at the address above.

MICHELLE L. PHILLIPS
Secretary