

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 16, 2021

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

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

ORDER APPROVING 2022 CLEAN ENERGY STANDARD
ADMINISTRATIVE BUDGET

(Issued and Effective December 16, 2021)

BY THE COMMISSION:

INTRODUCTION

As the administrator of the Clean Energy Standard (CES), the New York State Energy Research and Development Authority (NYSERDA) is required to file with the Public Service Commission (Commission) an annual petition to recover the funds necessary to cover its administrative costs for each CES subprogram. On July 30, 2021, NYSERDA filed a petition seeking approval of its administrative budget for the 2022 CES compliance period associated with the Renewable Energy Standard (RES) Tier 1, Tier 2, Offshore Wind Standard, and Tier 4 programs, as well as the Zero-Emissions Credit (ZEC) program (the Petition).

In this Order, the Commission approves NYSERDA's proposed 2022 CES compliance period administrative budget in the amount of \$30,209,000. The Commission authorizes NYSERDA to fund its administration of the RES subprograms through a combination of surplus funds received in previous years, including bid fees, Alternative Compliance Payments (ACPs), and interest income. For the ZEC program, NYSERDA is directed to continue to fund its administration of the program through a ZEC adder.

BACKGROUND

In the CES Framework Order, the Commission established the CES to increase the State's renewable energy supply and preserve New York's existing zero-emissions generation.¹ The Commission divided the CES into a RES and ZEC requirement. The RES includes a Tier 1 component that obligates each load-serving entity (LSE) to serve its retail customers by procuring new renewable resources, evidenced by the procurement of qualifying Tier 1 Renewable Energy Certificates (RECs) from NYSERDA or other sources, or by making ACPs. The CES Framework Order also included a Tier 2 Maintenance program to provide financial support for existing eligible renewable facilities that are at risk of ceasing operations. Under the ZEC program, each LSE that serves end-use customers in New York must 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.

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

In 2018, the Commission established an Offshore Wind Standard by requiring LSEs to support the procurement of 2.4 gigawatts (GW) of offshore wind resources by 2030. As with Tier 1, the Offshore Wind Standard obligates each LSE to serve its retail customers by procuring new offshore wind resources, evidenced by the procurement of Offshore Wind Renewable Energy Certificates (ORECs) from NYSERDA.² The Commission also authorized NYSERDA to hold initial procurement solicitations in 2018 and 2019, for an aggregate of approximately 800 megawatts (MW) or more of offshore wind. In response to the initial procurement, NYSERDA successfully contracted for 1,696 MW of offshore wind in October 2019.³ On April 23, 2020, to maintain New York's trajectory in meeting its clean energy goals, the Commission authorized NYSERDA to issue an additional offshore wind solicitation for 1,000 MW or more.⁴

On October 15, 2020, the Commission formally adopted the clean energy deployment targets of the Climate Leadership and Community Protection Act (CLCPA).⁵ In the CES Modification Order, the Commission aligned the RES to the clean energy mandates included in the CLCPA, including the goal that at least 70% of statewide load is served by renewable energy resources by

² Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) (Offshore Wind Framework Order).

³ Case 18-E-0071, supra, NYSERDA's Launching New York's Offshore Wind Industry: Phase 1 Report (filed October 23, 2019).

⁴ Case 18-E-0071, supra, Order Authorizing Offshore Wind Solicitation in 2020 (issued April 23, 2020) (2020 Offshore Wind Order).

⁵ See Chapter 106 of the Laws of 2019 (codified, in part, in Public Service Law (PSL) §66-p). The CLCPA became effective on January 1, 2020.

2030, and that 9,000 MW of offshore wind be procured by 2035.⁶ The Commission also created two new programs to facilitate achievement of these goals. The first is the Competitive Tier 2 program designed to support non-state-owned wind and run-of-river hydroelectric generating facilities that commenced operation prior to January 2015, and the second is the Tier 4 program designed to support renewable energy delivered into New York City. NYSERDA issued its first Competitive Tier 2 Request for Proposals (RFP) in January 2021, resulting in three agreements,⁷ and issued its first Tier 4 RFP on January 13, 2021.⁸

On November 17, 2016, the Commission approved the RES and ZEC program administrative budgets and funding for the 2017 compliance period, to be funded through existing uncommitted System Benefits Charge (SBC), Energy Efficiency Portfolio Standard (EEPS), and/or Renewable Portfolio Standard (RPS) funds.⁹ Further, the Commission ordered any unspent administrative funds to be used for future ratepayer benefit. Subsequently, the Commission approved the 2018 and 2019 CES administrative budgets in two orders issued on March 16, 2018,

⁶ Case 15-E-0302, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) (CES Modification Order).

⁷ NYSERDA Clean Energy Standard Competitive Tier 2 Program. <https://www.nysERDA.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/Tier-Two-Competitive-Program>

⁸ NYSERDA Clean Energy Standard Tier 4-New York City Renewable Energy. <https://www.nysERDA.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/Tier-Four>

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

and November 16, 2018, respectively.¹⁰ The Commission also reallocated additional funds from uncommitted SBC, EEPS, and/or RPS balances, to cover NYSERDA's administration of the RES and the ZEC programs.

On November 14, 2019, the Commission approved NYSERDA's 2020 CES administrative budget and directed NYSERDA to reallocate funds that were authorized but unspent from the 2018 CES compliance period to cover a portion of the 2020 CES compliance period administrative costs.¹¹ In addition, the Commission authorized NYSERDA to reallocate uncommitted SBC, EEPS, and/or RPS funds to cover the remaining 2020 CES compliance period administrative costs.

In the CES Modification Order, the Commission approved NYSERDA's administrative expenses for the 2021 CES compliance year. The Commission also authorized a REC and ZEC administrative adder that would include anticipated administrative costs for 12 months plus the shortfall or surplus from previous years, with the adders being reduced by any revenues received in previous years. Through an adder mechanism, administrative costs are allocated across the attributes NYSERDA annually sells to LSEs in each year, and via a commensurately increased attribute price or an increased LSE rate depending on the program. The Commission also directed NYSERDA to combine administrative funding requests for all CES programs into one comprehensive annual funding petition.

¹⁰ 15-E-0302, Order Approving Administration Budget for 2018 Clean Energy Standard (issued March 16, 2018); 15-E-0302, Order Approving 2019 Administration Budget (issued November 16, 2018).

¹¹ 15-E-0302, Order Approving 2020 Clean Energy Administrative Budget (issued November 14, 2019).

THE PETITION

NYSERDA proposes a total administrative budget of \$30,208,000 for the 2022 CES compliance year. According to the Petition, NYSERDA would fund its RES budget with surplus revenues received in previous years, including bid fees, ACPs, and interest income. For the ZEC program, NYSERDA proposes to continue to fund its administration of the program through a ZEC adder of approximately 1.75% of the ZEC acquisition costs. Additionally, the ZEC adder would cover a ZEC funding shortfall from 2020 due to New York State (NYS) Cost Recovery Fee (CRF) expenses.

The Petition explains that a primary driver of the budget request increase is the expansion of the renewable energy targets pursuant to the CLCPA, which results in NYSERDA needing to allocate additional staff towards activities involving procurement, contract negotiations, contract management and analysis, administration of the New York Generation Attribute Tracking System (NYGATS), participation in regulatory proceedings related to the Accelerated Renewable Energy Growth and Community Benefit Act (Accelerated Renewables Act),¹² and New York becoming the hub of the growing offshore wind industry in the Northeast.

For the Tier 1 program, the Petition notes that 2022 will require an increase in staff time to manage, negotiate, and report on contracts resulting from the completed 2017 through 2020 Tier 1 solicitations and the additional contracts resulting from the 2021 Tier 1 solicitation, which have resulted in 90 new agreements and over 10,800 MW of renewable capacity under contract. Results of the fifth solicitation, RESRFP21-1, are still under consideration and will result in additional

¹² See Chapter 58 of the laws of 2020, Section 2.

contracts to negotiate and manage. NYSERDA anticipates the number of projects under active management to continue to grow in 2022 and beyond. The number of renewable energy projects under active management is expected to exceed 170 by 2025, according to the Petition. At the same time, the Petition explains that settlement of Tier 1 pricing terms is becoming more complex with the adoption of the Index REC contract structure in 2020, in contrast to the relatively simple fixed REC structure used in past Tier 1 solicitations.

The new Competitive Tier 2 and Tier 4 programs will require expansion of current administrative management systems to track and report programmatic activities, according to the Petition. NYSERDA will be issuing a third Tier 2 RFP in 2022 and will be managing all Tier 2 contracts entered from the first and second RFPs. The Tier 4 program in 2022 will require management of awards from the first solicitation in 2021. Both programs will require expansion of current computer systems to manage and report programmatic activity.

A new and notable cost driver this year, according to the Petition, is increased efforts on issues related to electrical transmission and energy deliverability, both for the terrestrial grid and to support offshore wind generation. The Accelerated Renewables Act created a greater focus on the role of the transmission grid to ensure clean energy generation can be delivered to consumers. NYSERDA states that it is actively working to inform regulatory proceedings related to the Accelerated Renewables Act with timely and accurate assessments of the future of clean energy generation in New York.

The Petition also notes that the growing offshore wind industry in New York necessitates careful examination of the most cost-effective and resilient approaches for transporting offshore-generated electricity into the New York power grid.

This effort includes studying options for meshed versus radial network designs, interconnection technologies, and cable routing into the greater New York City and Long Island areas. The Petition also requests new funding for the exploration of floating technologies, research to support co-existence with fishermen, agriculture, wildlife, and other ecosystems with a goal of providing development certainty, reducing costs, and improving development timelines of offshore wind.

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. According to the Petition, NYSERDA continues to provide support to local governments and communities hosting renewable energy projects by engaging with community leaders to better understand the issues they face, providing free educational seminars and one-on-one technical assistance, and developing resources such as model zoning laws and guidebooks addressing common technology and policy questions.

The Petition also notes that NYSERDA will allocate a proportionate share of the annual CRF to the CES program. The CRF is a fee assessed to NYSERDA and other public authorities by New York State for an allocable share of state governmental costs attributable to the provision of services to public benefit corporations pursuant to Section 2975 of the Public Authorities Law. For the past six fiscal years, the CRF assessment has averaged about 1.3% of NYSERDA's annual expenses. NYSERDA is projecting a deficit in the ZEC program for 2020 as a result of CRF expenses, which it proposes to fund through a ZEC adder.

NYSERDA's administrative budget includes direct and indirect salaries, fringe benefits, and other direct program operating costs and allocated general and administrative

expenses. The proposed budget includes two new full-time employees (FTEs) which is incremental to the 27.5 FTEs approved in the CES Modification Order. According to the Petition, the additional FTEs will be focused on managing renewable generation projects and supporting CES financial management activities like contract pricing settlements. NYSERDA expects a significant increase in the number of RES projects in active development and management by NYSERDA staff over the next several years. NYSERDA also anticipates a corresponding increase in projects reaching commercial operation, which will increase the quantity of invoices processed by NYSERDA.

Table 1 illustrates the projected authorized but unspent balance of NYSERDA's 2020 CES administrative budget. As directed in the CES Modification Order, NYSERDA files quarterly itemized reports on costs associated with the administration and the development of the CES programs, reconciles actual expenses with approved funding and collections, and applies any differences to subsequent year collection amounts. NYSERDA is projecting a deficit in the ZEC program for 2020 and proposes to fund the deficit using the 2022 ZEC adder. Table 2 details commitments for the approved 2021 CES administrative budgets as of June 30, 2021. Table 3 presents NYSERDA's proposed 2022 CES administrative budget. Table 4 illustrates the estimated surplus of CES funds, a portion of which NYSERDA proposes to use for its 2022 CES administrative budget.

Table 1. 2020 Compliance Year

	Budget	Committed	Unspent Funds
RES Salary and Overhead	\$3,927,880	\$3,445,046	\$482,834
RES NYS Cost Recovery Fee	\$177,894	\$128,369	\$49,525
RES Technical Support	\$1,300,000	\$1,297,706	\$2,294
RES System Development	\$1,850,000	\$1,758,406	<u>\$91,594</u>
RES Total			\$626,247
ZEC Salary and Overhead	\$437,716	\$411,292	\$26,424
ZEC NYS Cost Recovery Fee	\$4,874,394	\$6,154,506	(\$1,280,112)
ZEC Technical Support	\$295,000	\$170,940	\$124,060
ZEC System Development	\$100,000	\$6,768	<u>\$93,232</u>
ZEC Total			(1,036,396)
Total	\$12,962,884	\$13,373,033	(\$410,149)

Table 2. 2021 Compliance Year (as of June 30, 2021)

	Tier 1	ZEC	OSW	Tier 2	Tier 4	Totals
Approved Budget	\$8,643,080	\$7,778,436	\$8,814,599	\$1,584,193	\$1,625,934	\$28,446,243
Salaries and Overhead	\$1,953,394	\$196,659	\$1,160,330	\$76,161	\$82,187	\$3,468,731
NYS Cost Recovery	\$118,301	\$3,158,814	\$27,849	\$902	\$10,470	\$3,316,336
Technical Support/System Development	\$243,009	\$718,530	\$1,633,018	\$66,620	\$2,422,418	\$5,083,595
Total Commitments	\$2,314,704	\$4,074,003	\$2,821,197	\$143,683	\$2,515,075	\$11,868,662
Remaining Budget	\$6,328,376	\$3,704,433	\$5,993,402	\$1,440,510	(\$889,141)	\$16,577,581

Table 3. 2022 Compliance Year (Proposed)

	Tier 1	ZEC	OSW	Tier 2	Tier 4	Totals
Program Salaries and Overhead	\$5,419,000	\$537,000	\$2,995,000	\$379,000	\$443,000	\$9,773,000
NYS Cost Recovery Expense	\$1,073,000	\$6,399,000	\$136,000	\$13,000	\$6,000	\$7,627,000
Technical Support/System Development	\$3,165,000	\$75,000	\$8,502,000	\$195,000	\$60,000	\$11,997,000
System Development	\$150,000	\$582,000	\$20,000	\$40,000	\$20,000	\$812,000
Total	\$9,807,000	\$7,593,000	\$11,653,000	\$627,000	\$529,000	\$30,209,000

Table 4. Estimate of CES Surplus

Source of Funds	Amount
Renewable Energy Credit Proceeds	\$31,000,000
ACP Payments	\$43,574,000
Management and Bid Fees	\$2,000,000
Contract Security and Bid Deposits	\$1,000,000
Investment Income	\$150,000
Total	\$77,724,000
Use of Funds	
Program Administration	\$4,400,000
Program Support	\$1,068,000
System Development Costs	\$2,500,000
REC Payments to Generating Facilities	\$31,000,000
NYS Cost Recovery Fee	\$632,000
Total	\$39,600,000
Surplus	\$38,124,000
Beginning Surplus as of January 1, 2021	\$19,785,000
Cumulative Surplus	\$57,909,000

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 August 25, 2021 [SAPA No. 15-E-0302SP48]. The time for submission of comments pursuant to the Notice expired on October 25, 2021. No comments were received.

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 carryout 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,¹³ environmental

¹³ See International R. Co. v Public Service Com., 264 AD 506, 510 (1942).

stewardship, and the conservation of resources.¹⁴ 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 utility’s existing equipment is “unsafe, inefficient or inadequate.”¹⁵ 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

NYSERDA’s 2022 compliance period budget of \$30,209,000 is approximately \$1.8 million, or 6.2%, over the 2021 authorized budget of \$28,446,243. NYSERDA has demonstrated that the cost increase is based on the State’s CLCPA goals which will drive the need for significant new long-term efforts to responsibly and economically advance large-scale renewable energy projects. According to the Petition, the number of renewable energy

¹⁴ 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).

¹⁵ PSL §66(5).

projects under active NYSERDA management is expected to exceed 170 by 2025.

At the same time, the Petition explains that settlement of Tier 1 pricing terms is more complex now as these contracts are increasingly based on the Index REC methodology, which requires significantly more work than the Fixed REC method previously relied on. A monthly netting process is required for contracts based on the Index REC, and therefore requires NYSERDA to provide active financial settlements regularly under these contracts, in contrast to the Fixed REC method which was simpler to administer.

Moreover, NYSERDA staff also have the Competitive Tier 2, offshore wind, and Tier 4 agreements to negotiate and manage. The LSE obligation approach under the Offshore Wind Standard and Tier 4 programs will be comparable to that under the ZEC requirement once projects begin producing RECs. For the new Competitive Tier 2 program, NYSERDA administers an LSE compliance obligation for Tier 2 via an annually calculated rate that is applied to each LSEs actual wholesale load. NYSERDA has held two procurements under the program with three signed contracts to date.

