

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-E-0302 - In the Matter of the Implementation of a Large-
Scale Renewable Program.

ORDER EXPANDING SCOPE OF PROCEEDING
AND SEEKING COMMENTS

(Issued and Effective January 21, 2016)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

In February 2015, the Commission, recognizing a changed landscape since it first implemented the Renewable Portfolio Standard (RPS) in 2004,¹ directed a reassessment of New York's approach for encouraging the expansion of large scale renewable energy generation.² The Commission directed Department of Public Service Staff (Staff) to work with the New York State Energy Research and Development Authority (NYSERDA) to prepare a Large Scale Renewable (LSR) options paper. By notice dated

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 14-M-0101, Proceeding to Consider Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015).

June 1, 2015, the Secretary issued for comment the Large Scale Renewable Energy Development in New York: Options and Assessment paper (LSR Options Paper), submitted by NYSERDA.³ Stakeholders filed comments on the LSR Options Paper and responses to the questions and a technical conference on the paper was held July 8, 2015.

Subsequent to the release of the LSR Options Paper, the State Energy Planning Board issued the 2015 New York State Energy Plan providing a roadmap to build a clean, resilient, and affordable energy system for New York State.⁴ The plan proposes that the State achieve, by 2030, a 40 percent reduction in GHG emissions from 1990 levels, 50 percent of the State's electricity generated from renewable resources (50 by 30 goal), and a 24 percent decrease in energy consumption in buildings (representing energy efficiency gains of 600 trillion British thermal units [Btu]).

In December 2015, to ensure the 50 by 30 goal is achieved rather than simply aspired to, Governor Cuomo directed the Department of Public Service (Department) to develop a Clean Energy Standard (CES) and to present the Commission a program framework by June 2016 for a CES mandating achievement of the 50 by 30 goal.⁵ The Governor noted that "the Clean Energy Standard

³ Case 15-E-0302, In the Matter of the Implementation of a Large-Scale Renewable Program, Notice Instituting Proceeding, Soliciting Comments and Providing for Technical Conference (issued June 1, 2015).

⁴ New York State Energy Planning Board, 2015 New York State Energy Plan (issued June 25, 2015), Adopting by Resolution No. 7 (2015 SEP), available at <http://energyplan.ny.gov/Plans/2015>.

⁵ Letter from Governor Andrew M. Cuomo to Audrey Zibelman, CEO, New York State Department of Public Service, December 2, 2015 (Cuomo Letter) available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable_Energy_Letter.pdf.

provides a cost-effective, efficient, and enforceable mandate to meet the goal of ensuring clean, resilient, and affordable energy for all New Yorkers.”⁶

Further, the Governor directed the Department to evaluate ways in which zero emission resources may be retained as a short-term bridge while the State’s energy economy transitions to the scale of renewable energy promised by the 50 by 30 goal. Specifically, the Governor stated that “elimination of upstate nuclear facilities, operating under valid federal licenses, would eviscerate the emission reductions achieved through the State’s renewable energy programs, diminish fuel diversity, increase price volatility, and financially harms host communities.”⁷ This Order, in response to Governor Cuomo’s mandate, expands the scope of the LSR proceeding to incorporate consideration and implementation of a CES that is designed to meet the Governor’s renewable and zero emission electric generation mandate.

DISCUSSION AND CONCLUSION

New York has long been and continues to be a national, and indeed a worldwide, leader in promoting safe and environmentally sustainable electricity generation. The Commission has a longstanding policy of promoting renewable energy resources to meet our responsibilities under the Public Service Law (PSL) to preserve environmental values and conserve natural resources and to accomplish the State’s clean energy

⁶ Governor Cuomo Directs Department of Public Service to Begin Process to Enact Clean Energy Standard (released December 2, 2015) available at <https://www.governor.ny.gov/news/governor-cuomo-directs-department-public-service-begin-process-enact-clean-energy-standard>.

⁷ Cuomo Letter.

goals. In 2004, the Commission implemented RPS,⁸ which has since assisted in the development of 65 large-scale renewable energy projects, adding approximately 2,000 megawatts (MW) of renewable capacity to the New York energy market.⁹ Since the RPS first commenced, many of the conditions relevant to the form and function of the program have changed. Recognizing the changed landscape, as well as the essentiality of significantly increasing the penetration of renewable resources for meeting our objectives, the State's environmental goals, and federal emission requirements, we directed a reassessment of New York's approach toward large scale renewable energy generation in February 2015, in the Reforming the Energy Vision proceeding.¹⁰ There the Department of Public Service Staff (Staff) was directed to work with the New York State Energy Research Development Authority (NYSERDA) to prepare a Large Scale Renewable (LSR) options paper.

The LSR Proceeding, as commenced, focused on the next evolution of the RPS program, and how to bring renewable energy

⁸ 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).

⁹ Case 15-E-0302, supra, LSR Options Paper (filed June 1, 2015). Since the filing of the LSR Options Paper, NYSERDA completed its 2015 RPS solicitation, resulting in five more projects supported and more than 150 MW of capacity. See <http://www.nyserda.ny.gov/All-Programs/Programs/Main-Tier>. NYSERDA will also conduct a 2016 RPS solicitation pursuant to the Commission's direction. 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).

¹⁰ Case 14-M-0101, supra, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015), pp. 82-84.

to the scale needed to meet New York's energy goals. The LSR Options Paper offered several options including maintaining the current framework of the RPS program (contracts for RECs only); offering long-term contracts for bundled energy and RECs; long-term purchase power agreements; utility ownership of LSRs; as well as various options to support financing of LSR.

The LSR Options Paper and the numerous party comments present many important ideas and difficult issues that we need to consider to determine the best path forward. However, due to intervening and continuously evolving events, consideration of the LSR program framework would be insufficient if it did not also include thorough consideration of other non-emitting generation resources and their role in meeting the State's environmental goals, as well as its responsibility under the federal government's recently finalized Clean Power Plan.

Specifically, some nuclear facilities in the State have indicated an intent to retire, stating, among other things, an inadequacy in the wholesale electric market for valuing zero emission electric energy resources.¹¹ In assessing a CES, careful thought needs to be given regarding the need to preserve the emission gains made by the State. Unexpected retirement of these units due to economic conditions or other factors beyond the State's direct control could possibly lead to an increase of over 12 million metric tons in carbon dioxide emissions alone, a truly unacceptable outcome. Therefore, by this order, we are

¹¹ Case 14-E-0270, Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC., Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation (filed July 11, 2014). On November 2, 2015, Entergy announced plans to close the FitzPatrick Nuclear Power Plant. <http://www.prnewswire.com/news-releases/entergy-to-close-james-a-fitzpatrick-nuclear-power-plant-in-central-new-york-300170100.html>

expanding the scope of this proceeding to include consideration of a CES and maintenance of non-emitting generation.

Consideration of a CES is consistent with the Commission's statutory responsibility, pursuant to State Energy Law §104(5)(b), to render decisions and set policies that are reasonably consistent with the 2015 SEP. In addition, a CES is consistent with the Commission's statutory authority. Section 5(2) of the PSL directs the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs . . . 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." Under PSL §5, the Commission has created a number of clean energy initiatives and programs including the System Benefits Charge, the RPS, the Energy Efficiency Portfolio Standard, and the New York Green Bank.¹² A CES program is comparable to and complementary of all of the aforementioned programs.

Staff is directed to issue a White Paper for comment, developed in consultation with NYSERDA, that presents and addresses the issues associated with the design of a CES standard. The Staff White Paper should include, but not be limited to, consideration of the following:

- How the CES aligns with and contributes to the achievement of REV objective and principles;
- Best practices in the region and nationally;

¹² The Commission's authority to include the cost of programs in rates, if needed, was affirmed by the Third Department of the Appellate Division of the New York State Supreme Court. See Multiple Intervenors v. Public Service Commission of the State of New York, 569 N.Y.S.2d 522 (3d Dept. 1991).

- Methods to determine the nature of the obligation of the mandate;
- Methods to achieve and enforce compliance with the mandate;
- The role of energy efficiency;
- Assuring adequacy of supply of clean energy including methods to incent the development of in-state resources;
- The cost to consumers and the role of complementary state programs to drive down the cost of compliance that is ultimately bore by consumers;
- Equitable allocation of the obligations and costs of the CES mandate on all classes of consumers, particularly low income customers; and
- Structure and operation of the retail energy market.

We expect that, through the development of the White Paper and analysis of comments from stakeholders, Staff will gather the information necessary to propose a Clean Energy Standard for our consideration by June.

The Commission orders:

1. This proceeding is expanded to include the consideration of a Clean Energy Standard consistent with the discussion in the body of this Order.
2. Department of Public Service Staff is directed to prepare, in consultation with the New York State Energy Research and Development Authority, a White Paper on Clean Energy Standard to be issued for comment.
3. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary