

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 8, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman, concurring

- CASE 14-M-0094 - Proceeding on Motion of the Commission to Consider a Clean Energy Fund.
- CASE 14-M-0101 - Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision.
- 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 COMMENCING PROCEEDING

(Issued and Effective May 8, 2014)

BY THE COMMISSION:

INTRODUCTION

Although the clean energy industry continues to grow in New York,¹ appreciation of the potential for clean energy programs to address fundamental and pressing environmental and energy challenges that electric energy providers, consumers, and

¹ See Draft New York State Energy Plan, 2014 p. 6 (explaining that carbon-free sources of energy continue to increase as a share of total energy produced in New York and that the residential solar photovoltaic [PV] market on Long Island is one of the fastest-growing in the United States).

regulators face is also growing rapidly. To tap this potential sooner, rather than later, we focus on ways in which the State's clean energy program can be made more efficient and its resources can be deployed or redeployed to stimulate innovation and increase clean energy investment.

With this order, the Commission commences a proceeding to consider the development of a Clean Energy Fund (Clean Energy Fund or Fund). Our intent is to ensure continuity of the State's clean energy programs, and to enhance program efficiency and leverage, while also managing their transition from an almost exclusive reliance on ratepayer surcharges to tariff and sustainable market based clean energy activities such as those envisioned in the Commission's related proceeding for Reforming the Energy Vision (REV Proceeding).²

BACKGROUND

Authorization for the current Renewables Portfolio Standard (RPS) and Energy Efficiency Portfolio Standard (EEPS) programs will, unless extended by the Commission, expire at the end of 2015. Similarly, the system benefit charge Technology and Market Development (T&MD) program is set to expire at the end of 2016. Historically, and for these programs as they currently exist, the Commission has directed that RPS and EEPS funds be used to support the achievement of specific MWh goals.

Since both the RPS and the EEPS goals have thus far appeared to be unattainable,³ some stakeholders believe program expenditures, and the collections from ratepayers needed to support those expenditures, should be increased to whatever

² Case 14-M-0101, Proceeding To Consider Reforming the Energy Vision, Order Commencing Proceeding (issued April, 25, 2014).

³ At the end of 2013, RPS was at 49% of the 2015 goal and EEPS electric and gas programs were at 55% and 59%, respectively of their 2015 MWh goals.

level necessary to achieve the pre-established MWh goals, while others point to the non-attainment of the goals as an indication of program failure and cause to reconsider the Commission's underlying policy direction. Each of these views is problematic. Continual increases in ratepayer contributions toward MWh goals is unrealistic; at the same time, it is imperative that our energy policy initiatives drive a rapid, significant and sustainable increase in the adoption of clean energy services and technologies.

Fortunately, certain market based approaches to the current surcharge-funded RPS and EEPS programs are already progressing. Through the NY-Sun initiative, the New York State Energy Research and Development Authority (NYSERDA), our partner in the development of the RPS and SBC programs, designed and will implement a "MW Block" program design.⁴ When coupled with a multi-year commitment to the solar photovoltaic (solar PV) program, this program design is expected to achieve a greater scale of solar PV deployment and to facilitate a transition away from the current surcharge-funded, pure incentive program and towards a sustainable market based approach. Similarly, in recent orders, the Commission authorized the implementation by NYSERDA of the State's Green Bank initiative.⁵ The Green Bank is designed to enhance the opportunities for private resources to strengthen the marketplace viability of many different commercially proven clean energy technologies.

⁴ Case 03-E-0188, Retail Renewable Portfolio Standard, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs (issued April 24, 2014).

⁵ Case 13-M-0412, Initial Capitalization for the New York Green Bank, Order Establishing New York Green Bank and Providing Initial Capitalization (issued December 19, 2013).

In the December 26, 2013 Order Approving EEPS Program Changes⁶ (December EEPS Order or December 2013 Order) we began the process of articulating the overall policy based outcomes intended for the Commission's clean energy programs. The December EEPS Order broadly directed Staff and NYSERDA, in conjunction with other stakeholders, to begin working immediately on a number of issues related to transitioning the State's clean energy efforts to a more, modern regulatory framework. Further, on January 7, 2014, the draft State Energy Plan was released. The draft Plan specifically calls on the Commission to facilitate the introduction of new business models which can contribute to grid efficiency and to maximize the use of behind the meter or customer sited resources to expand demand management, energy efficiency, and clean distributed generation and storage.⁷

On April 25, 2014, the Commission issued an order to institute a proceeding for Reforming the Energy Vision (REV).⁸ This initiative aims to align electric utility practices and the regulatory paradigm with technological advances in information management and power generation and distribution. The basic value of behind the meter distributed energy resources, including clean energy resources, and the regulatory and market structures needed to accelerate their delivery and adoption will be examined in the REV Proceeding.

⁶ Case 07-M-0548, Energy Efficiency Portfolio Standards, Order Approving EEPS Program Changes (issued December 26, 2013).

⁷ 2014 Draft New York State Energy Plan, New York State Energy Planning Board, January 7, 2014, p. 33, available at <http://energyplan.ny.gov/>.

⁸ Case 14-M-0101, supra, Order Commencing Proceeding (issued April 25, 2014).

DISCUSSION

As the terminal year of several Commission-authorized clean energy programs⁹ approaches, the future of ratepayer supported public benefit programs must be carefully considered. The December EEPS Order initiated this process, and stated that both the clean energy programs and our regulatory methods must be reshaped to reflect a single, consistent paradigm in service of our overriding objectives. The April 25, 2014 order initiated the REV proceeding to explore and implement regulatory reforms to ensure that clean energy programs, the roles and responsibilities of the regulated utilities, and retail markets are aligned to achieve robust market-driven investment supporting economic energy efficiency and clean technologies as critical components of New York's 21st Century power system design and operation. In this order, we build on the December 2013 and April 2014 orders with a directive to NYSERDA to develop and submit for our approval a proposal for a single comprehensive clean energy fund as described below.

The role of Commission authorized clean energy programs will undergo significant changes in relation to the innovative clean energy program strategies already underway (e.g. Green Bank, NY-Sun) and in the context of our more comprehensive REV proceeding.¹⁰ Moreover, it is unlikely that the full suite of regulatory reforms envisioned in the REV proceeding will be developed or implemented prior to the current December 31, 2015 expiration of EEPS and RPS. Therefore, during this transformational period, we must continue our support for further development and continued expansion of the clean energy

⁹ The Renewable Portfolio Standard (RPS), the Energy Efficiency Portfolio Standard (EEPS), Technology and Market Development (T&MD).

¹⁰ Case 14-M-0101, supra, Order Commencing Proceeding (issued April 25, 2014).

industry in New York. However, as discussed previously, many of the regulatory reforms currently envisioned will facilitate robust markets for clean energy, energy efficiency and distributed energy resources of all sorts without a continuous need for ratepayer support. While we expect that the marketplace will eventually provide many of the types of products and services that currently receive ratepayer support, the change will not be instantaneous. Further, at least for the foreseeable future, the market is not expected to provide for all the initiatives currently supported by ratepayers. Therefore, we expect a reduced but continuing need for ratepayer supported programs.

The transition from the current suite of ratepayer supported programs to more market driven delivery mechanisms will decrease the need for ratepayer surcharges that currently support the programs. Within this context, we believe that a single comprehensive clean energy fund will provide: continuity of support for clean energy programs as a whole; flexibility to allocate the funds among the portfolio of clean energy programs in response to evolving circumstances; and the establishment of a transparent upper limit on contributions from ratepayers. A comprehensive clean energy fund could support a suite of clean energy programs designed to leverage public funds to maximize benefits; build a bridge to self-sustaining clean energy markets; and support and complement the expanded integration of distributed energy resources in the planning and operation of utility systems.¹¹ A comprehensive fund would also provide a flexible tool to account for the needs of customers, such as low income customers, who may be less able to obtain market based services.

¹¹ Id.

A clean energy fund would also provide continuity of funding through 2020 and beyond, and a "bridge" for the transition from the current portfolio of clean energy programs (i.e., RPS, EEPS and T&MD) to the new regulatory and market framework being developed through the REV proceeding. In this new model, the utilities may actively manage and coordinate the deployment of energy efficiency and clean distributed energy resources as a core component of their business. This focus is expected to result in improved system efficiency and empowered customer choice.

We envision that, as part of their system operation and planning function under REV, the utilities will develop plans to increasingly integrate distributed energy resources (DERs) into their systems. These plans are also expected to include a transition from the current surcharge-funded EEPS programs to clean energy initiatives consistent with the policy direction from the REV proceeding in order to better serve customers' needs and improve system efficiency.

In parallel with the evolution of the utility role, NYSERDA's ratepayer funded programs should refocus on market and technology transformative strategies designed to provide temporary intervention and support to overcome specific barriers and produce self-sustaining results. Beyond supporting market intervention strategies that facilitate greater penetration of clean and efficient technologies, NYSERDA's portfolio should continue to provide access to clean energy for low-income customers that may not otherwise benefit from the new markets. With this evolution of roles and approaches, it is paramount to success that programs and activities delivered by the utilities and NYSERDA are complimentary and not competing in nature.

During this period of change and transition, flexibility will be needed to allow the allocation and

reallocation of funds within the portfolio in response to evolving and changing market conditions. However, this flexibility must be bounded by the discipline of a fixed annual funding cap as well as directional goals and objectives applicable to the fund. To that end, we direct NYSERDA, in consultation with Staff, to develop a proposal for a comprehensive Clean Energy Fund that takes into consideration the activities of our clean energy policy initiatives (e.g. Green Bank, NY-Sun, REV). The proposal should recommend annual ratepayer collection levels for each year of the 2016-2020 program cycle and beyond. The proposed annual collection levels should ideally be below the authorized 2015 total annual collection levels¹² and should decline in reflection of the full capitalization of the Green Bank and the expected transition of utility EEPS programs to programs consistent with the policy direction from the REV proceeding. The proposal should also identify directional goals and objectives for the fund that align with and support State Energy Plan policies. Consistent with our directives in the December EEPS Order, NYSERDA, as it develops its proposal, shall explore the issue of fuel neutrality and, if appropriate, include such a feature in its comprehensive Clean Energy Fund proposal.

As noted above, subsequent to the initial allocation of monies to specific initiatives encompassed by the Clean Energy Fund and within the context of the Fund's ultimate goals and objectives, we anticipate that there may be a periodic need to reallocate funds among strategies in response to evolving market and regulatory changes and to maximize benefits; however,

¹² Annual collections for the RPS, EEPS and SBC T&MD programs total \$925 million in 2015. The schedule for transitioning the utility programs to utility rate cases is yet to be defined and will affect the determination of the appropriate collections for the Clean Energy Fund.

the proposal should suggest total collections levels that shall remain fixed through 2020.

NYSERDA's Clean Energy Fund proposal should also address the possibility of transitioning Commission authorized programs administered by NYSERDA to a "bill-as-you-go" model where collections are retained in utility accounts and transferred to NYSERDA at a specified frequency based on actual program expenditures. Transitioning to a "bill-as-you-go" model could avoid the future build-up of significant cash balances in NYSERDA's accounts.¹³

NYSERDA, in consultation with Staff, shall also develop a plan and schedule for obtaining broad stakeholder input during the development of its Clean Energy Fund proposal. This stakeholder outreach plan and schedule should be provided to Staff within 30 days of the issuance of this order. The Clean Energy Fund proposal should be filed no later than August 13, 2014, at which time we will seek comments on the completed proposal.

As we initiate this proceeding to consider the development of a Clean Energy Fund, and as the work that will be done through the REV proceeding is brought into sharper focus, it now appears that while some of the activities which the December 26, 2013 Order assigned to the E² Working Group should continue to be addressed in that forum, other activities are more appropriately considered in the context of the Clean Energy Fund and REV proceedings. We therefore take this opportunity to eliminate the requirement for a June 1, 2014 action plan and provide additional clarification regarding the various action items initially assigned to the E² Working Group. In particular,

¹³ This model is likely to require a true up mechanism to avoid significant over or under collections. NYSERDA should consult with Staff and the utilities regarding the need and appropriate design of the mechanism.

our discussion of the Assessment of Programs and Status of Evaluation and Technical Resource Manual Improvements in the December EEPS Order¹⁴ should continue to guide the E² Working Group's efforts in these important areas. Further, the analysis we sought from the E² Working Group concerning Fuel Neutrality and a Comprehensive Clean Energy Fund¹⁵ will be handled through the Clean Energy Fund proceeding, initiated with this order, and the analysis we sought through an examination of Cost-Effectiveness Screening Guidance, a Self-Directed or "Banking" Approach for Large Customers, and Sharing of Customer Data¹⁶ now appear to be more effectively provided through the REV proceeding.

The funds authorized in the December 2013 Order for the development of information and materials and associated activities that would have been part of the action plan should continue to be used to support these actions and other activities that Staff deems appropriate to align the clean energy programs with the regulatory framework being created through the REV proceeding. We also clarify through this order that the authorization provided in the December 2013 order for NYSERDA to use these funds carried a broad mandate. Pursuant to that order, the use of those funds for the development of the Clean Energy Fund proposal, and the stakeholder outreach plan and schedule would be appropriate. In addition, use of those funds for the completion of State Environmental Quality Review Act compliance materials related to both this proceeding and the REV proceeding would also be appropriate.

¹⁴ December 26, 2013 Order, pp. 27 and 33.

¹⁵ December 26, 2013 Order, pp. 31-32.

¹⁶ December 26, 2013 Order, pp. 29, 32 and 34.

The Commission orders:

1. A proceeding is instituted to consider the development of a comprehensive New York State Clean Energy Fund.

2. The New York State Energy Research and Development Authority (NYSERDA) is directed to develop and submit for Commission consideration by August 13, 2014 a proposal for a comprehensive Clean Energy Fund as described in the body of this order.

3. NYSERDA is directed to file a stakeholder outreach plan and schedule for the development of the comprehensive Clean Energy Fund proposal within 30 days of the issuance of this order.

4. The Secretary in her sole discretion may extend the deadlines set forth in this order, provided the request for such extension is in writing, includes a reasonable justification for the extension, and is filed on a timely basis, which shall be on at least one day's notice prior to the any affected deadline.

5. This proceeding is continued.

By the Commission

KATHLEEN H. BURGESS
Secretary

CASE 14-M-0094 et al.

Commissioner Diane X. Burman, concurring:

I concur with this decision as reflected in my comments made at the public session on May 8, 2014.