

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Proceeding to Implement a )  
Large-Scale Renewable Program and a ) Case 15-E-0302  
Clean Energy Standard. )

**JOINT UTILITIES COMMENTS ON  
NYSERDA’S PROPOSED BUILD-READY PROGRAM**

On June 5, 2020, New York State Energy Research and Development Authority (NYSERDA) petitioned the Public Service Commission to approve its Build-Ready program.<sup>1</sup> The Accelerated Renewable Energy Growth and Community Benefit Act (Act)<sup>2</sup> directs NYSEDA to develop this program to identify sites for renewable energy projects for streamlined private development.<sup>3</sup> The Joint Utilities<sup>4</sup> support the State’s clean energy goals and recognize that elements of NYSEDA’s proposal can help that effort. Nonetheless, due to the paucity of program details, the Joint Utilities urge the Commission to exercise the authority expressly granted to it by the Act to order “necessary or reasonable limitations”<sup>5</sup> and to require establishment of procedures/protocols and funding for build-ready sites.<sup>6</sup> Specifically, the Joint Utilities ask the Commission to make any approval conditional pending review and approval, after public comment, of NYSEDA’s submission of a detailed implementation plan addressing

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<sup>1</sup> Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard* (CES Proceeding), Petition Regarding Clean Energy Standard; Clean Energy Resources Development and Incentives Program (filed June 5, 2020) (Petition).  
<sup>2</sup> Chapter 58, Part JJJ of the Laws of 2020. The Act directs support of the Climate Leadership and Community Protection Act (CLCPA), Chapter 106 of the Laws of 2019. (The CLCPA is *available at* <https://legislation.nysenate.gov/pdf/bills/2019/S6599>.) See Act, Chapter 58, Part JJJ of the Laws of 2020, Sec. 1900 regarding CLCPA support.  
<sup>3</sup> CES Proceeding, Petition, p. 1.  
<sup>4</sup> 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 & Rockland Utilities, Inc., and Rochester Gas & Electric Corporation.  
<sup>5</sup> See Act, Chapter 58, Part JJJ of the Laws of 2020, Sec. 1904(2).  
<sup>6</sup> See *id.*, Sec. 1902(3).

those issues. The Joint Utilities also urge the Commission to reject the Petition’s backstop proposal and to order earlier and regular public oversight of the Build-Ready program.

## **I. Background**

Overall, the Act supports meeting the State’s clean energy goals<sup>7</sup> through such programs as Build-Ready. The Act recognizes the importance of cost-effectiveness for all its directives.<sup>8</sup> Specifically, the Act directs NYSERDA to develop a program to “establish procedures and protocols for the purpose of establishing build-ready sites”<sup>9</sup> and to “establish and revise any eligibility and evaluation criteria it deems appropriate for the proper administration of the programs.”<sup>10</sup> The Act directs NYSERDA to “seek funding from any authorized or other available source to administer” the program.<sup>11</sup> Finally, the Act permits NYSERDA to submit to the Commission an “appropriate filing” describing its activities and plans that might include a funding request in order to proceed “promptly.”<sup>12</sup> To address the filing, the Act also directs the Commission to “promptly,” but no later than four months from its submission, “issue an order responding to such petition *subject to any necessary and reasonable limitations based on the public service law.*”<sup>13</sup> The Act also requires that both the petition and order include a plan for re-investment of any excess build-ready funds.<sup>14</sup>

Describing the Petition as “advancing the business case for the Build-Ready program, including the temporary use of existing funds for that purpose,”<sup>15</sup> NYSERDA proposes a

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<sup>7</sup> *Supra*, note 2.

<sup>8</sup> Act, Chapter 58, Part JJJ of the Laws of 2020, Sec. 1905(2).

<sup>9</sup> *Id.*, Sec. 1902(3).

<sup>10</sup> *Id.*, Sec. 1903.

<sup>11</sup> *Id.*, Sec. 1904(1).

<sup>12</sup> *Id.*, Sec. 1904(2).

<sup>13</sup> *Id.*, Sec. 1904(2) (emphasis added).

<sup>14</sup> *Id.*, Sec. 1902(9).

<sup>15</sup> CES Proceeding, Petition, p. 2.

program in coordination with host localities and in recognition of environmental justice to identify sites suitable for renewable energy projects for offer to private developers through competitive auctions.<sup>16</sup> NYSERDA lists the factors the Act requires for initial site selection, noting prioritization of previously developed sites, and describes its plan to review proposals through an initial screening process followed by preliminary assessment and design process for “fatal flaws.”<sup>17</sup> NYSERDA also describes its efforts already underway with other State agencies and its expectation to develop six projects annually.<sup>18</sup>

NYSERDA provides a five-year budget (2020-2025) that projects costs of \$71.8 million.<sup>19</sup> NYSERDA expects to draw no more than \$50 million from the full budget because it anticipates recovery of costs from anticipated sales of project sites to renewable developers over the program’s five-year term.<sup>20</sup> Until that cost recovery, NYSERDA plans to use the Clean Energy Fund (CEF) cash balance to fund the program<sup>21</sup> and also seeks Commission approval of a financial backstop mechanism funded by utility customers and collected by the utilities.<sup>22</sup> In terms of accountability, NYSERDA proposes filing annual detailed reports, starting April 1, 2021, culminating in its own review and analytic assessment of the Build-Ready program near the end of 2025 for public comment.<sup>23</sup>

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<sup>16</sup> *Id.*, p. 1.

<sup>17</sup> *Id.*, pp. 3-6.

<sup>18</sup> *Id.*, pp. 2-3, 4.

<sup>19</sup> *Id.*, pp. 8-9.

<sup>20</sup> *Id.*, p. 9.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, pp. 9-10.

<sup>23</sup> *Id.*, p. 10.

## II. Discussion

The Joint Utilities have consistently supported the State’s efforts to move to a clean energy future; our customers want more clean energy and the Joint Utilities’ focus is meeting our customers’ energy needs. The Build-Ready program offers tools to support the State’s clean energy goals and is intended to provide developers with opportunities to streamline the site development process to bring more renewable resources online quickly and cost-effectively.<sup>24</sup> The Joint Utilities particularly agree with the Act’s and the Build-Ready program’s consideration of available transmission and distribution facilities as factors in site selection.<sup>25</sup> The Joint Utilities also strongly support the Build-Ready program’s self-supporting goal<sup>26</sup> and agree with the Petition’s proposal to retain any excess funds for “future ratepayer benefit as approved by the Commission.”<sup>27</sup>

While acknowledging the inherent challenge of the Act’s directive to establish a build-ready program quickly, the Joint Utilities note some concerns with the proposal. Despite the Act’s directive to NYSERDA to establish procedures and protocols as well as eligibility and evaluation criteria, the Petition does not fully meet those requirements. While referring to NYSERDA’s intention to “employ a protocol under which it will survey the state for potentially suitable sites, acquire interests in real property for sites that appear promising, and then conduct site-by-site reviews of siting feasibility, including environmental review and interconnection

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<sup>24</sup> *Id.*, pp. 1-2.

<sup>25</sup> *See* Act, Chapter 58, Part JJJ of the Laws of 2020, Sec. 1902(1)(iv); *see also* CES Proceeding, Petition, p. 3. In that regard, the Joint Utilities note their efforts to identify locations where new generation could be both readily interconnected and most beneficial to the electric grid. *See* the Joint Utilities’ respective Distributed System Implementation Plan (DSIP) 2020 update filings in Case 16-M-0411, *In the Matter of Distribution System Implementation Plans*.

<sup>26</sup> CES Proceeding, Petition, p. 2. NYSERDA expects that the Build-Ready program costs will be recovered through the proceeds of the auction. *Id.*, p. 9.

<sup>27</sup> *Id.*, p. 10.

options,”<sup>28</sup> the Petition focuses on the statutory criteria by expressing a priority for sites with some existing development<sup>29</sup> and refers to “fatal flaws” as a possible basis for rejecting a site with little detail on procedures and protocol.<sup>30</sup>

In addition, the Petition appears to contemplate that NYSERDA could put out to bid both fully build-ready sites and some early-stage sites.<sup>31</sup> The Petition further notes that sites may be more or less valuable depending on the site’s status in the interconnection process.<sup>32</sup> However, the Petition contemplates that the Build-Ready team will execute interconnection agreements and “any remaining items necessary for the engineering, procurement and construction of the project” prior to disposition of the site.<sup>33</sup> This action may be premature given that it is unlikely that a developer would have committed to build a project at this stage of the process and as such the desired project specifications, and interconnection, must be considered unknown or at best highly conceptual. Furthermore, even though the interconnection process is a critical component of a site’s viability, the Petition does not sufficiently expand on how the Build-Ready team will effectively implement that process and establish that the site can be cost-effectively interconnected.<sup>34</sup>

The Petition alludes to the Build-Ready team’s interest in engaging “with the ongoing grid planning program” as part of its site-identification process.<sup>35</sup> The Joint Utilities urge

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<sup>28</sup> *Id.*, p. 3.

<sup>29</sup> *Id.*, p. 5.

<sup>30</sup> *Id.*, p. 6. However, the Petition does anticipate the process NYSERDA uses for Renewable Energy Credit (REC) procurement as a model for the solicitation here.

<sup>31</sup> *Id.*, pp. 6-7.

<sup>32</sup> *Id.*, p. 6.

<sup>33</sup> *Id.*

<sup>34</sup> *See id.* *See also* NYSERDA’s “Build-Ready” Program webinar, dated May 1, 2020, which lacks detail regarding the interconnection process, available at <https://www.nyserda.ny.gov/-/media/Files/Programs/Clean-Energy-Standard/2020-05-01-build-ready-webinar.pdf>

<sup>35</sup> CES Proceeding, Petition, p. 6.

NYSERDA to explicitly spell out this coordination in the program. Frequent coordination between the Build-Ready team and the Joint Utilities can reduce costs for these sites, and enable site selection that considers local system topologies<sup>36</sup> and the Joint Utilities' knowledge of their respective systems so that renewable energy can be efficiently delivered to their customers. In order to limit costs, improve renewable power deliverability, and speed project development, NYSERDA should establish regular points of contact with the Joint Utilities. Regular meetings with planning staff at each of the Joint Utilities cannot replace their standard interconnection procedures, but will provide a critical feedback loop for NYSERDA to consider before, for example, issuing interconnection requests. Without this critical coordination NYSERDA's Build-Ready program will add costs, increase development times, and potentially add projects to the system at points of interconnection that exacerbate rather than help to resolve congestion.

The Joint Utilities appreciate the difficulty of implementing this new program, but believe that expending customer funds, to the extent expenditures exceed auction proceeds, poses a sufficient risk to increased customer costs, and contravenes the Act's goal of cost-effectiveness, so as to warrant more detail. The Joint Utilities suggest that the Build-Ready program must include specific protocols for site selection, including evaluation of the timing for the final executed interconnection agreement, and address the issues raised above. In addition, NYSERDA should clarify the nature of the risk analysis that would be conducted both prior to acquiring a build-ready site as well as guidelines for determining the cost effectiveness of continuing the project to "full build-ready." Finally, to support the cost-effectiveness of the

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<sup>36</sup> Interconnection issues relative to the bulk system would require appropriate coordination with the New York Independent System Operator (NYISO).

effort, NYSERDA should be required to use competitive processes such as auctions to both acquire, to the extent feasible,<sup>37</sup> and dispose of sites.

Similarly, with respect to funding, the Petition provides a very high-level overview without the type of analysis that might demonstrate the bases for the assurances that the Build-Ready program will be self-sustaining.<sup>38</sup> There are few details of the budget or of the bases for the expectation that the program will be self-sustaining within five years of the program launch.<sup>39</sup> If the expectation is that developers will repay all the costs advanced so that the Build-Ready program is self-sustaining, the Joint Utilities suggest that a better source of funding for those costs could be the NY Green Bank.<sup>40</sup> Alternatively, the temporary use of customer-funded CEF cash balances can be appropriate if subject to express controls such as caps or reimbursement requirements.<sup>41</sup>

The question of a proposed customer-funded utility backstop is also problematic in that it exposes customers to financial risks normally borne by project developers. The Commission originally approved a backstop approach in the context of long-term renewable energy credit (REC) and zero-emission credit (ZEC) contracts that provide environmental benefits to

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<sup>37</sup> NYSERDA proposes to acquire interests in real property for promising sites. *Id.*, p. 3.

<sup>38</sup> The Petition also anticipates sustaining a competitive disposition of six projects annual without showing the basis as to the lead time to reach that level of activity or the timing of acquiring, permitting, and ultimately selling individual sites. *Id.*, p. 8. While it is possible to achieve this annual goal, it may be overstated, especially in the early years given that NYSERDA is new to this type of work. *Id.*, pp. 2-3, 4. Both the Act and NYSERDA identify the need for expert assistance and to work with other state agencies. *See* Act, Chapter 58, Part JJJ of the Laws of 2020, Sec. 1902(7); *see also* CES Proceeding, Petition, p. 3.

<sup>39</sup> *Id.*, p. 9.

<sup>40</sup> Use of the NY Green Bank would also reduce the potential need for a backstop.

<sup>41</sup> NYSERDA must work to properly implement the Act and it is problematic to continue to draw on the CEF balance ahead of a comprehensive review of these funds. The Joint Utilities note their request that the first CES Triennial be considered within the context of the *White Paper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act* (filed June 18, 2020) in the CES Proceeding. CES Proceeding, Joint Utilities Comments on the Clean Energy Standard Phase 4 Implementation Plan Proposal (filed July 13, 2020), pp. 7-8.

customers.<sup>42</sup> In contrast, the primary, direct beneficiaries of the Build-Ready program are private generation developers. The Joint Utilities support the Act's goals; however, should this Build-Ready program be approved, the Commission should reject a customer-funded backstop,<sup>43</sup> particularly ahead of a demonstration of need or evaluation of the program as it is implemented.

Finally, the Commission should require regular and timely review of this Build-Ready program rather than waiting five years for a NYSERDA post-program evaluation. With earlier and regular public review, the Commission can meaningfully assess the program's effectiveness as it proceeds and, as necessary, direct changes to NYSERDA's activities.

### **III. Conclusion**

The Joint Utilities urge the Commission to apply the Act's express authorization for placement of "necessary and reasonable limits" on NYSERDA's proposed Build-Ready program by granting conditional approval of the program contingent on the Commission's approval of a detailed implementation plan for public review addressing the issues of procedures/protocol and

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<sup>42</sup> CES Proceeding, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016).

<sup>43</sup> It is noted that the *White Paper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act* (filed June 18, 2020), p. 66, in the CES Proceeding steps back from use of a backstop.



funding raised herein. The Joint Utilities further urge the Commission to reject the request for a funding backstop and to require timely and regular public review of the Build-Ready program.

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Respectfully submitted,

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