

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 17, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Diane X. Burman, concurring  
James S. Alesi  
Tracey A. Edwards  
John B. Howard

CASE 18-E-0138 - Proceeding on Motion of the Commission  
Regarding Electric Vehicle Supply Equipment and  
Infrastructure.

DECLARATORY RULING REGARDING  
ELECTRIC VEHICLE PRIZE COMPETITIONS

(Issued and Effective December 17, 2020)

BY THE COMMISSION:

INTRODUCTION

On October 23, 2020, the Long Island Power Authority (LIPA) filed a Petition for Declaratory Ruling (the Petition) requesting that the Public Service Commission (Commission) issue a declaratory ruling that certain programs established by the Commission's recent Make-Ready Order<sup>1</sup> and implemented by the New York State Energy Research and Development Authority (NYSERDA) are open to communities located anywhere in New York State, regardless of whether those communities are served by investor-owned utilities or by LIPA.

---

<sup>1</sup> Case 18-E-0138, Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs (issued July 16, 2020) (Make-Ready Order).

As discussed below, the Commission declares that the Environmental Justice Community Clean Vehicles Transformation Prize, the Clean Personal Mobility Prize, and the Clean Medium- and Heavy- Duty Innovation Prize (the Prize Competitions) established by the Make-Ready Order and being implemented by NYSERDA are open to projects located anywhere in the State. Consistent with the cost allocation methodology directed by the Make-Ready Order, projects located outside of the investor-owned utility service territories must be funded incrementally and are not eligible to access the \$85 million in Prize Competition funds established by the Make-Ready Order.

#### THE PETITION

LIPA, as a corporate municipal instrumentality of the State of New York and a political subdivision of the State of New York, requests a declaratory ruling from the Commission that the prize competitions established in the Make-Ready Order are open to projects in communities located anywhere in the State. Though not generally subject to the Commission's jurisdiction, LIPA explains, it supports the Commission's Electric Vehicle (EV) goals and has taken coordinated actions to encourage EV deployment and charging infrastructure in LIPA's service territory.

According to LIPA, the Climate Leadership and Community Protection Act (CLCPA) includes the requirements that all State agencies prioritize greenhouse gas (GHG) emissions reductions in disadvantaged communities and that no less than 35 percent of the overall benefits of spending on clean energy programs benefit disadvantaged communities. LIPA goes on to explain that the Prize Competitions are intended to advance the goals of reducing vehicle emissions, improving access to clean

transportation, and electrifying vehicle fleets in disadvantaged communities.

LIPA urges the Commission to declare that the Prize Competitions are open to projects in communities served by non-jurisdictional electric utilities, such as LIPA. LIPA points out that the Make-Ready Order was silent as to the eligibility of communities not served by electric utilities regulated by the Commission, potentially rendering those communities ineligible by omission. The Commission's objectives to advance the State's transportation electrification goals, expand access to clean transportation, and reduce emissions in disadvantaged communities should be pursued by all communities throughout the State, LIPA argues, without regard to the particular electric service provider or regulatory framework that governs that service. LIPA explains that a coordinated, statewide approach is needed to meet the CLCPA requirements, and that all New Yorkers should share in the benefits of the CLCPA.

Regarding cost sharing, LIPA explains that eligibility and participation of communities outside investor-owned utility service territories may fit the parameters already established. LIPA continues that it accepts the parameters of the Make-Ready Order, whereby the Commission directed Staff and NYSERDA to work collaboratively to determine an appropriate cost allocation approach. LIPA agrees with the Commission's framework that costs will generally be allocated to all customers within the service territory where program activity takes place, except that program activities with Statewide benefits may be allocated to multiple utilities.

PUBLIC NOTICE

Pursuant to the Commission's Rules of Procedure, 16 NYCRR §8.2(c), responses to the Petition were due within a 21-

day period, which expired on November 13, 2020. The comments received are addressed below.

COMMENTS

The City of New York

The City of New York (the City) supports LIPA's efforts to increase EV adoption on Long Island and accelerate the build-out of EV charging infrastructure. The City notes that it is a major LIPA customer with a number of facilities throughout the Rockaways, and has a strong interest in ensuring that EV adoptions continue to increase in line with the City's and State's transportation electrification goals.

According to the City, significant investments in EV charging equipment and innovative EV projects that target disadvantaged communities would help spur adoption in the Rockaways where, according to NYSERDA's EvaluateNY EV data analysis tool, 143 of the 11,771 EVs currently on the road in the City are registered. It is important, therefore, that projects providing EV-related benefits to communities in the Rockaways can be considered in NYSERDA's prize program. The City explains that the Rockaways has the second lowest income of neighborhoods in Queens, meaning that residents could benefit from NYSERDA prizes that specifically target disadvantaged communities.

Additionally, the City agrees with LIPA that the rationales for establishing the prize competitions apply equally to all communities throughout the State. The City's support is conditioned on there being proper mechanisms in place to ensure an equitable allocation of costs, with LIPA's customers funding portions of projects located within LIPA's service territory. The City describes complications that may arise from allowing

projects in the LIPA service territory to access the \$85 million funded by the investor-owned utilities.

The City strongly encourages NYSERDA to coordinate with LIPA and identify LIPA-specific funding streams that can be made available to pay for projects located in LIPA's service territory. Projects located within Commission-jurisdictional utility boundaries should be the only projects accessing the \$85 million budget, while any project or portion of a project within LIPA's service territory should be funded out of the LIPA-specific funding stream, the City explains. The City concludes by stating that NYSERDA and Department of Public Service Staff (Staff) should develop an appropriate cost allocation methodology and include it in the Implementation Plan.

NYSERDA

NYSERDA supports the Petition and LIPA's efforts to identify valuable opportunities to advance emissions reductions opportunities. NYSERDA explains that the Prize Competitions' Implementation Plan filed with the Commission can be easily updated in the event the Commission grants LIPA's Petition. This would make a seamless expansion of the prize competitions possible.

LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; and (ii) whether any action by it should be taken pursuant to a rule. The Commission also may decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute. Declaratory rulings

involving interpretations of existing statutes, rules, or regulation are not "actions" within meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations and, therefore, they may be issued without further SEQRA review.<sup>2</sup> The declaratory relief requested in the Petition falls within the ambit of the statute and regulations authorizing issuance of a declaratory ruling.

#### DISCUSSION AND CONCLUSION

While the focus in the Make-Ready Order was on funding projects located in communities served by investor-owned utilities, the Commission agrees with LIPA and the City that the objectives to advance the State's transportation electrification goals, expand access to clean transportation, and reduce emissions in disadvantaged communities are relevant across the entire State. The Commission therefore declares that the Prize Competitions administered by NYSERDA, as authorized in the Make-Ready Order, are applicable to projects Statewide. Accordingly, a Prize Competition project may be proposed anywhere in New York State, including in an area served by a non-jurisdictional electric service provider, subject to limitations on funding discussed below. The Commission finds that the impact of allowing projects to be proposed Statewide as part of the Prize Competitions will have a negligible impact on NYSERDA's administrative budget.

As noted by the City, complications would arise related to the tracking, spending, and recovery of program costs from LIPA customers if projects outside of an investor-owned utility service territory were to be funded by the \$85 million

---

<sup>2</sup> 6 NYCRR §617.5(c)(37) (defining "interpretation[s] of an existing code, rule or regulation," as Type II actions not subject to review under SEQRA).

Prize Competition budget. The Commission agrees and shares these concerns. Therefore, in the event a project is selected, which is located outside of the investor-owned utility service territories, such a project may not access the \$85 million in Prize Competition funds established in the Make-Ready Order and must be secured through alternative funding. The Commission expects that LIPA and any other non-jurisdictional entity interested in hosting a Prize Competition project will identify funding streams well in advance of any project being selected in order to avoid delay when an award may potentially be made.

In the Make-Ready Order, the Commission recognized that there may be program activity related to the Prize Competitions with statewide benefits, and that these benefits may be allocated to multiple utilities based on appropriate factors.<sup>3</sup> NYSERDA developed a budget that follows this Commission directive by accounting for the planning grants for each prize, NYSERDA administrative expenses, and consultant support for various tasks, before identifying the resulting award pools for each prize.<sup>4</sup> The award pools for each prize that NYSERDA identified in its Implementation Plan are unchanged by this ruling, since any projects selected outside of an investor-owned utility service territory must have an alternative funding source.

Finally, NYSERDA indicates that granting the relief in the Petition could be seamlessly accommodated into its Implementation Plan. The Commission expects that NYSERDA will update and file its Implementation Plan, particularly with

---

<sup>3</sup> Make-Ready Order, p. 144.

<sup>4</sup> Case 18-E-0138, NYSERDA Transportation Prizes Implementation Plan (filed November 13, 2020), pp. 20-21.

respect to §3.2, Prize Eligibility, to be consistent with this ruling.<sup>5</sup>

The Commission finds and declares:

1. The Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs, issued in this proceeding on July 16, 2020, is applicable to projects Statewide, subject to funding limitations, as discussed in the body of this ruling.

2. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary

---

<sup>5</sup> Id., pp. 12-13.