

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 11, 2021

COMMISSIONERS PRESENT:

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

CASE 20-E-0473 - In the Matter of Developing a Funding Mechanism
for the Electric Generation Facility Cessation
Mitigation Program.

ORDER AUTHORIZING FUNDING FOR ELECTRIC GENERATION FACILITY
CESSATION MITIGATION PROGRAM

(Issued and Effective February 11, 2021)

BY THE COMMISSION:

INTRODUCTION

On April 8, 2020, the State Energy Planning Board adopted an amendment to the State Energy Plan directing the Commission to develop a mechanism to provide a stable source of funding for the Electric Generation Facility Cessation Mitigation Program (Mitigation Program). By this Order the Commission authorizes the New York State Energy Research and Development Authority (NYSERDA) to enter into a memorandum of understanding with Empire State Development for the use of uncommitted funds from legacy programs in the amount of approximately \$12.5 million per year through 2030 to create a stable source of funding for the Mitigation Program.

BACKGROUND

Electric Generation Facility Cessation Mitigation Program

The Electric Generation Facility Cessation Mitigation Program (Mitigation Program) was created in 2016 to provide funds to "local government entities"¹ where an electric generating facility has ceased operations.² A local government entity may be eligible for funds

where (i) on or after June 25, 2015, an electric generating facility located within such local government entity has ceased operations, and (ii) the closing of such facility has caused a reduction in the real property tax collections or payments in lieu of taxes of at least twenty percent owed by such electric generating facility.³

The Urban Development Corporation d/b/a Empire State Development (ESD) is responsible for administering the Mitigation Program.⁴ Before ESD awards funds to a local government entity, (1) either the State Department of Taxation and Finance or the local industrial development authority must confirm the reduction in real property taxes or payments in lieu of taxes (PILOT); and (2) the Department of Public Service (DPS) must confirm that the electric generating facility is no longer producing electricity or participating in the markets administered by the New York Independent System Operator (NYISO).⁵

The president of ESD is responsible for determining the amount of the award, taking into consideration the difference between the tax payments or PILOT in the last year of the facility's operation and the facility's current tax payments

¹ Local government entities are defined as a county, city, town, village, school district, or special village. 2016 N.Y. Sess. Laws Ch. 58 (A. 9008-C), Part BB.

² Id.

³ Id.

⁴ Id.

⁵ Id.

or PILOT.⁶ Pursuant to amendments enacted in 2017, the award is available over a seven year period with a potential maximum award of 80% of lost revenues in the first year that decreases by 10% of lost revenues each year to ultimately end in the seventh year in a potential maximum award of up to 20% of lost revenues.⁷ Each local government entity may only receive one award per year regardless of the number of electric generation facilities that have ceased operation within its jurisdiction.⁸

The funds for the Mitigation Program, to date, were provided by NYSERDA from proceeds collected from Regional Greenhouse Gas Initiative (RGGI) auctions.⁹ The Mitigation Program's budget is currently authorized for \$69 million,¹⁰ \$45 million of which has been appropriated using RGGI collections, to date.¹¹

Since the program's creation, ESD has administered the Mitigation Program in cooperation with NYSERDA and in consultation with DPS.¹² In addition to NYSERDA and DPS, the Department of Taxation and Finance or the local industrial development agency (IDA) aide the Mitigation Program by confirming the local government entity's tax loss while the NYISO works with DPS to confirm the facility has ceased operation.¹³

⁶ Id.

⁷ 2017 Sess. Law Laws Ch. 58 (S. 2008C), Part QQ.

⁸ Id.; Empire State Development, Electric Generation Facility Cessation Mitigation Program: Program Guidelines 2 (2016), available at <https://esd.ny.gov/sites/default/files/EGFCM-Final-Guidelines-Amended-042018.pdf>.

⁹ 2017 Sess. Law Laws Ch. 58 (S. 2008C), Part QQ.

¹⁰ 2018 Sess. Law Laws Ch. 59 (S. 7509-C), Part AAA.

¹¹ Id. As of December 31, 2020, approximately \$32.5 million has been disbursed by ESD through the Program

¹² Empire State Development supra note 8.

¹³ Id.

ESD may require a local government entity to repay a grant received under the Mitigation Program if (1) the application for a grant contains misrepresentations or is incomplete; (2) the grant was awarded in error; or (3) the documentation supporting the local government entity's tax loss is not true and complete.¹⁴ If a local government entity receives a grant and then receives insurance payments, additional grants from a different source, or property tax receipts for the facility reducing the amount of the tax loss, that local government entity must repay the grant proceeds corresponding to that payment.¹⁵ In monitoring the Mitigation Program, for up to six years following the final disbursement, ESD may audit applications on a random or specified basis.¹⁶

State Energy Plan

Pursuant to the State Energy Law, there is a State Energy Planning Board.¹⁷ The State Energy Planning Board is responsible for adopting a State Energy Plan in accordance with the provisions enumerated in statute, including identification of emerging trends and recommendations for administrative programs to implement policies, programs, and objectives.¹⁸ Pursuant to the State Energy Law, "[e]very agency of the state shall conduct its affairs so as to conform with the state energy policy. . . ."¹⁹ Pursuant to Energy Law §6-106(6), the State Energy Planning Board may amend the State Energy Plan either at its own initiative or upon a written application. The State Energy Planning Board must publish any proposed amendment in the

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Energy Law §6-102(1).

¹⁸ Energy Law §6-104.

¹⁹ Energy Law §3-103.

State Register and solicit public comments.²⁰ The State Energy Planning Board will adopt an amendment "upon a finding . . . that there has been a material and substantial change in fact or circumstance since the most recent plan was adopted."²¹

In 2015, the State Energy Planning Board adopted the 2015 New York State Energy Plan (State Energy Plan).²² The State Energy Plan was designed to coordinate Reforming the Energy Vision (REV) with other energy policies and initiatives.²³ After the Climate Leadership and Community Protection Act (CLCPA)²⁴ was enacted in 2019, the State Energy Plan was amended to further the goals established in the CLCPA (Amendment).²⁵ On January 8, 2020, the Amendment was published in the State Register for comment.²⁶

On April 8, 2020, the State Energy Planning Board adopted the Amendment. Accounting for the transition the State's electric generation fleet will need to undergo in order to meet the clean energy goals established in the CLCPA and State policies, and as a result of market forces, the Amendment anticipates that the Mitigation Program will see additional demand.²⁷ Accordingly, the Amendment directs the Commission to "develop a process to consider a mechanism that can provide a stable source of funding for the Mitigation program."²⁸

²⁰ Energy Law §6-106(6).

²¹ Id.

²² New York State Energy Planning Board, The Energy to Lead: 2015 New York State Energy Plan (2015).

²³ Id. at 9.

²⁴ 2019 N.Y. Laws Ch. 106.

²⁵ New York State Energy Plan, Amendment, available at <https://energyplan.ny.gov/-/media/nysenergyplan/meeting/2015-SEP-Amendment.pdf>.

²⁶ XLII N.Y. Reg. 87-89 (January 8, 2020).

²⁷ Id.

²⁸ Id.

Potential Funding Sources

Pursuant to the State Energy Plan Amendment, the Commission sought public comments regarding the process and potential stable sources of funding to further the Mitigation Program.²⁹ Funding source options for which the Commission sought comments included: (1) existing clean energy program collection levels, including uncommitted funds, that have been allocated to NYSERDA from the System Benefit Charge (SBC), supporting Clean Energy Fund (CEF) Portfolios as well as legacy portfolios (SBC III and IV, Renewable Portfolio Standard (RPS), and Energy Efficiency Portfolio Standard (EEPS)); (2) through the renewable component of the Clean Energy Standard (CES) program administered by NYSERDA; (3) additional incremental collections via the SBC surcharge; (4) a combination of existing funds and increased collections; or (5) an alternative, new means to collect funds to support the Mitigation Program.³⁰

With regard to existing clean energy program collections, the Commission has authorized rate payer collections to fund various NYSERDA administered energy efficiency and clean energy programs. In January 2016, the Commission's Clean Energy Fund Framework Order consolidated all post-2015 NYSERDA clean energy activities and rate-payer funding under the CEF program. The CEF Order identified that previously authorized collections for RPS, EEPS, and SBC Programs, as well as future collections for the CEF Portfolio, would be collected through the SBC surcharge under the umbrella of the surcharge schedule for CEF collections.³¹

²⁹ XLII N.Y. Reg. 12 (October 7, 2020).

³⁰ Id.

³¹ Case 14-M-0094, supra, Order Authorizing the Clean Energy Framework (issued January 21, 2016) (CEF Order).

The System Benefit Charge III (SBC III) program was active January 1, 2006,³² and expired December 31, 2011.³³ The System Benefit Charge IV (SBC IV or TM&D) was active January 1, 2012,³⁴ and expired February 29, 2016, when the last year of the Program's authorization was rolled into the CEF Program.³⁵ Both SBC Programs have ended, however NYSERDA continues to make payments on outstanding encumbrance obligations related to ongoing, existing commitments.

The Energy Efficiency Portfolio Standard was authorized from 2008 through February 29, 2016, for NYSERDA.³⁶ NYSERDA was required to conclude all spending related to EEPS programs by February 29, 2020.³⁷

The RPS was first adopted in September 2004 to support the deployment of renewable energy generation.³⁸ RPS supports large-scale generation through a Main Tier, with projects selected through regular solicitations, as well as small-scale generation through the Customer Sited Tier (CST), which includes

³² 05-M-0090 et al., In the Matter of the System Benefits Charge III, Order Continuing the System Benefits Charge and the SBC-Funded Public Benefit Programs (issued December 21, 2005).

³³ 05-M-0090 et al., supra, Order Continuing Systems Benefits Charge Funded Programs (issued December 30, 2010).

³⁴ 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).

³⁵ Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Order Authorizing the Clean Energy Framework (issued January 21, 2016) (CEF Order).

³⁶ Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Authorizing the Conclusion of the Energy Efficiency Portfolio Standard (issued November 17, 2017).

³⁷ Id.

³⁸ 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).

incentives, solicitations, and other support mechanisms. The NY-Sun Program was established in 2012, in which the Commission expanded the 2012 and 2013 solar photovoltaic (PV) budget to support the goals of the NY-Sun Initiative.³⁹ PV generation was separated from the CST in the April 2014 Order establishing the NY-Sun program.⁴⁰

The NY-Sun initiative, its goals, and its post-2015 funding were included as part of the CEF. In addition, the CEF Order directed NYSERDA to identify specific uses for excess uncommitted funds from legacy portfolios, including RPS, at the end of 2015 and subsequent years. Further, the CEF Order allowed for the NY-Sun budget allocation for the 2016 to 2023 period to be fully retained in the case of project attrition. In the Commission's 2018 NY Sun Order, the Commission authorized NYSERDA to reallocate any RPS funds, which were previously assigned to the NY-Sun initiative for specific program years 2014 and 2015, for general use as part of the NY-Sun Program, in the event such funds become uncommitted due to project attrition.⁴¹

NYSERDA is also responsible for administering the Clean Energy Standard (CES) and the programs established by the Commission to incentivize the construction and maintenance of

³⁹ Case 03-E-0188, supra, Order Authorizing the Expansion of the Solar Photovoltaic and Geographic Balance Program From 2012 Through 2015 and the Reallocation of Main-Tier Unencumbered Funds, (issued April 24, 2012).

⁴⁰ Case 03-E-0188, supra, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs (issued April 24, 2014).

⁴¹ Case 03-E-0088, supra, Order Regarding NY-Sun Funds (issued September 14, 2018).

large-scale renewable energy and nuclear generating resources.⁴² The cost of Renewable Energy Credits (RECS) and Zero Emission Energy Credits (ZECs) associated with Tiers 1 and 3 are recovered from Load Serving Entities (LSE) customers through a separate recovery mechanism - the commodity charge on monthly utility bills. The new Tier 2 costs are recovered through a dedicated REC purchasing obligation imposed on LSEs. LSE obligations to procure RECs and Offshore Wind Renewable Energy Certificates (ORECs) under the Tier 4 and OSW programs will also be recovered from customers through the commodity charge on monthly utility bills. However, obligations associated with these programs will only be triggered once the eligible resources start producing energy, which is at least a year away.⁴³

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 October 7, 2020 [SAPA No. 20-E-0473SP1].

⁴² See Case 15-E-0302, et al., Large-Scale Renewable Program and Clean Energy Standard - Clean Energy Standard, Order Adopting A Clean Energy Standard (issued August 1, 2016) (CES Framework Order) and Case 15-E-0302, supra, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) (October CES Order).

⁴³ Under the Clean Energy Standard, the Commission has established distinct programs, referred to as "Tiers", to encourage the development of different sectors of the renewable market. These are: Tier 1 - designed to encourage the development of new renewable resources that begin commercial operation on or after January 1, 2015; Tier 2 - designed to support existing (pre-2015) in-state, non-state owned eligible renewable resources; Tier 3, designed to support at-risk upstate nuclear generating facilities; Tier 4 designed to deliver incremental renewable energy into Zone J (New York City) over new transmission facilities; and OSW Tier, designed to promote the development of 9 GW of OSW delivered into New York.

The time for submission of comments pursuant to the Notice expired on December 6, 2020. The comments received are addressed below.

PUBLIC COMMENTS

Cortlandt Area Commenters

Joint comments were received from the Town of Cortlandt (Town) and the Hendrick Hudson School District (School District). The Indian Point facilities (IP) currently provides revenue to both, in addition to several other entities. The Town and School District estimate that they will receive payments from the Mitigation Program after IP ceases producing electricity.⁴⁴ The Town and School District do not have a preference for how the Mitigation Program is funded, they just ask that it have sufficient funding to provide the necessary assistance. They would prefer to apply for and receive payments in accordance with their respective budget processes. Both also request that the Commission submit biannual reports regarding projected payments, total funds in the Mitigation Program, and other pertinent information.

Assemblywoman Sandra R. Galef, 95th Assembly District, also submitted comments. Assemblywoman Galef supports the creation of an independent funding stream for the Mitigation Program and cautions against using existing revenues describing closures as a new problem requiring new solutions. Assemblywoman Galef suggests that a surcharge on the System Benefits Charge makes the most sense. The Assemblywoman also supports annual reviews of the Mitigation Program, including

⁴⁴ Other operations will continue at the IP site including the storage of spent fuel, site restoration, and radiological decommissioning.

balances and expenditures, transfers, awards, eligible communities, and timelines for future payments.

Multiple Intervenors

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers, submitted comments outlining its numerous concerns regarding proposals for funding the Mitigation Program. Initially, Multiple Intervenors notes that it does not agree that captive electric customers should be responsible for funding the Mitigation Program. Multiple Intervenors states that the Mitigation Program is a cost unrelated to the provision of utility service. The group urges that this should remain a State-funded initiative. Multiple Intervenors notes the programs that electric customers already fund in urging against creating another funding obligation.

Notwithstanding that disagreement, Multiple Intervenors states the Commission should utilize previously collected and uncommitted funds rather than imposing incremental financial obligations on customers. If a new incremental financial obligation is imposed on customers, Multiple Intervenors states a "neutral" allocation methodology that does not rely on volumetric allocation of costs should be used. The group argues that volumetric allocation would impose a substantial burden on high-load-factor customers, which would push the State away from the competitive industrial rates the State Energy Plan cites as a means of economic development. In the event an incremental financial obligation is imposed on customers, Multiple Intervenors requests that the Commission evaluate and reduce the level of assistance provided.

Joint Utilities

The Joint Utilities⁴⁵ submitted comments supporting a transparent and robust process to develop a funding mechanism. The Joint Utilities note that over its history, the Commission has relied on transparent process to develop innovative programs. The Joint Utilities note various areas where stakeholders need more information. If the funding mechanism must move forward prior to a stakeholder process, the Joint Utilities recommends initially funding the Mitigation Program using existing uncommitted funds collected through the System Benefits Charge.

The Joint Utilities recommend that ESD and NYSERDA make a summary of Mitigation Program activities available before the end of the first quarter of each year in which withdrawals are made from the CEF to support the Mitigation Program. Financial controls are needed to ensure that ESD is only supporting the displacement of generating plant property taxes and PILOT agreements and that funds are used to support only the municipalities that have contributed to the funding source through the SBC. They also propose that ESD and NYSERDA should work with the Joint Utilities to forecast the funding need.

DISCUSSION

The State Energy Plan recognized New York's electric generation fleet is undergoing, and will undergo, a transition in the coming years as a result of market forces, State policies, and the advent of the CLCPA. This transition includes the elimination of all coal generation, the retirement of the

⁴⁵ The Joint Utilities are Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

Indian Point nuclear reactors, the goal of 70% renewable electricity by 2030, and the commitment to a zero-carbon electricity sector by 2040.

New York's nation-leading commitment to transforming and modernizing the electric generation sector required by the CLCPA requires a comprehensive approach, not only to supporting the new generation sources, but recognizing the financial implications of retirements of existing sources. A balance between the State's climate goals, need to modernize and its economic realities must be struck, with an even sharper focus given the economic ramifications of the COVID-19 pandemic. The existing Mitigation Program is one tool that the State has utilized to recognize this balance for communities who will experience substantive financial impacts from the shift away from traditional sources of generation.

In light of the transformation the State's electric generation fleet, the Commission must also consider its obligation to effectuate State energy policy and the State Energy Plan,⁴⁶ as well as the Commission's authority to preserve environmental values and conserve natural resources.⁴⁷ The Commission also notes that the State's ratepayers are benefitting and will continue to benefit from the transition of the State's electric fleet and modernization of the electric generating facilities.

Commenters expressed support for the Mitigation Program recognizing its role in the State's electric generation transition. While commenters recognize the need for the Mitigation Program and additional funding, there is no overall consensus on the source of funding. Courtland Area Commenters state no preference for the source of funds, simply stating the

⁴⁶ Energy Law §3-103.

⁴⁷ PSL §5(2).

funding should exist. Assemblywoman Galef advocates for collections through the SBC surcharge. JU recommends existing uncommitted funds be used in the near term and further advocate for a more robust process in the design and delivery of the program. MI objects to the Mitigation Program being funded by electric ratepayers, stating it is a cost unrelated to the provision of utility service. MI however states, if ratepayer funds will be utilized for this purpose, they should come from previously collected but uncommitted funds, rather than incremental obligations placed upon the ratepayers.

The Commission finds it is appropriate to utilize electric ratepayer funds to support the Mitigation Program, as the transition from older, existing generation towards more modern generation units and a cleaner grid of the future requires a comprehensive approach that ranges from support for the building of new generation to easing the financial implications for impacted communities. The Commission, however, notes the concerns raised by commenters related to imposing incremental funding obligations and the tenure of this commitment have merit. Of the potential sources of funds that could be utilized for this purpose, the use of uncommitted funds from legacy clean energy portfolios is the only option that allows support for this initiative while not imposing incremental funding obligations on ratepayers or jeopardizing the activities of currently active portfolios.⁴⁸ Given the current financial ramifications of the COVID-19 pandemic, the Commission finds not imposing incremental funding obligations is a prudent choice at this time.

⁴⁸ Uncommitted funds, in this context, are defined as funds that have been previously authorized by the Commission for legacy NYSERDA portfolios but which have not been expended or committed to projects that are still active.

According to NYSERDA, the uncommitted funds from legacy programs as of September 14, 2020, total \$329.7 million.⁴⁹ Based on estimates provided by ESD, the Mitigation Program will require approximately \$12.5 million per year based on known and projected electric generation facility retirements. Upon execution of the memorandum of understanding discussed below, the Commission authorizes the use of legacy uncommitted SBC, EEPS, RPS funds in the estimated amount of \$12.5 million per year through December 31, 2030, not to exceed \$112.5 million in total. The approach taken here, allows for a budget-bounded approach providing stable funding through 2030, and as the funding is coming from uncommitted legacy portfolio funding, does not jeopardize current program activities.⁵⁰

With this authorization to use funds that were collected for NYSERDA's legacy portfolios through the SBC surcharge⁵¹ on eligible customers' electric bills,⁵² the Commission must ensure the funds are used prudently and in benefit to the customers from whom the funds were collected. In doing so, the Commission first recognizes that the Mitigation

⁴⁹ Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Petition Regarding Clean Energy Fund Triennial Review, Appendix 6, filed December 29, 2020. Any additional use of uncommitted funds from legacy programs requires Commission authorization and will be addressed in the CEF Review currently underway, in Case 14-M-0094.

⁵⁰ The Commission authorizes funding for the program through 2029 provided that the program remains active and operational. See generally 2015 Sess. Law Laws Ch. 20, Part C (establishing a sunset date of July 1, 2025).

⁵¹ The CEF Order eliminated the RPS surcharge and instructed that all previously authorized EEPS, RPS, T&MD, and incremental CEF collections be collected under the CEF Surcharge, through the SBC surcharge mechanism. See pages 93-99 of the CEF Order as well as Ordering Clause #7.

⁵² The SBC surcharge is assessed on customers of the state's major investor owned utilities and is not assessed on customers of the Long Island Power Authority or municipal electric companies. NYPA customers are exempt from the SBC.

Program itself establishes criteria that a local government entity must meet in order to be eligible for a grant.⁵³ The local government entity must realize a 20% or greater reduction in real property tax collections and/or PILOTs owed in order to be eligible for a grant. With this requirement, it is unlikely that the retirement of a facility owned and operated by a municipal electric utility within that municipal electric utility's service territory will result in the required real property tax reduction.⁵⁴ There may be instances, however, in which a privately-owned facility ceases operation in a service territory where the SBC surcharge was not assessed and the 20% threshold is met. To account for this, the Commission will impose eligibility requirements for use of these funds such that they shall only be allowed for municipalities for which they, or their residents, were assessed the SBC surcharge.

Monitoring & Reporting

The Joint Utilities call for a more transparent and robust process to establish a funding mechanism. Given that the Mitigation Program has been operational since June 2016, we find this request to be unnecessary. With NYSERDA, DPS, the Department of Taxation and Finance or the local IDA, and the NYISO are already directly or indirectly involved in ensuring that grants are awarded only where a facility has actually ceased operation and a local government entity has realized the

⁵³ See 2016 N.Y. Sess. Laws Ch. 58 (A. 9008-C), Part BB.

⁵⁴ See Real Prop. Tax Law §102(20) ("Tax' or 'taxation' means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes"); Real Prop. Tax Law §412 ("Real property owned by public authorities enumerated in the Public Authorities Law shall be entitled to such exemption as may be provided therein."); Pub. Auth. Law Chp. 43-a (providing real property tax exemption for specified public authorities).

20% loss, additional process is unnecessary. We will impose certain regular reporting requirements for additional oversight of these ratepayer funds.

NYSERDA is directed to enter into a Memorandum of Understanding with ESD detailing the provisions of this Order. No later than 60 days in advance of each calendar year, ESD will submit to NYSERDA a funding request for the upcoming calendar year. The Commission anticipates that the first request for funds will be received no later than November 1, 2021, and the final request for funds will be received no later than November 1, 2029. Such request will take into consideration prior funding and payments and will be designed to result in a cash balance at the end of such year that is not expected to exceed 20% of payments made for the year. NYSERDA shall transfer funding to ESD within 30 days of such funding request. No later than 60 days after each calendar year, ESD will provide to NYSERDA an annual accounting report summarizing (1) the Mitigation Program's cash balance at the beginning of the calendar year; (2) funding amounts provided by NYSERDA during the calendar year; (3) a list of payments made to approved local government entities during the calendar year, including the payment date, amount, and receiving entity; (4) any payments refunded to ESD by a receiving entity; (5) any funding amounts refunded to NYSERDA, as discussed below; and (6) the Program's cash balance at the end of the calendar year.⁵⁵

If ESD should end a calendar year with a cash balance in excess of 20% of expenses for such year, ESD shall refund the balance excess of 20% to NYSERDA no later than 90 days after such calendar year. If ESD should end a calendar year with a

⁵⁵ In the interest of administrative efficiency, the Commission recommends that ESD prepare and provide accountings for all funds; however, the Commission's requirements pertain only to those funds provided under this Order.

cash balance less than 20% of expenses for such year, that remaining balance shall be included in that year's starting cash balance and therefore reconciled into the next year's funding estimate. Given the coming year's financial need represents an estimate, in the event of unanticipated payments or funding needs that exceed the estimate in a given year, ESD may submit an ad-hoc funding request to NYSERDA during the year. NYSERDA will transfer payment to ESD within 30 days of such ad-hoc funding requests.

On an annual basis, NYSERDA shall file in Case 20-E-0743, an Annual Report (1) summarizing the items enumerated above; (2) providing the balance remaining of funds authorized in this Order; and (3) detailing the funding request for the current calendar year. NYSERDA shall file this annual report within 15 days of receipt of ESD's annual accounting report.

Based on the reporting process outlined above, NYSERDA is authorized to transfer funding to ESD solely for the purpose of the Mitigation Program, in the estimated amount of \$12.5 million per year, and such transfers shall not exceed \$112.5 million in total through 2029. NYSERDA shall use the existing Bill-As-You-Go (BAYG) requisition process to access the funds from the investor-owned electric distribution utilities⁵⁶ and to maintain approximately two months of working capital, and including a five-year projection of estimated Clean Energy Fund requisitions.⁵⁷ NYSERDA shall, in consultation with these utilities, update the BAYG terms to specify the Mitigation

⁵⁶ The Bill-As-You-Go process was established by the Commission in the January 21, 2016 Clean Energy Fund Order, Case 14-M-0094 et al., whereby authorized collections are held by the major electric and gas investor-owned utilities and NYSERDA requisitions for the funds on a monthly basis based on an approximate two-month working capital need.

⁵⁷ NYSERDA will use ESD's annual estimate to project subsequent year estimated disbursements.

Program as a component of the BAYG process as detailed herein, within 60 days of this Order.

CONCLUSION

Given the need to support the transition from existing generation to a more modern, cleaner grid of the future through a comprehensive approach that ranges from support for the building of new generation to easing the financial implications for impacted communities, the Commission finds it appropriate to allocate the use of uncommitted funds from legacy programs. Accordingly, NYSERDA is directed to enter into a memorandum of understanding with ESD to allow for the transfer of an estimated amount of \$12.5 million per year, not to exceed \$112.5 million in total, to fund the Mitigation Program through December 31, 2029.

The Commission orders:

1. Consistent with the discussion in this Order, New York State Energy Research and Development Authority shall enter into a memorandum of understanding with Empire State Development to allow for the transfer of funds of an estimated amount of \$12.5 million per year, not to exceed \$112.5 million in total.

2. New York State Energy Research and Development Authority shall file a copy of the executed memorandum of understanding within 30 days of this Order.

3. New York State Energy Research and Development Authority shall submit annual filings consistent with the discussion in this Order with the first annual filing due by March 16, 2022, and every year thereafter until March 15, 2031, after funding ceases on December 31, 2030.

4. Within 60 days of this Order, New York State Energy Research and Development Authority and the investor-owned

electric distribution utilities shall update the Bill-As-You-Go terms to specify the Mitigation Program as a component of the Bill-As-You-Go process.

5. 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.

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary