STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 22, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, concurring
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 FINANCIAL BACKSTOP COLLECTION MECHANISM

(Issued and Effective June 23, 2023)

BY THE COMMISSION:

INTRODUCTION

On July 1, 2021, the New York State Energy Research and Development Authority (NYSERDA) filed a petition seeking approval of its Clean Energy Standard (CES) financial backstop collection process (Petition). The Public Service Commission (Commission) established the CES to increase the State's renewable energy supply and preserve New York's existing zero-emissions generation. NYSERDA's ability to make timely payments to eligible generators under the program is dependent upon the collection of the necessary funds in advance of the payment due date. Total procurement expenditures in any given cycle are, however, not known beforehand. The Commission therefore adopted the concept of a financial backstop whereby NYSERDA would be able to collect CES program shortfalls from the electric distribution companies (EDCs),[1] and directed NYSERDA, in consultation with Department of Public Service Staff (Staff), to file a proposal for implementing such a financial backstop for Commission consideration.[2]

A well-designed financial backstop will be critical to ensuring that NYSERDA has the financial means to address the expansion of the State's clean energy targets. In this Order, the Commission approves the financial backstop collection process proposed in the Petition, with modifications. NYSERDA is authorized to utilize the process approved in this Order to collect funds to remediate the accumulated Zero-Emissions Credit (ZEC) deficit and to address future projected cash flow deficits by providing appropriate documentation for the Commission to review and render a determination.

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-emission generation.[3] The Commission divided the CES into a Renewable Energy Standard (RES) and ZEC requirement. The RES includes a Tier 1 component that obligates each load-serving entity (LSE) to serve its

[1] The EDCs include Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (O&R), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), Central Hudson Gas & Electric Corporation (Central Hudson), and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid).

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

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

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 Alternative Compliance Payments (ACPs).[4] 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 these programs by purchasing RECs and ZECs from qualifying generators during each compliance year.

In 2018, the Commission established an Offshore Wind Standard by requiring LSEs to support the procurement of offshore wind resources. Once an offshore wind generating facility commences operation, NYSERDA will purchase Offshore Wind Renewable Energy Certificates (ORECs) from these generators during each compliance year. 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 ORECs from NYSERDA.[5]

On October 15, 2020, the Commission formally adopted the clean energy deployment targets of the Climate Leadership and Community Protection Act (CLCPA).[6] In the CES Modification Order, the Commission aligned the RES to the clean energy

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[4] 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. Unlike the other CES tiers that recover program costs through LSEs, the costs of the Tier 2 Maintenance awards are recovered through electric distribution companies.

[5] 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).

[6] 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.

mandates included in the CLCPA, including the goal that at least 70% of statewide load be served by renewable energy resources by 2030, and that at least 9,000 megawatts (MW) of offshore wind be procured by 2035.[7] 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. Both of these programs are structured like the ZEC program, where NYSERDA purchases Tier 2 and Tier 4 RECs from eligible resources during each compliance year, with each LSE purchasing these RECs from NYSERDA in proportion to the load they serve.

NYSERDA’s ability to make timely payments to eligible generators under these programs is dependent upon the collection of the necessary funds in advance of the payment due date. The CES Framework Order explained that total procurement expenditures in any given cycle will not be known beforehand, and although the financial risk to NYSERDA will be relatively small, it may nevertheless require a guarantor. The Commission therefore determined that the EDCs are best situated to provide this service through cost recovery from their ratepayers, and therefore should serve as a financial backstop to ensure NYSERDA has sufficient funds to make timely payments to eligible generators.

In the CES Administration Order, the Commission directed NYSERDA, in consultation with Staff, to file a financial backstop process proposal for Commission

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

consideration.[8] The Commission explained that the mechanism must give NYSERDA sufficient flexibility to timely manage its finances with sufficient transparency and predictability for other stakeholders, and should include an efficient true-up method so that large under- or over-collections can be avoided to the extent possible. Further, the Commission noted that it expects that both the New York Power Authority's (NYPA) and the Long Island Power Authority's (LIPA) previously announced participation in the CES program will include participation in a backstop mechanism to ensure a full and equitable implementation of this vital statewide policy. As the Commission explained, the financial backstop would be invoked if projected aggregate shortfalls exceed the amounts that could be covered short-term from CEF cash balances, as further detailed below. In the interim, the Commission granted NYSERDA on-going approval to use any cash balances in the Clean Energy Fund (CEF) to meet REC or ZEC program cash shortages.

In the CES Modification Order, the Commission directed that the financial backstop mechanism address the financial risk of revenue shortfalls for all programs authorized under the CES. The Commission also identified a cumulative ZEC deficit totaling approximately $34 million from compliance years 2017 through 2019, due mainly to NYPA's contractual terms with existing customers which could not be unilaterally amended to include a ZEC charge. The Commission directed the EDCs to collaborate with NYSERDA, Staff, and other interested parties to develop a backstop mechanism to address the NYPA ZEC deficit, and to file tariffs including such a mechanism. The Commission also reiterated that the mechanism must give NYSERDA sufficient flexibility to manage its finances and that large under- or

[8] CES Administration Order, pp. 20-21.

over-collections should be avoided to the extent possible, and recommended that an efficient true up method be considered to achieve this goal.

On April 20, 2023, the Commission adopted the CES Tier 1 Transition Order which will transition the CES Tier 1 RES compliance obligation for LSEs away from the current predetermined percentage-based approach toward a load share approach similar to other existing LSE obligations under the CES.[9] Therefore, beginning in 2025, NYSERDA will only be collecting its Tier 1 contractual requirements for a compliance year plus any Commission-approved administrative adder. Subsequent to year end, there will be a true up process to reconcile any differences between estimated NYSERDA REC costs and volumes with actual costs and volumes. Although there may be a variation between the forecasted Tier 1 price and the actual price NYSERDA pays for the Tier 1 RECs, NYSERDA was directed to review the Tier 1 cost estimate forecast with Staff to ensure concurrence, in an effort to minimize the variation between the estimated and the actual cost that would be used in the annual Tier 1 REC reconciliation.

THE PETITION

NYSERDA proposes that any available CEF cash balances continue to fund, in the short-term, any CES shortfalls, for as long as such cash balances are available based on NYSERDA’s CEF cash flow projections. NYSERDA explains that it used CEF cash balances to cover ZEC program deficits in compliance years 2017 through 2019, but, given the scale and ongoing nature of this deficit, intends to seek recovery through the financial backstop

[9] Case 15-E-0302, Order Modifying Clean Energy Standard Tier 1 Obligations (issued April 20, 2023) (CES Tier 1 Transition Order).

mechanism for the cumulative ZEC program deficit of $28,515,346 for the first three compliance years ending March 31, 2020. In future compliance years, it will seek recovery of any ZEC program deficits at the end of each compliance year.

For any future Tier 1 program deficits, NYERDA proposes that the backstop mechanism be initiated if NYSERDA's forecast for the Tier 1 program demonstrates that it may not be able to satisfy contractual payment obligations to generators with either (a) use of CEF cash balances in the short-term or (b) projected revenues from REC sales and ACPs.[10] NYSERDA explains that, on a calendar year basis, it prepares and files an Annual Financial Status Report with the Commission. The report summarizes annual and cumulative revenues, expenses, and any surplus or deficits, as applicable. If the Annual Financial Status Report shows a surplus, NYSERDA proposes that it be carried forward to the following year.

If the conditions triggering the financial backstop are met, NYSERDA proposes to file with the Commission a summary explaining the actual and/or forecasted deficit and the amount allocable to each EDC (including NYPA and LIPA) based on recent load data provided by Staff. The Petition suggests that such filing be reviewed by Staff for compliance with any requirements established by the Commission, including ensuring that NYSERDA's request is sufficiently documented and that any forecast assumptions are reasonable. NYSERDA recommends that the review be completed within 30 days of filing, after which Staff would file its determination with the Commission and send directly to NYSERDA and each EDC.

[10] Beginning with the 2025 program year, ACP payments will no longer exist as a revenue source as the Commission has modified the way Tier 1 obligations are calculated, doing away with ACPs. See, Tier 1 Transition Order.