NYSERDA's 2022 budget includes a material cost increase under Technical Support due to increased technical work related to the electrical transmission and energy deliverability for the terrestrial grid and to support offshore wind activities. The addition of technical support related to electrical grid issues to support on-going procurement and implementation of the CES is appropriate. It is important to implement the most cost-effective and resilient approaches to bringing large-scale land and offshore wind renewable resources on-line. Investments made in the offshore wind Technical Support category will harness the collective knowledge of the

industry's leading experts to advance the technical understanding needed to address offshore wind development challenges, fully incorporate the input of stakeholders, and develop the efficiencies needed to reduce both project development costs and timelines.

It is therefore reasonable that the NYSERDA team must grow as the workload of the CES continues to grow. The Commission therefore approves NYSERDA's total proposed 2022 CES compliance period budget.

The Petition proposes to fund the administration of the RES with revenues received in previous years. The CES Modification Order authorized NYSERDA to reduce administrative costs by using any previous year's income, and the CES Phase 2 Implementation Plan authorized NYSERDA to use ACPs to offset the cost of achieving RES goals, including mitigating any fiscal impact to ratepayers.¹⁶ In accordance with previously filed implementation plans, NYSERDA collects bid fees as part of the offshore wind, Tier 1, and Tier 2 programs and has collected funds due to contract security forfeitures as part of the Tier 1 program. Per the respective implementation plans, the Commission authorized that these funds can be used to offset the costs of administering these programs. NYSERDA anticipates closing calendar year 2021 with a balance of approximately \$10.6 million in cumulative bid fees, bid deposits, and forfeited contract security.

Similarly, the Commission has authorized the use of ACP funds to offset the cost of achieving the RES goals, including mitigating any impact to customers related to the financial backstop as described in the Order approving the Phase 2 Implementation Plan. NYSERDA carried a balance of \$9.2

¹⁶ Case 15-E-0302, Order Approving Phase 2 implementation Plan (issued November 11, 2017).

million in ACP collections into 2021 as reflected in the CES Financial Status Report for calendar year 2020.¹⁷ NYSERDA expects to collect an additional \$43.6 million in ACPs funds after settling the 2020 compliance year, and end 2021 with a surplus of approximately \$58 million.

The Commission agrees that using the surplus funds from previous collections is appropriate in order to mitigate the ratepayer impact of CES program costs. The Commission therefore directs the use of surplus CES funds, including bid fees, ACPs, and interest income, to cover the 2022 budget. These funds are sufficient to offset the entirety of NYSERDA's 2022 CES administrative budget.

Lastly, NYSERDA is requesting to fund the ZEC program through a ZEC adder (approximately 1.75% of ZEC acquisition costs) and to use the adder to cover the shortfall of funding for Year 4 due to the NYS Cost Recovery Fee. A ZEC adder has been used in the past and is the most appropriate method to fund the ZEC program and is therefore approved.

The Commission orders:

1. The New York State Energy Research and Development Authority is authorized to expend up to \$30,209,000 for the 2022 budget comprising: Salary and Overhead, NYS Cost Recovery Fee Expenses, Renewable Energy Standard/Zero-Emission Credit Technical Support, and Renewable Energy Standard/Zero-Emission Credit System Development, as discussed in the body of this Order.

2. The New York State Energy Research and Development Authority is authorized to use previously collected revenues including bid fees, forfeited contract security funds,

¹⁷ Case 15-E-0302, NYSERDA Combined CES Annual Financial Status Report (filed March 30, 2021).

Alternative Compliance Payments received, and interest income to fund the 2022 Clean Energy Standard compliance period of the Renewable Energy Standard, and is authorized to fund the 2022 Clean Energy Standard compliance period of the Zero-Emission Credit program through the Zero Emission Credit adder, as discussed in the body of this Order.

3. The New York State Energy Research and Development Authority shall continue to file quarterly reports containing itemized expenses associated with the administration of the Renewable Energy Standard and Zero-Emission Credit programs.

4. 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.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary