

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to
Implement a Large Scale Renewable Program
and a Clean Energy Standard

Case 15-E-0302

Proceeding on Motion of the Commission to
Consider a Clean Energy Fund

Case 14-M-0094

PETITION

Introduction

The Commission’s August 1, 2016 “Order Adopting a Clean Energy Standard” in the above-referenced proceeding (the CES Order) directed the New York State Energy Research and Development Authority (NYSERDA) to file, by August 25, 2016, a petition proposing both the amount of an “adder to cover the administrative costs and fees incurred to administer Tier 1” of the Renewable Energy Standard (RES), as established by the CES Order, and “a sales and payment schedule during the compliance period intended to generally match, on a periodic basis, (monthly or quarterly) the sales quantity to the expected actual load quantity so as to minimize the time that NYSERDA is holding RECs in its own account.”¹ NYSERDA hereby presents its petition as to those two matters.

This petition also includes proposals regarding: (i) the Zero Emissions Credit (ZEC) Requirement Programs (ZECR) administrative adder; (ii) the ZEC sales and payment schedule (including certain related proposals regarding NYSERDA’s administration of the ZECR Program); and (iii) the mechanism by which the distribution utilities will provide security for the payments that will be owed to REC and ZEC generators.

¹ CES Order at p. 108-109.

Background

In establishing the RES and ZECR Programs, which comprise the CES, the Commission adopted the State Energy Plan goal that 50% of New York's electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas (GHG) emissions by 40% by 2030. The CES Order created the principal structure through which the State will channel its supply-side efforts to achieve the GHG goal.² In furtherance of that strategy, the Commission directed a two-part initiative to increase the State's renewable energy supply and to impose obligations on load-serving entities (LSEs) to financially support the preservation of existing at-risk nuclear zero-emissions generation facilities.

Under the ZECR Program, the Order requires each LSE that serves end-use customers in New York to purchase from NYSERDA the percentage of ZECs purchased by NYSERDA from the zero-emissions generators during each year that represents the portion of the electric energy load served by the LSE in relation to the total electric energy load served by all such LSEs during that year. The Order establishes the ZECR compliance period as April 1 to March 31 of each year, beginning in 2017. The ZECR purchase obligation is divided into six two-year tranches, the last ending on March 31, 2029.

Under Tier 1 of the RES, the Order requires each LSE to serve their retail customers by procuring qualifying RECs in a defined and increasing percentage of the total load served by the LSE. Unlike with ZECs, LSEs will be able to meet their RES obligations by purchasing RECs from not only NYSERDA but also from other sources or by making Alternative Compliance Payments (ACPs) to NYSERDA. The Order establishes the RES REC compliance period as January 1 to December 31 of each year, beginning in 2017, and requires each LSE to inform NYSERDA, by December 1, whether it intends to purchase RECs from NYSERDA during the compliance period.

Administration/Administrative Adder

The CES Order directed NYSERDA to propose an "adder" to cover the administrative costs and fees incurred by NYSERDA to administer Tier 1 of the RES in calendar year 2017, in order to allow the Commission an opportunity to consider the adder at its November 2016 Session. As described above, it is requested that the Commission also approve an adder that will apply to "NYSERDA's incremental administrative costs and fees associated with the ZEC program and ZEC revenues" for the period April 1, 2017 through March 31, 2018.³

² CES Order at p. 2.

³ CES Order, Appendix E, § 17, p. 10.

Under the CES Order, for 2017, the REC price offered by NYSERDA to the LSEs is equal to the weighted average cost per MWh NYSERDA paid to acquire the RECs, plus the Commission-approved administrative adder. The CES Order also required NYSERDA to publicly file the REC price and expected available quantity for 2017 by December 1, 2016. The ZEC price for 2017 was administratively determined by the Commission, subject to the approved administrative adder. As is described below, given the uncertainty regarding the number of RECs that will be made available for sale in 2017, and in an effort to reduce the start-up costs in the initial year of the Programs, NYSERDA proposes an alternative method of allocating costs and collecting administrative funds.

As NYSERDA launches its role in the CES in 2017, it is likely that the new and expanded approach for procurement, contracting and sale of RECs and ZECs as well as overall program administration will be resource intensive, particularly in the early years of the program as its operations are identified and implemented. Required activities will include the design and build of a purchase and sale apparatus, including communications channels and financial security requirements to address LSE creditworthiness, capability of accommodating all of the contemplated transactions, including purchases, sales, true-up reconciliations, and potential refunds. NYSERDA's administrative budgets typically include those direct and indirect costs for NYSERDA staff salaries, fringe benefits, and other operating costs (which may also include program support contractor expenses).

In addition to NYSERDA's administrative expenses and capital costs described above, NYSERDA will allocate a proportionate share of the annual New York State Cost Recovery Fee (CRF) to the CES program. The Cost Recovery Fee is a fee assessed to NYSERDA and other public authorities by New York State for an allocable share of state governmental costs attributable to the provision of services to public benefit corporations pursuant to Section 2975 of the Public Authorities Law. Annually, the Director of the Budget, in consultation with the State Comptroller, determines the amount of expenses incurred for the provision of central government services to public benefit corporations. The Director the Budget is responsible for determining the amount owed by each public benefit corporation and is allocated as an overhead cost across NYSERDA's program activities in proportion to its total annual expenses.

For the past three fiscal years, the CRF assessment has averaged about 2.1% of NYSERDA's annual expenses. NYSERDA has assumed a rate of .9% for determining the amounts of CRF costs allocable to the RES and ZECC programs.

The previously-authorized Clean Energy Fund (CEF) budgets included an allocation for CRF payment; with the adoption of the CES, a portion of these costs will be shifted from the CEF to

the CES.⁴ As a result, NYSERDA will monitor the CRF balances and periodically report to DPS Staff on the status of the residual CEF budget for the CRF, including the opportunity to refund any excesses to ratepayers if deemed appropriate.

For the ZECR Program, NYSERDA estimates its administrative costs and CRF expenses for the period through March 31, 2018 as follows, and proposes to include an adder of \$.2172 to the ZEC price established by the CES Order:

ZEC Program Salary and overhead expenses	\$1,640,000
CRF expenses	4,360,000
Total Costs	<u>\$6,000,000</u>
ZECs expected to be offered for sale April 1, 2017 – March 31, 2018	<u>27,618,000</u>
ZEC administration adder per ZEC	\$.2172

Given the uncertainty regarding the number of RECs to be offered for sale during calendar year 2017, and in an effort to reduce the REC/ZEC adder charges for non-recurring expenses and system/capital costs in the first year of each program, NYSERDA requests approval to use uncommitted Systems Benefit Charge (SBC), Energy Efficiency Portfolio Standard (EEPS), and Renewable Portfolio Standard (RPS) to fund such costs rather than collecting these through a REC/ZEC adder mechanism. These uncommitted funds are in addition to those noted in NYSERDA’s April 29, 2016 filing (which reported on committed and uncommitted fund balances as of February 29, 2016). The following table summarizes these costs, reduced by remaining RPS Administrative Consulting and New York Generation Attribute Tracking (NYGATS) funds.

REC Program Salary and overhead expenses (through December 31, 2017)	\$1,420,000
REC/ZEC Program Non-recurring expenses	1,000,000
REC/ZEC system development costs	5,930,000
Subtotal - NYSERDA expenses and capital costs	<u>\$8,350,000</u>
Estimated CRF expenses	\$150,000
Less Remaining RPS and NYGATS Administrative Funds	<u>(\$2,000,000)</u>
Total Costs to be funded through repurposed SBC/EEPS/RPS funds	<u><u>\$6,500,000</u></u>

NYSERDA expects to provide quarterly reports to DPS Staff on actual expenses incurred.

⁴ Case 14-M-0094; Proceeding on Motion of the Commission to Consider a Clean Energy Fund, “Order Authorizing the Clean Energy Fund Framework,” issued and effective January 21, 2016.

NYSERDA Administration of the RES and ZECR Programs

NYSERDA will develop and build a purchase and sale platform for the purposes of buying and selling both RECs and ZECs. NYSERDA will also enter into contractual relationships with each New York LSE, compliance with which will involve the periodic payment by each LSE to NYSERDA for their share of the ZEC costs, and, for those LSEs who inform NYSERDA of their intention to purchase RECs from NYSERDA, the REC costs. In addition, NYSERDA anticipates executing so-called “backstop” agreements with each of the electric distribution companies (EDCs) to cover any risk that inflows to NYSERDA from the LSEs would not be in time or sufficient to cover its obligations to the REC and ZEC generators for any period of time.

Sales and Payment Schedules

In order to effectuate the timely implementation of the RES and ZECR Programs, NYSERDA requests that the Commission direct NYSERDA to develop and file, as compliance filings to be approved by DPS Staff, within ten days of the issuance of its order, the forms of standard REC, ZEC and EDC agreements, which agreements will incorporate the payment schedules and all necessary terms including methods of payment, financial security requirements, penalties for non-compliance, and other requirements consistent with the principles stated below. NYSERDA further requests that the Commission direct each LSE and EDC to execute such agreements and provide them to NYSERDA within one week of the date upon which the compliance filings are approved by DPS Staff. Finally, NYSERDA requests that DPS Staff be authorized, upon request by NYSERDA, to approve modifications to the form of those agreements as may be necessary to reflect changes to the Programs or other contingencies over the life of the Programs.

As is outlined below, the standard agreements should describe, among other things, the timing and amounts of the LSEs’ obligations to purchase RECs and ZECs from NYSERDA, and the penalties for failure to do so. NYSERDA will endeavor to create processes and compliance methods that will be as efficient as possible for all parties.

The ZECR Program

NYSERDA proposes that the LSE ZEC purchase and sale program would operate in accordance with the following principles:

- Based on data to be provided by NYGATS, regarding the load served by each LSE during the previous 12 months for which data is available, NYSERDA will determine and make available to each LSE the number of ZECs that each LSE will be required to

purchase for compliance, assuming the maximum eligible generation from the eligible zero-emissions facilities.

- Within one week of the date upon which DPS Staff approves the compliance filing, each LSE will be required to provide an executed copy of the LSE ZEC Agreement, including the completed Attachment, to NYSERDA.
- The LSE ZEC Agreement will provide a schedule of monthly payments due to NYSERDA, beginning on April 1 of 2017, with each monthly amount calculated as 1/12 of the LSE compliance amount multiplied by the ZEC price (including any adder).
- The LSE ZEC Agreement will require each LSE to establish and identify to NYSERDA an account in the NYGATS to which NYSERDA will deposit ZECs purchased by the LSE.
- NYSERDA will structure its agreements with the zero-emissions credit facilities to provide that NYSERDA's payments to those facilities will become due on interval dates that will allow NYSERDA to make payments using receipts from the LSE ZEC Agreements.
- NYSERDA will inform DPS Staff, on a monthly basis, as to the amount of funds received as against the total amount due for each month, and will report to DPS Staff on the compliance or non-compliance of individual LSEs.
- Between April and September of 2018, and in each subsequent year, NYSERDA, using data provided by NYGATS regarding actual load served during the previous April to March time period and the total number of ZECs purchased by NYSERDA associated with zero-emissions MWh produced during the April to March time period, reconcile the compliance requirements for each LSE with the purchases by each LSE and determine the additional purchases and sales that must be directed to match the compliance requirements to load served.

The REC Program

NYSERDA proposes that the RES REC purchase and sale program would operate in accordance with the following principles:

- On or before December 1, 2016, and in each subsequent year, NYSERDA will publish on its website a REC price (including any adder), the estimated quantity of RECs NYSERDA expects to offer for sale in the 2017 compliance period, the ACP price, and will make available to each LSE the maximum number of RECs that may be purchased by such LSE.
- Within one week of the date upon which DPS Staff approves the compliance filing, each LSE will be required to provide an executed copy of the LSE REC Agreement, with the

completed attachment, to NYSERDA, including the number of RECS to be purchased; NYSERDA will reserve that number of RECs for sale to that LSE.

- The LSE REC Agreement will provide a schedule of monthly payments due to NYSERDA, beginning in January of 2017, with each monthly amount calculated as 1/12 of the LSE reserved RECs multiplied by the REC price. Under NYSERDA's proposed funding approach, no administrative adder would be included in the REC price for year 2017.
- The LSE REC Agreement will require each LSE to establish and identify to NYSERDA an account in the NYGATS to which NYSERDA will deposit RECs purchased by the LSE.
- NYSERDA will publish on its website the terms, including methods of payment, by which LSEs may make ACP payments to NYSERDA.
- NYSERDA will inform DPS Staff, on a monthly basis, as to the amount of funds received for both REC purchases and ACPs as against the total amount due for each month, and will report to DPS Staff on the compliance or non-compliance of individual LSEs.
- Between January and June of 2018, and in each subsequent year, NYSERDA, using data provided by NYGATS regarding actual load served during the previous year, will reconcile the compliance requirements for each LSE with the purchases and ACP payments by each LSE and determine the additional purchases and sales, if any, that must be directed to match the compliance requirements to load served.
- Between January and June of 2018, and in each subsequent year, NYSERDA will make available any unsold RECs for purchase by LSEs toward compliance requirements.

Relatedly, NYSERDA requests that the Commission clarify its requirement that the LSEs notify NYSERDA of their intention to purchase RECs by December 1 by directing the LSEs to also inform NYSERDA of the number of RECs they intend to purchase from NYSERDA for the associated compliance period.

In June of 2018, and in each subsequent year, NYSERDA, using data available in NYGATS will assist DPS Staff in determining LSE compliance based on actual load served and RECs purchased/ACPs paid during the previous year.

EDC Guarantee

The CES Order recognized that NYSERDA will be entering agreements with both renewable and zero-emissions generators that will require payments by NYSERDA to those generators at regular intervals, and that NYSERDA's ability to make those payments will depend upon NYSERDA's receipt of funds for the sale of RECs and ZECs in advance of the payment due

dates. The success of the REC and ZEC programs depends on the strength, from a credit-worthiness point of view, of the NYSERDA REC and ZEC sale agreements with LSEs.

The Commission specifically addressed the financial risk regarding the REC program by providing that the EDCs should serve as guarantors of the obligations to the generators – that is, to provide a financial “backstop.”⁵ NYSERDA hereby proposes that the Commission clarify that the backstop mechanism is provided for not only the REC program but also, in the same way, for the ZEC program.

In addition, and because the effectiveness of the purchase contracts will depend on the certainty of the payments to the generators, NYSERDA proposes that the EDC backstop operate on the following principles:

- ZEC and REC payment obligations to generators will be ideally matched to the same period in which payment is received from LSEs for purchase of their proportionate share of RECs and ZECs, but any timing delays or permanent issues in receipt of payments from LSEs would create cash flow issues for the timing of payment obligations to generators.
- As described above, NYSERDA proposes to use a monthly payment obligation to the generators and therefore would propose to use a monthly payment obligation from LSEs for the purchase of RECS and ZECs.
- NYSERDA requests approval to use any NYSERDA cash balances in the Clean Energy Fund available at the time that such time a need arises on a temporary basis prior to invoking the EDC guarantee collection mechanism, with the condition that any CEF cash used in this manner would be restored through the EDC guarantee collection mechanism. However, CEF cash balances were scheduled to decline from 2016 through 2019 to get to targeted 2-month working capital balance, and are also proposed to be used prior to using an external borrowing facility for NY Green Bank, so the availability of CEF cash to address short term cash shortfalls in ZEC collections compared to ZEC payment obligations may be limited.
- The EDC guarantee would be invoked if aggregate shortfalls exceeded the amounts that could be covered short term from CEF cash balances (and the CEF cash balances would have to be restored through this process).
- The EDC guarantee mechanism needs to be established and authorized so that NYSERDA may invoke the EDC guarantee when appropriate trigger events have been met without requiring additional Commission approval; this will ensure that collections can be initiated in a timely manner to address cash shortfalls and allow generators to be paid according to the contracts executed with NYSERDA.

⁵ CES Order at pp. 111-112.

Conclusion

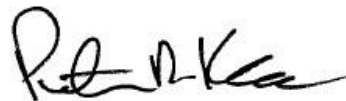
NYSERDA requests that the Commission approve NYSERDA's proposals, including the administrative expense allocation, the treatment of the CRF, and the Sales and Payment Schedules, and direct NYSERDA to file, as a compliance filing for DPS Staff approval, the LSE ZEC, REC and EDC forms of agreement.

NYSERDA also requests that the Commission consider NYSERDA's expressed principles regarding the nature and structure of the EDC guarantee, including approval to use any available cash balances in the Clean Energy Fund on a temporary basis prior to invoking the EDC guarantee collection mechanism, and that the Commission confirm that the guarantee will be required in a manner that serves the purpose of solidifying NYSERDA's ability to meet its obligations in both the REC and ZEC programs.

Finally, NYSERDA requests that the Commission clarify that LSEs are to notify NYSERDA not just of their intention to purchase RECs from NYSERDA but also of the number of RECs that they expect to purchase for the associated compliance period.

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Respectfully submitted,



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