



August 24, 2020

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard – Comments of Multiple Intervenors

Dear Secretary Phillips:

Pursuant to the Notice published in the June 24, 2020 edition of the *New York State Register* (I.D. No. PSC-25-20-00019-P), Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments on the Petition Regarding Clean Energy Standard – Clean Energy Resources Development and Incentives Program (“Petition”), filed by the New York State Energy Research and Development Authority (“NYSERDA”) on June 5, 2020 in the above-referenced proceeding.

NYSERDA submitted the Petition pursuant Article 8 of the Accelerated Renewable Energy Growth and Community Benefit Act (“Act”). (Petition at 1.) The Act, in relevant part, directs NYSEERDA to establish a Build-Ready Program to enable “the siting and development of major renewable energy facilities at appropriate locations.”¹ The Act prescribes a process for doing so, directing NYSEERDA to identify sites suitable for renewable energy development, giving priority to brownfields and other previously developed sites;² acquire the rights necessary to develop such sites;³ prepare such sites for construction;⁴ and, finally, competitively auction the build-ready sites to renewable developers.⁵ NYSEERDA is directed to procure the services of consultants to assist

¹ Pub. Auth. Law § 1902.

² *Id.* at §§ 1902(1)(a) and (b).

³ *Id.* at § 1902(2).

⁴ *Id.* at § 1902(4).

⁵ *Id.* at § 1902(5).

with this process.⁶ NYSERDA may offer incentives to developers through a competitive process pursuant to its administration of the Clean Energy Standard (“CES”).⁷ NYSERDA may also request funding for the Build-Ready Program,⁸ but in doing so must “consider the ability to recoup funds allocated or spent in furtherance of” the Build-Ready Program.⁹

In some respects, the Petition tracks the requirements of the Act closely. NYSERDA would survey the State for sites, focusing on “the re-use of previously developed and otherwise underutilized sites for renewable facilities,” but not ruling out greenfield sites. (*Id.* at 3, 5.) NYSERDA would acquire the real property interest in sites, develop such sites by acquiring the necessary permits, regulatory approvals, and other rights, and then auction the sites to renewable energy developers. (*Id.* at 3-4, 6.) NYSERDA proposes to offer successful bidders a long-term Tier 1 Renewable Energy Credit (“REC”) contract. (*Id.* at 7.) Proceeds from the auctions would be recycled to develop new sites, with NYSERDA expecting to realize positive returns on its investments. (*Id.* at 4, 9.) NYSERDA requests \$50 million in preexisting Clean Energy Fund (“CEF”) cash balances collected from customers to fund the initial program years, expecting revenues from the auctions to cover any additional expenses. (*Id.* at 9-10.) NYSERDA acknowledges that it has little experience on the developer-side of renewable energy deployment. (*Id.* at 4.) Thus, the bulk of its request to use \$50 million of customer funds is to hire outside consultants. (*Id.* at 9.) If NYSERDA realizes a shortfall, and the CEF balances would need to be restored, NYSERDA proposes to invoke the utility backstop mechanism and collect even more customer funds to cover its expenses.¹⁰ (*Id.* at 9-10.) If NYSERDA realizes a surplus from its activities, NYSERDA proposes to retain the surplus for future customer benefit (as opposed to returning said surplus to customers). (*Id.* at 10.)

Multiple Intervenors understands that much of the Build-Ready Program design is prescribed by the Act, and thus there is no opportunity for the Commission to modify certain aspects of the Petition. Nevertheless, there is plenty of room to shape the Build-Ready Program to the benefit of customers that fund its implementation and remain consistent with the Act. Multiple Intervenors’ Comments focus on only those aspects of the Petition. Multiple Intervenors has concerns about portions of the Petition that go beyond the requirements of the Act or could be inconsistent with the Act to the detriment of customers, and supports those aspects of the Petition that appropriately balance policy objectives with customer interests. Fundamentally, Multiple Intervenors’ recommendations herein seek to make the Build-Ready Program as cost-effective as possible, minimizing its financial impacts on increasingly over-burdened customers.

⁶ *Id.* at § 1902(7).

⁷ *Id.* at § 1902(10).

⁸ *Id.* at § 1904.

⁹ *Id.* at § 1902(9).

¹⁰ See Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 16, 2016).

The most concerning aspect of the Petition is NYSEERDA's REC contract proposal. NYSEERDA proposes to offer successful bidders of build-ready sites Tier 1 REC contracts. (*Id.* at 7.) NYSEERDA "expects" that such REC offerings would occur separately from the annual Tier 1 solicitation, and that bidders would offer a bid for RECs with their bid for the build-ready sites. (*Id.*) Other than using the same contractual provisions and bid evaluation criteria as Tier 1 solicitations, NYSEERDA offers no further details concerning the implementation of this proposal. (*Id.*) Such lack of details is concerning, as merging REC solicitations with the Build-Ready Program can create additional costs for customers, as well as contravening the Act's requirement that any developer incentives be offered "through a competitive process."¹¹ For instance, would developers have an incentive to bid artificially high to ensure a successful bid if they can recoup the cost in the form of higher REC prices? Would NYSEERDA accept a higher \$/MWh REC bid so that it is no longer responsible for a brownfield site? Perhaps most importantly: why should a willingness to purchase a site from NYSEERDA enable a developer to avoid the competitive REC procurement process to which all other, similarly situated developers are subject? NYSEERDA has not demonstrated that its proposed REC offering would not entail more costs to customers. Nor has NYSEERDA evidenced that its proposed REC offering is truly competitive, as the Act requires. Multiple Intervenors urges the Commission to ensure that any REC solicitation related to the Build-Ready Program be truly competitive – as the Act requires – to manage customer costs.

How NYSEERDA proposes to treat program surpluses or shortfalls is also concerning. First, NYSEERDA proposes to retain any lifetime surplus for future customer benefit. (*Id.* at 10.) Second, NYSEERDA proposes to invoke the utility backstop mechanism to collect from customers any shortfalls, if it realizes shortfalls despite its "best efforts." (*Id.*) As of March 31, 2020, NYSEERDA reports \$1.36 billion in approved, uncommitted funds collected from customers.¹² In light of this sum, Multiple Intervenors recommends that any surplus funds be returned to customers, rather than retained for future use. Customers already are funding an enormous CEF surplus; excess funds should accrue to customer benefit by being credited back to customers, who then could use the funds as they see fit, thereby helping to stimulate a depressed economy. Similarly, because of the large CEF balance, NYSEERDA should recoup any shortfalls from the CEF, not through incremental collections from customers. Considering the size of the uncommitted balance – \$1.36 billion – NYSEERDA has ample customer funds available for clean energy initiatives without requiring any new customer collections for the foreseeable future. If it approves the Petition, the Commission should ensure that NYSEERDA manages customer funds efficiently and effectively – compliance with the Act should not require any more than the initial funding request of \$50 million.

Finally, the Act requires NYSEERDA to engage in precisely the same activities in which private developers of renewable energy projects engage – selecting and developing sites. (*Id.* at 3, 5.) The Commission's longstanding policy has been to support competition in the electric generation sector, both in ownership and operation of that generation, as well as in developing that

¹¹ Pub. Auth. Law § 1902(10).

¹² Case 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Clean Energy Fund Quarterly Performance Report through March 31, 2020 (filed June 1, 2020) at 11.

generation.¹³ Such a policy is grounded on lowering costs to consumers of electricity and on equitably shifting the risk of investment decisions onto developers that voluntarily choose to assume that risk.¹⁴ As currently framed, NYSERDA's proposal to not rule out greenfield sites or other sites that may be of interest to private developers can clash with the Commission's policy. (*See id.*) Should NYSERDA select sites that private developers might consider or currently are considering, NYSERDA would act as a competitor of the private generation market the Commission seeks to foster and maintain. In doing so, NYSERDA would shift investment risk back to captive customers because NYSERDA would use customer funds to support its site identification and development efforts – with the risk that such investment may not be recouped in full – thereby displacing private investment. (*Id.* at 9-10.) Moreover, such use of captive customer funds would be less efficient than those expended by experienced developers – NYSERDA acknowledges that it has little experience on the developer side of renewable energy (hence the need to rely extensively on outside consultants). (*Id.* at 4.) There is no compelling need or justification for NYSERDA to consider greenfield sites; indeed, the Act mandates that NYSERDA prioritize brownfields and otherwise underutilized sites.¹⁵ Therefore, Multiple Intervenors recommends that the Commission require NYSERDA to limit eligible sites to brownfields so that customer funds are used for renewable energy development that otherwise likely would not have occurred.

Multiple Intervenors does support certain aspects of NYSERDA's Petition. First, NYSERDA proposes to use currently existing CEF cash balances to fund its build-ready activities. (*Id.* at 9-10.) This is consistent with past Multiple Intervenors positions, and is far preferable to any request seeking incremental collections. Customers can scarcely afford another incremental expense layered on top of the multitude of other initiatives captive customers already are required to fund. This is especially true considering the economic devastation of COVID-19. Moreover, this is facially reasonable: to reiterate, NYSERDA has \$1.36 billion in uncommitted funds collected from customers. It is questionable whether any additional collections are needed in light of such a large, unused sum. Indeed, while beyond the scope of responding to the Petition, Multiple Intervenors urges the Commission to consider directing that a portion of unused and uncommitted \$1.36 billion be returned directly to customers via reduced future collections or bill credits.

Second, NYSERDA proposes to establish an apparently self-sustaining program, using revenues from auctions to offset future program expenses. (*Id.*) Such a program design avoids the need to rely on future customer collections, assuming NYSERDA manages the program efficiently and effectively. To that end, Multiple Intervenors requests that the Commission approve the above aspects of the Petition. Additionally, and as a corollary to managing the Build-

¹³ *See, e.g.*, Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) at 96-100.

¹⁴ *See id.* at 30-31 (concluding that: “Competitive providers ... would bear more of the risk of investment decisions, and customers less, than under regulation”).

¹⁵ Pub. Auth. Law § 1902(1)(b).

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Ready Program to avoid a shortfall, Multiple Intervenors requests that the Commission ensure that NYSERDA manages the Build-Ready Program such that it efficiently and effectively uses customer funds to realize a surplus, and to return said surplus to customers, thereby avoiding the need for any additional customer funds to implement the Act.

Multiple Intervenors appreciates this opportunity to provide feedback on the Petition, and respectfully urges the Commission to adopt the recommendations set forth in these Comments.

Respectfully submitted,

MULTIPLE INTERVENORS

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cc: Active Parties (via e-mail)

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