

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 11, 2015

COMMISSIONER PRESENT:

Audrey Zibelman, Chair

CASE 14-M-0094 - Proceeding on Motion of the Commission to
Consider a Clean Energy Fund.

CASE 10-M-0457 - In the Matter of the System Benefits Charge IV.

CASE 07-M-0548 - Proceeding on Motion of the Commission
Regarding an Energy Efficiency Portfolio
Standard.

CASE 03-E-0188 - Proceeding on Motion of the Commission
Regarding a Retail Renewable Portfolio
Standard.

ORDER EXTENDING CLEAN ENERGY PROGRAMS

(Issued and Effective December 11, 2015)

INTRODUCTION

Clean energy technologies will address fundamental and pressing environmental and energy challenges while creating enormous economic opportunities for New York. And while the clean energy programs authorized in the past have led to significant accomplishments, new strategies are needed to build on this success in a way that meets evolving customer and market needs and transitions away from approaches that rely almost exclusively on ratepayer subsidies. On May 8, 2014, the Commission directed the New York State Energy Research and Development Authority (NYSERDA) to develop a proposal for a comprehensive Clean Energy Fund (CEF) to accomplish that evolution and to ensure that New York's clean energy programs

are coordinated with the comprehensive regulatory reform being undertaken in the Reforming the Energy Vision (REV) proceeding.

NYSERDA, Department of Public Service Staff (Staff), stakeholders, and others have put substantial work into developing, reviewing, and analyzing the CEF proposal. The proposal, and the many detailed comments submitted in response, require serious and extensive deliberation by the Commission. Given its complex nature, this analysis, with the support of Staff, is currently ongoing. During the pendency of a Commission decision on the CEF, Commission authorization of several NYSERDA programs will expire at the end of the year if no action is taken. Allowing those programs to expire before the CEF is in place would cause substantial market disruption and cause harm to New York's clean energy markets and businesses that support them.

For that reason, this Order authorizes NYSERDA to continue to implement the Energy Efficiency Portfolio Standard (EEPS) and Renewable Portfolio Standard (RPS) Customer-Sited Tier (CST) programs while the Commission completes its review of the CEF proposal and grants a two month extension, to February 29, 2016, to each operational program.

BACKGROUND

NYSERDA currently operates a number of programs funded from ratepayer collections based on Commission authorization, including EEPS, RPS, NY-Sun, New York Green Bank, and the Technology and Market Development (T&MD) program. Through these programs, New York has made progress towards building a cleaner energy industry and setting a foundation for the deployment of clean energy technology.

RPS was first adopted in September 2004 to support the deployment of renewable energy generation.¹ RPS supports large-scale generation through a Main Tier, with projects selected through regular solicitations, as well as small-scale generation through the CST, which includes incentives, solicitations, and other support mechanisms. Solar photovoltaic (PV) generation was separated from the CST in the April 2014 order establishing the NY-Sun program.² The RPS Main Tier and CST programs were authorized to operate through December 31, 2015.³

EEPS was initiated in 2008 to give dedicated support to energy efficiency technologies.⁴ Through EEPS, both NYSERDA and investor-owned electric and gas utilities were required to submit electric energy efficiency program proposals. EEPS was authorized to operate through December 31, 2015.⁵ However, utility energy efficiency programs beyond 2015 were authorized

¹ Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004).

² Case 03-E-0188, supra, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs (issued April 24, 2014) (NY-Sun Order).

³ Case 03-E-0188, supra, Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program (issued April 2, 2010); Order Establishing New RPS Goal and Resolving Main Tier Issues (issued January 8, 2010).

⁴ Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008).

⁵ Case 07-M-0548, supra, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011).

in 2015 as part of the REV Framework Order and the Gas Energy Efficiency Order.⁶

In the May 8, 2014 Order Commencing the Clean Energy Fund (CEF) Proceeding, the Commission acknowledged the successes of existing clean energy programs and the need for continuation of programs beyond 2015 but also articulated the need for fundamental changes to the State's approach to clean energy in pursuit of New York's ambitious clean energy goals, as detailed in the State Energy Plan. Consistent with the overall evolution of New York's energy system within the REV proceeding, clean energy programs would transition to become more market-focused, spurring clean energy investments in New York to reach sufficient scale to meet those goals, subject to a transparent upper limit on ratepayer collections.

Consistent with the Commission's direction, NYSERDA filed a Clean Energy Fund Proposal on September 23, 2014. On November 6, 2014, a Notice Soliciting Comments was issued requiring NYSERDA to submit a Clean Energy Fund Information Supplement and directing substantial public outreach. Following that outreach, NYSERDA filed the CEF Information Supplement (proposal) on June 25, 2015, intended to supplement and replace the original CEF proposal.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking related to the

⁶ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) (REV Framework Order); Case 15-M-0252, In the Matter of Utility Energy Efficiency Programs, Order Authorizing Utility-Administered Gas Energy Efficiency Portfolios (issued June 19, 2015) (Gas Energy Efficiency Order).

Clean Energy Fund was published in the State Register on October 15, 2014 [SAPA No. 14-M-0094SP2].⁷ The time for submission of comments pursuant to the Notice expired on December 1, 2014. On November 6, 2014, the Secretary issued a notice soliciting comments on the Clean Energy Fund. Several notices were issued extending comment deadlines. Pursuant to a notice issued on July 15, 2015, initial comments on the Clean Energy Fund were due by August 14, 2015, with reply comments due by August 28, 2015. Comments relevant to the relief granted in this order are addressed below. Comments related to other aspects of the CEF proposal will be addressed in future orders as appropriate.

Many parties submitting comments, including the Advanced Energy Economy Institute, Alliance for Clean Energy New York, American Council of Engineering, the Association for Energy Affordability, Inc., the Clean Energy Organizations Collaborative, Citizen's Environmental Coalition, City of New York, Clearwater, Efficiency First NY, Energy Efficiency for All, Energy Technology Savings, Ensave, the National Fuel Cell Research Center, the Natural Resources Defense Council, the NY Farm Bureau, New England Clean Energy Council, Northeast Clean Heat and Power Initiative the Northeast Energy Efficiency Partnership, and Senator Catherine Young, encouraged the continuation of some or all current clean energy programs and emphasized the importance of a gradual transition. No comments were submitted recommending the elimination of all or most clean energy programs. Authorizing a short extension of current clean energy programs while continuing to evaluate the CEF proposal as a whole would be consistent with recommendations by commenters.

⁷ Several notices related to the Clean Energy Fund were published pursuant to SAPA in the State Register on October 15, 2015, in contemplation of the possibility that program extensions would be needed or that a phased decision would be appropriate.

DISCUSSION AND CONCLUSION

Consideration of the CEF proposal, and the extensive comments received in response to that proposal, requires substantial analysis and careful consideration. The CEF proposal represents a major shift in the State's clean energy strategy premised upon a voluminous and detailed filing discussing the shift and hundreds of pages of comments received from more than one hundred organizations. The new approach will impact collections levels, creation of business and employment opportunities, availability of clean energy technologies, integration of new technologies into the energy system, and environmental improvements and reductions to pollutant emissions. It would be inappropriate to rush such a complex decision on these important matters merely because the end of the year deadline is imminent. At the same time, allowing current clean energy programs to lapse before authorizing a replacement would cause substantial market disruption.

A number of clean energy programs can continue to operate in 2016 without further action. This includes the utility energy efficiency programs, for which budgets and targets were established in the REV Framework Order and the Gas Energy Efficiency Order;⁸ the Technology and Market Development (T&MD) program, which has authorization to operate through the end of 2016;⁹ NY-Sun, which received approval to operate through

⁸ Case 14-M-0101, supra, REV Framework Order (issued February 26, 2015); Case 15-M-0252, supra, Gas Energy Efficiency Order (issued June 19, 2015).

⁹ Case 10-M-0457, In the Matter of the System Benefits Charge IV, Order Continuing the System Benefits Charge and Approving an Operating Plan for a Technology and Market Development Portfolio of System Benefits Charge Funded Programs (issued October 24, 2011).

2023;¹⁰ and NYGB, which is not time-constrained.¹¹ Collections to fund the utility energy efficiency programs and the T&MD program have already been authorized. NYGB currently has substantial uncommitted funds, including the 2015 allocation of \$150 million, and therefore will be able to continue operations while the CEF proposal is considered.¹² Uncommitted funds also remain available for NY-Sun and, as previously authorized, NYSERDA can maintain NY-Sun program activity by using existing, uncommitted RPS funds or borrowing from other program sources.¹³

However, authorization for EEPS and the RPS Customer-Sited Tier programs, other than the solar PV programs subsumed by NY-Sun, expires on December 31, 2015.¹⁴ Absent action here, NYSERDA could not continue working with ratepayers and developers to support clean energy technology deployment. Allowing these programs to lapse before the CEF is approved would result in substantial market disruption, including harming the ability of small businesses to continue operating; creating customer confusion; and decreasing the confidence of clean energy technology developers in New York's support for clean energy programs. For that reason, NYSERDA is authorized to

¹⁰ Case 03-E-0188, supra, NY-Sun Order (issued April 24, 2014).

¹¹ Case 13-M-0412, Petition of New York State Energy Research and Development Authority to Provide Initial Capitalization for the New York Green Bank, Order Establishing New York Green Bank and Providing Initial Capitalization (issued December 19, 2013).

¹² Case 13-M-0412, supra, NY Green Bank Quarterly Report No. 5 (filed November 12, 2015).

¹³ Case 03-E-0188, supra, NY-Sun Order (issued April 24, 2014).

¹⁴ The REV Framework Order already authorized the continuation of the RPS Main Tier through 2016 by directing an additional solicitation. Case 14-M-0101, supra, REV Framework Order (issued February 26, 2015). To the extent necessary, a future order on the CEF proposal will address funding for that solicitation.

continue operating EEPS and the RPS CST through February 29, 2016 (the Extension Period).

In order to ensure that these programs are able to continue operating during the Extension Period, NYSERDA must be authorized to draw from appropriate funding sources. NYSERDA's proposal projects \$79.2M in uncommitted EEPS 2 funds; \$46.5M in uncommitted EEPS 1 funds; and \$74M in uncommitted SBC3 funds as of December 31, 2015.¹⁵ By requiring electric surcharges to support electric programs and gas surcharges to support gas programs, using ratepayer funds to cross-subsidize EEPS programs has been discouraged. As explained in the January 2001 SBC Order, however, the System Benefits Charge (SBC) was originally designed to encourage energy efficiency, promote a cleaner environment, and reduce the financial burden of energy costs on low-income customers. That Order gave NYSERDA authority to include non-electric measures in the SBC program, in order to offer more comprehensive packages to customers.¹⁶ Those principles are extended by authorizing NYSERDA to utilize uncommitted EEPS 2 electric funds to support EEPS 2 electric program and EEPS 2 gas funds to support EEPS 2 gas program operations during the Extension Period. To the extent EEPS 2 Gas funds are exhausted, NYSERDA is also authorized to reallocate EEPS 1 Gas funds and, lastly, SBC3 funds to support non-electric measures in order to maintain operations of current EEPS 2 Gas programs during this extension.

With regard to RPS, NYSERDA's proposal projects uncommitted funds for the RPS program as a whole at \$844 million

¹⁵ Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, NYSERDA CEF Information Supplement (filed June 25, 2015).

¹⁶ Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs (issued January 26, 2001) (January 2001 SBC Order).

as of December 31, 2015. NYSERDA, however, anticipates that funds designated for the CST will not be sufficient to support two additional months of operations. If additional funds are needed to maintain current program operations once CST funds are exhausted, NYSERDA is authorized to transfer uncommitted funds from the RPS Main Tier to the CST.

NYSERDA shall document any reallocation of EEPS electric or EEPS gas funds between programs, reallocations of SBC3 funds, or reallocations of RPS Main Tier funds through a compliance filing identifying the amount of funds being transferred, the affected programs, and corresponding revisions to energy savings targets, within 5 days of projected need. EEPS transfers during the Extension Period shall not be subject to the restriction described in the December 2013 Order limiting reallocations between customer sectors to 10% of the total annual approved program budgets.¹⁷

The Extension Period affords the time necessary to fully assess the CEF proposal and stakeholder comments without opening a gap in the State's support of clean energy programs. Continuous support for clean energy technology will help ensure that the CEF can reach its goal of spurring private investment and driving clean energy markets in New York State to the scale needed to meet the State's clean energy goals and support the evolution of the energy system in REV.

It is ordered:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to continue to operate the Energy Efficiency Portfolio Standard (EEPS) and Renewable

¹⁷ Case 07-M-0548, supra, Order Approving EEPS Program Changes (issued December 26, 2013).

Portfolio Standard (RPS) Customer-Sited Tier programs through February 29, 2016.

2. NYSERDA is authorized to fund the operation of RPS Customer-Sited Tier programs using uncommitted RPS funds.

3. NYSERDA is authorized to fund the operation of EEPS electric programs using uncommitted EEPS 2 electric funds.

4. NYSERDA is authorized to fund the operation of EEPS gas programs using uncommitted EEPS 2 or EEPS 1 gas funds. To the extent that insufficient uncommitted gas funds exist, NYSERDA is authorized to reallocate uncommitted Systems Benefit Charge (SBC3) funds to EEPS 2 gas programs.

5. NYSERDA transfers of EEPS funds among programs shall not be subject to a restriction on reallocations between customer sectors.

6. NYSERDA shall document any reallocation of EEPS electric or EEPS gas funds between programs, reallocations of EEPS 1 gas funds, reallocations of SBC3 funds, or reallocations of RPS Main Tier funds through a compliance filing identifying the amount of funds being transferred, the affected programs, and corresponding revisions to energy savings targets, within 5 days of projected need.

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 one day prior to the affected deadline.

8. These proceedings are continued.

(SIGNED)

Commissioner