If approved, NYSERDA proposes that the EDCs commence financial backstop collections as soon as practicable, and that such collections occur over a period not to exceed twelve billing periods. Additionally, NYSERDA asks that EDCs make payments to NYSERDA at least quarterly. According to NYSERDA, EDCs should not be responsible for payments to NYSERDA until the funds have been collected from customers. NYSERDA suggests that each EDC be responsible for truing up its volumetric collections and making any tariff or other required filings. NYSERDA further recommends reconciling any backstop collections received against program costs and indicate the resulting cash balance in the Annual Financial Status Report.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) was published in the State Register on July 28, 2021 [SAPA No. 15-E-0302SP47]. The time for submission of comments pursuant to the Notice expired on September 27, 2021. Comments were received from the City of New York (City), the Joint Utilities,[11] and NYPA. The comments are summarized and addressed below.

COMMENTS

The City recommends modifying NYSERDA's proposal to: (1) allow the backstop mechanism to be triggered only when there is an actual deficit; (2) require NYSERDA to make a filing to the Commission regarding disposition of any surpluses that accumulate for three years; (3) provide an opportunity for comment by interested parties any time NYSERDA seeks to activate the backstop mechanism; and (4) provide for Commission

[11] The Joint Utilities include Central Hudson, Con Edison, NYSEG, National Grid, Orange and Rockland, and RG&E.

determinations as to whether the backstop mechanism should be activated, and if so, the length of the customer collection period associated with such activation and any rate or tariff changes required to effectuate the collections.

The Joint Utilities maintain that NYSERDA's proposed timing and scope for review of future backstop funding requests lacks transparency, as well as standards and criteria needed for the Commission to effectively evaluate the backstop funding request. The Joint Utilities argue that a financial backstop should be triggered no more than once a year and be subject to a cap, as determined by the Commission. If needed, the Joint Utilities suggest that NYSERDA should file a compliance filing forecasting the expected expenditures that exceed all the sources of cash available to NYSERDA, including unspent cash balances of NYSERDA-administered ratepayer collected funds,[12] ACP funds, and outside sources of capital. In addition, they submit that the financial backstop could be triggered 45 days after notice of filing, unless the Commission determines to exercise review of NYSERDA's request on its own motion or in response to public comment. The Joint Utilities also state that the financial backstop may not be necessary to cover the NYPA ZEC deficit if NYSERDA cash balances are utilized as a temporary funding mechanism.

NYPA states that it is not an EDC, and as an LSE it provides electric supply to its customers via contracts and NYPA-issued tariffs. As such, its power contracts cannot be

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[12] Case 14-M-0094, Clean Energy Fund, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) (CEF Framework Order). The CEF Framework Order authorized a Bill-as-you-Go (BAYG) structure whereby ratepayer funds are held at each of the utilities and transferred to NYSERDA as monies are necessary to meet near-term obligations. As required by the CEF Framework Order, monies held by the utilities accrue carrying charges held for ratepayer benefit.

unilaterally modified by NYPA alone in response to Commission directives. Consequently, NYPA argues that it can neither pass along nor collect charges associated with any financial backstop from its customers. NYPA is also concerned that NYSERDA's proposal could cause NYPA's commodity customers to pay the backstop charge twice, once through their EDC and again through NYPA. NYPA argues that the financial backstop should instead be assessed against all delivery customers since it will simplify the administration of the financial backstop collection process and eliminate the possibility of double charging NYPA supply customers.

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 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."

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

[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).

DISCUSSION

The Commission determined in the CES Administration Order that EDCs shall serve as a financial backstop to enable NYSERDA to maintain sufficient cash flow to administer the CES.[16] The EDCs are best situated to provide this service through cost recovery from their ratepayers, and therefore should serve as a financial backstop to ensure NYSERDA has sufficient funds to make timely payments to eligible generators. A well-designed financial backstop will be critical to ensuring that NYSERDA not only has the financial means to address the expansion of the renewable energy targets pursuant to the CLCPA and the resulting increase in renewable energy programs and power contracts that it administers, but also sustain the ZEC Program. The number of renewable energy projects actively managed by NYSERDA in 2025 is expected to exceed 170.[17]

The invocation of the financial backstop is expected to be rare, or, in cases like the NYPA current ZEC deficit, a result of a legal impediment that will be resolved over time. NYPA has indicated its intention to meet the CLCPA renewable energy targets through independent efforts, although it must contractually negotiate such purchases directly with its customers. While NYPA works to renegotiate its existing contracts and reduce the quantity of "uncollectible" expenses, NYSERDA shall be allowed to collect from the EDCs the current accumulated ZEC payment deficit of $33,295,904 through year five of the ZEC program ending March 31, 2022.[18] This amount includes the original $28,515,346 deficit included in the Petition

[16] CES Administration Order, p. 20.

[17] Case 15-E-0302, Order Approving 2022 Clean Energy Standard Administrative Budget (issued December 16, 2021), p. 7.

[18] Case 15-E-0302, Combined CES Annual Financial Status and ZEC Summary Report (filed March 31, 2023).

(through March 31, 2020), plus $4,780,558 in additional accumulated deficits from April 1, 2019, through March 31, 2022.[19]

In addition to utilizing the backstop mechanism to cure the existing ZEC deficit, NYSERDA requests permission to invoke the backstop mechanism if NYSERDA's forecast for the Tier 1 program demonstrates that it may not be able to satisfy contractual obligations to make payments to generators using (a) short-term CEF cash balances or (b) projected revenues from REC sales and ACPs. NYSERDA's proposal recommends that when the backstop collection request is filed, Staff's review must be completed within 30 days of the filing. The Joint Utilities and the City express concern that such a process does not provide for stakeholder input or review. The City further argues that invoking the financial backstop should require Commission action for each activation. Moreover, the City asserts that Commission action would be necessary to establish the length of the customer collections period associated with each activation, as well as direct any rate or tariff changes required to effectuate the collections. The Joint Utilities also argue that the Commission should have the option to evaluate the request if warranted. The Commission agrees with both parties regarding the necessity of Commission review and therefore adopts a backstop review process that requires Commission approval for each future invocation of the backstop mechanism.

Therefore, NYSERDA shall be required to make a filing for Commission review and determination before such backstop

[19] The ZEC deficit of $28,515,346 included in NYSERDA's Petition and the subsequent additional deficits of $4,780,558 are shown in the Combined CES Annual Financial Status and ZEC Summary report filed by NYSERDA on March 31, 2023. The $34.0 million figure referenced in the CES Modification Order and referenced above was an interim value of the deficit identified in 2020.

collection can be initiated. The Commission determines that such filing shall include, at a minimum, a forecast of any program shortfall that looks forward two years. The forecast shall list, for each program backstop funding is requested, the current cash available, projected cash inflows, and projected cash outflows for the two year period involved. The filing shall also include, as the Joint Utilities suggest, a forecast of the expected expenditures that exceed all the sources of cash available to NYSERDA, including unspent cash balances of ratepayer collected funds, ACP funds, and outside sources of capital. These sources of funds include those available in both the CEF as well as the CES.

The information required to be submitted as part of any backstop invocation request will allow the Commission to determine, as the Joint Utilities suggest, whether the financial backstop is actually necessary to cover projected CES program deficits. The City's suggestion that only actual deficits, and not forecasts, should trigger the financial backstop would be too limiting and potentially expose NYSERDA to cash flow issues. However, given that this Order requires NYSERDA to petition the Commission for future invocations of the backstop mechanism, including to address forecasted deficits, the City and other interested stakeholders will have the opportunity to comment on the specifics of future backstop filings, including the adequacy of NYSERDA's forecasts.

The Joint Utilities recommend that the backstop mechanism be invoked only once per year and be subject to a Commission-established cap to decrease complexity and increase transparency. Given NYSERDA's knowledge of its program needs, the Commission believes limiting the invocation of the financial backstop mechanism to once per year is reasonable. The financial backstop mechanism should be a rare event and invoking it no more than once per year should be sufficient. Imposition of a cap is not necessary since the Commission will be reviewing NYSERDA's request, with input from stakeholders, and analyzing any cash flow estimates in its review to ensure they are reasonable. For these reasons, the recommendation to impose a cap is rejected.

Regarding the length of the collection period, NYSERDA proposes a period of no longer than 12 billing cycles. The City questions the rationale behind this recommendation, stating that there may be other factors involved such as commodity price spikes which may make it necessary to increase the length of the collection period. In accordance with each EDC's tariff, the cost recovery associated with backstop charges will be conducted over a period of one-to-twelve months.

The City's suggestion that NYSERDA make a filing to the Commission regarding disposition of any surpluses that accumulate for three years is reasonable, although such information is already included in various reports filed with the Commission or Staff. For example, if any cumulative ACP surplus is more than 25 percent of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year, as part of its annual filing NYSERDA must propose a use for the excess portion (i.e., amount above 25 percent) that is in the ratepayers' interest.[20] Therefore, we will not require any new filing as suggested.

In addition to directing development of a backstop mechanism, the CES Administration Order highlighted the potential benefits of an efficient true up method so that large over- or under-collections could be avoided to the extent

[20] Case 15-E-0302, Order Approving Phase 2 Implementation Plan (issued November 17, 2017), pp. 19-20.

possible.[21] This would help to mitigate the financial shortfalls due to uncollectible expenses. The Commission therefore directs NYSERDA to propose a true-up process to enable program true-ups to be remedied in an efficient and straightforward manner such that large year-to-year deficits do not accumulate in the manner similar to the aforementioned ZEC deficit. This proposed process shall be filed within 120 days of the effective date of this Order.

Cost Recovery

Each EDC has approved delivery surcharges that allow for the recovery of costs associated with the financial backstop. As explained in the Appendix, each EDC's delivery surcharge has a distinct name, including the System Benefit Charge (SBC) for NYSEG and RG&E; the Clean Energy Standard Delivery Charge (CESD) for Con Edison, National Grid, and Orange & Rockland; the Clean Energy Standard Surcharge (CESS) for Central Hudson; all of which became effective on April 1, 2017. According to the surcharge tariff language, the "Backstop Costs" invoiced by NYSERDA and recovered by each EDC will be collected as part of a designated charge and the associated line item on a customer's utility bill under either the SBC, CESD, or CESS surcharge mechanism. The EDCs shall recover backstop costs from all customers, including NYPA customers that receive delivery service from the EDCs. The ZEC deficit collections undertaken in accordance with this Order shall be allocated across the EDCs and LIPA based on a MWh load ratio share. This allocation methodology is similar to the methodology authorized by the Commission to recover costs associated with ZECs and other CES Tiers. The pro-rata share allocated to each EDC and LIPA is

[21] CES Administration Order, p. 21.

shown below and shall be collected over a period of no more than 12 months, consistent with existing utility tariffs.

ZEC Deficit Amount Allocations

	2022 Annual Delivery Service Load (MWh)	MWh Load Ratio Share	Pro-Rate Share
Central Hudson	5,038,524	3.7%	$1,215,893
Con Edison	53,290,877	38.6%	$12,860,119
NYSEG	16,170,214	11.7%	$3,902,185
National Grid	33,248,701	24.1%	$8,023,555
O&R	4,211,186	3.1%	$1,016,241
RG&E	7,271,949	5.3%	$1,754,862
LIPA	18,743,000	13.6%	$4,523,048
Total	137,974,451	100.0%	$33,295,904

The EDCs shall commence backstop collections from customers, for the allocated ZEC deficit amounts described above, beginning October 1, 2023, consistent with the companies' existing tariffs. NYSERDA shall invoice the EDCs quarterly, in four equal amounts, commencing December 15, 2023, with payments due within 30 days, such that invoiced amounts may be paid with amounts collected from customers through the prior three months, and with backstop costs not collected from the EDCs prior to collections from customers. Consistent with the Commission's CEF Framework Order, the EDCs are directed to apply carrying charges to all cash balances collected and will apply interest charges at the "other customer cost of capital," to be segregated on the books of each utility and used for the benefit of ratepayers.[22] Moreover, NYSERDA shall reflect the accounting associated with these backstop collections in the quarterly and annual CES Financial Status Reports filed with the Commission.

[22] See, CEF Framework Order.

NYSERDA and LIPA should collaborate on the best mechanism to effectuate the payment of CES backstop invoices from NYSERDA. This could include modification to the existing ZEC agreement between NYSERDA and LIPA, or the execution of a new agreement.

Each EDC shall be responsible for truing up its volumetric collections. Annually, the EDCs are authorized to fully reconcile, with carrying charges using the Commission's other customer capital rate, the differences between their NYSERDA invoiced allocated portion of the ZEC deficit amounts and the backstop collections recovered from customers for the period October 1, 2023, through September 30, 2024. Any remaining over/under collections shall be deferred for future ratepayer benefit/collection. In addition, each EDC is directed to file workpapers in this proceeding, in Excel format, detailing the backstop cost recovery on not less than 10 days' notice on January 1, 2025.

NYPA

The Commission has urged both NYPA and LIPA to implement a backstop mechanism to ensure a full and equitable implementation of this vital statewide policy. NYPA states that it is not an EDC, and as an LSE it provides electric supply to its customers via contracts and NYPA-issued tariffs. As such, its power contracts cannot be unilaterally modified by NYPA alone in response to Commission directives. Consequently, NYPA argues that it can neither pass along nor collect charges associated with any financial backstop from its customers. NYPA is also concerned that NYSERDA's proposal could cause NYPA's commodity customers to pay the backstop charge twice, once through their EDC and again through NYPA. NYPA argues that the financial backstop should instead be assessed against all delivery customers since it will simplify the administration of the financial backstop collection process and eliminate potentially double charging NYPA supply customers. Consistent with this proposed approach, the financial backstop mechanism approved herein will be recovered through distribution charges, and will therefore be levied upon NYPA customers through the appropriate EDCs that deliver supply to NYPA's customers.

CONCLUSION

A well-designed financial backstop mechanism is essential to ensure that NYSERDA has the financial means to address the expansion of the State's clean energy targets. The process for backstop collections adopted in this Order, including recovery from utility customers, provides a mechanism to cure the existing ZEC deficit, as well as establishes a procedure for future invocations of the CES financial backstop. Moreover, the proposal regarding a true-up process directed in this Order would further help to prevent large year-to-year CES deficits from accumulating in the future, and would ensure that NYSERDA is able to meet its ongoing payment obligations to generators.

The Commission orders:

1. The New York State Energy Research and Development Authority's financial backstop proposal is approved, with modifications, as discussed in the body of this Order.

2. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid shall, on October 1, 2023, commence Clean Energy Standard backstop collections of its allocated portion of the cumulative Zero-Emissions Credits

deficit of $33,295,904, over a period not to exceed twelve billing periods, as discussed in the body of this Order.

3. The utility companies identified in Ordering Clause No. 2 are directed to reconcile the backstop charges and file workpapers in this proceeding, in Excel format, detailing the cost recovery on not less than 10 days' notice on January 1, 2025, as discussed in the body of this Order.

4. The New York State Energy Research and Development Authority shall invoice the utility companies identified in Ordering Clause No. 2 quarterly, commencing December 15, 2023, as discussed in the body of this Order.

5. The New York State Energy Research and Development Authority shall reflect the accounting associated with these backstop collections in the quarterly and annual Clean Energy Standard Financial Status Reports filed with the Commission in Case 15-E-0302, as discussed in the body of this Order.

6. The New York State Energy Research and Development Authority shall, within 120 days of the effective date of this Order, file a proposed true up process to remedy Clean Energy Standard program deficits in an efficient manner that avoids large year-to-year deficits, as discussed in the body of this Order.

7. 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.

8. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

APPENDIX

FINANCIAL BACKSTOP SURCHARGES

EDC	Surcharge Mechanism	Description
Central Hudson Gas & Electric Corporation	Clean Energy Standard Surcharge	To be determined at a minimum on an annual basis to be effective with the first billing batch in April. Includes a reconciliation of prior period surcharge recoveries (11 months actual, one month forecast) as applicable and an allowance for bad debts.
Consolidated Edison Company of New York, Inc.	Clean Energy Standard Delivery Surcharge	Recovery period is from 1-12 months depending on total size of the costs, and reconciliation performed to account for differences between actual costs and amounts recovered.
Niagara Mohawk Power Corporation d/b/a National Grid	Clean Energy Standard Delivery Surcharge	To be collected in either the next annual rate reconciliation or in an interim adjustment to the surcharge rate. Backstop Costs collected as part of an interim adjustment to the CESD rate may be collected over a period from one month to twelve months.
New York State Electric & Gas Corporation	System Benefit Charge	The rates can be reset for any backstop charges incurred during a recovery period.
Orange and Rockland Utilities, Inc.	Clean Energy Standard Delivery Surcharge	Recovery period is from 1-12 months depending on total size of the costs, and reconciliation performed to account for differences between actual costs and amounts recovered.
Rochester Gas and Electric Corporation	System Benefit Charge	The rates can be reset for any backstop charges incurred during a recovery period.