STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on August 14, 2025

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 21-E-0629 - In the Matter of the Advancement of Distributed Solar.

ORDER DENYING REHEARING

(Issued and Effective August 14, 2025)

BY THE COMMISSION:

INTRODUCTION

On May 19, 2025, the New York Solar Energy Industries Association (NYSEIA or Petitioner) filed a petition for rehearing (Petition) of the Public Service Commission's (Commission) Order Approving NY-Sun Program Modifications (Order), which was issued in this proceeding on April 24, 2025. The Order approved, with modifications, the Post 10 gigawatt (GW) Report filed by the New York State Energy Research and Development Authority (NYSERDA), which, in relevant part, detailed the incremental distributed solar capacity that could be procured using an expected $421 million surplus in the

authorized NY-Sun program budget.[1] Specifically, the Commission, inter alia, directed NYSERDA to return approximately $118.3 million of the expected surplus back to the legacy NYSERDA portfolios from which they originated, and return approximately $152.7 million to NYSERDA's balance of uncommitted legacy funds within the Clean Energy Fund, to be used to reduce future collections related to NYSERDA's other clean energy programs currently pending before the Commission. This reduced the total NY-Sun budget by $271 million. However, the Commission authorized NYSERDA to utilize $150 million of the surplus to continue incentivizing certain solar projects beyond 10 GW of statewide distributed solar by 2030 (10 GW Goal).

Petitioner argues that rehearing of the Order is warranted due to new circumstances such as the recent federal election and a new U.S. Congress, and potential changes to federal clean energy policies and programs, which occurred since NYSERDA's original proposal (i.e., the Post 10 GW Report) was filed and the public comment period occurred. Petitioner further asserts that rehearing should be granted because the Commission committed errors of law, including violations of the State Administrative Procedure Act (SAPA) by failing to provide adequate notice that it might use part of the surplus for purposes other than the NY-Sun program, and by failing to minimize unnecessary adverse impacts on existing jobs or issue a Jobs Impact Statement. Additionally, Petitioner maintains that the Order conflicts with the Climate Leadership and Community Protection Act (CLCPA).[2] Based on the foregoing, NYSEIA requests

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[1] Case 21-E-0629, NY-Sun Program: Impacts of the Inflation Reduction Act and the Potential for Incremental Distributed Solar Capacity Beyond the 10 GW Goal (filed January 5, 2024) (Post 10 GW Report).

[2] Chapter 106 of the Laws of 2019.

that the Commission grant rehearing on the portion of the Order reducing the total NY-Sun budget by $271 million and restore those surplus funds back to the NY-Sun program.

For the reasons discussed below, the Commission denies the Petition in its entirety.

BACKGROUND

In response to a series of Commission orders related to the NY-Sun program, on January 5, 2024, NYSERDA filed the Post 10 GW Report, detailing, inter alia, the incremental distributed solar capacity that could be procured within the existing NY-Sun program budget of $3.267 billion, in light of the Inflation Reduction Act of 2022. NYSERDA estimated that a total of approximately $2.846 billion of the total budget would be needed to achieve the 10 GW Goal, leaving a surplus of approximately $421 million. Noting that a previous expansion of the NY-Sun program relied on reallocating up to $118.3 million of uncommitted funds from legacy NYSERDA portfolios and New York Green Bank (NYGB) funds instead of authorizing new ratepayer collections, NYSERDA proposed to reduce the total NY-Sun budget by $75 million (i.e., the projected budget shortfall at the time) and utilize the remaining $346 million to support incremental solar capacity beyond the 10 GW Goal.[3] NYSERDA then presented several scenarios of the potential incremental distributed solar capacity that could be achieved using the remaining surplus.

Pursuant to SAPA §202(1), a Notice of Proposed Rulemaking regarding the Post 10 GW Report was published in the State Register on February 28, 2024 (SAPA Notice). On October 17, 2024, the Secretary to the Commission issued a further

[3] As an alternative, NYSERDA proposed reallocating the full $118.3 million back to the NYGB and legacy NYSERDA portfolios.

notice soliciting additional stakeholder feedback on how the surplus funds could be used to support low-to-moderate income households and disadvantaged communities, including, but not limited to, creating synergies with other ratepayer-funded programs intended to drive energy affordability and/or access to clean energy solutions in the low-to-moderate income market segment (October 2024 Notice). Numerous comments were received on the Post 10 GW Report pursuant to both the SAPA Notice and the October 2024 Notice.

Thereafter, on April 24, 2025, the Commission issued the Order, finding that, inter alia, the distributed solar market had sufficiently matured such that ratepayer-funded financial incentives through the NY-Sun program could be phased out following achievement of the 10 GW Goal. The Commission directed NYSERDA to reallocate $118.3 million of the expected $421 million surplus back to the legacy NYSERDA portfolios from which they originated. The Commission further directed that approximately $152.7 million of the surplus should be returned to NYSERDA's balance of uncommitted legacy funds, to be used to reduce future collections related to NYSERDA's other clean energy programs currently pending before the Commission. The Commission directed that the remainder, approximately $150 million, be used to continue incentivizing distributed solar development beyond the 10 GW Goal through the NY-Sun program.

PETITION FOR REHEARING

Preliminarily, NYSEIA requests that the Commission allow NYSERDA to proceed with certain actions outlined in the Order in order to minimize market disruption and harm to industry and program participants. NYSEIA limits its request for rehearing to the Commission's decision to reduce the total NY-Sun program budget by a total of $271 million.

In support of its request, NYSEIA argues that rehearing is warranted based on new circumstances. NYSEIA cites to various changes since NYSERDA's original proposal was filed and the public comment period occurred, including, but not limited to, the 2024 election of a new president and U.S. Congress. NYSEIA further asserts that Congress' consideration of a budget reconciliation deal that could impact solar development, inflationary pressures, and actions in early 2025 by the U.S. Environmental Protection Agency regarding the disbursement of award funding, constitutes new circumstances warranting rehearing.

In addition, NYSEIA avers that the Commission committed an error of law in deciding to reduce the total authorized NY-Sun program budget. According to Petitioner, such decision "defies the letter and the spirit of the CLCPA."[4] NYSEIA maintains that, even assuming the State is on track to achieve the 10 GW Goal, that fact alone provides an insufficient justification for diverting funds from NY-Sun. Instead, NYSEIA argues that the Commission should have considered the broader CLCPA target of 70% of the statewide electric generation coming from renewable sources by 2030 (the 70 by 30 Target). In support of its position, NYSEIA cites to a recent decision of the New York Appellate Division Third Department, which concluded that the Town of Athens' denial of an application for a zoning use variance, on the basis that there was no public necessity for the proposed solar project because the State was on track to achieve its established solar procurement target, was arbitrary, capricious, and unsupported by substantial

[4] Petition, p. 5. As noted below, the CLCPA included a procurement target of 6 GW of photovoltaic solar generation. Public Service Law (PSL) §66-p(5).

evidence.[5] According to NYSEIA, the logic of that ruling should apply here (i.e., before eliminating previously authorized funding to support distributed solar projects through the NY-Sun program, the Commission must consider the long-term goals of the CLCPA and not limit its focus on whether New York is "on track" for the 10 GW Goal).

NYSEIA also contends that the Commission violated SAPA notice requirements because its decision to use part of the surplus for purposes other than the NY-Sun program was not specified in the SAPA Notice and the October 2024 Notice, or recommended in comments responsive to those notices. NYSEIA claims that, if such notice was provided, the Commission would have received significant stakeholder feedback voicing concerns about eliminating funding for the NY-Sun program. NYSEIA further asserts that the October 2024 Notice was not published in the State Register and only had a comment period of 14 days.[6]

NYSEIA further alleges that the Commission violated SAPA §201-a by failing to minimize unnecessary adverse impacts on existing jobs. NYSEIA reasons that it should have been apparent to the Commission that a sudden elimination of NY-Sun support for certain market segments and the rapid phaseout of NY-Sun support for all other market segments would have substantial adverse impacts on employment in the impacted sectors. NYSEIA also claims that the Commission violated SAPA

[5] Freepoint Solar LLC v. Town of Athens Zoning Board of Appeals, 234 A.D.3d 127 (3rd Dep't 2024).

[6] NYSEIA acknowledges that one commenter recommended that a portion of the surplus funds be used for energy efficiency and building electrification purposes, but argues that the proposal should have undergone a full public comment period if the Commission wanted to seriously consider diverting NY-Sun funds to pay for an alternative program.

by failing to include a Jobs Impact Statement as part of the SAPA Notice.

COMMENTS

Pursuant to 16 NYCRR §3.7(c), responses to the Petition were due on June 3, 2025. One entity filed comments in opposition to the Petition, while multiple entities and individuals filed comments in support thereof.[7] On June 13, 2025, NYSEIA filed supplemental comments identifying that (1) the U.S. House of Representatives passed the budget reconciliation bill on May 22, 2025, (2) the New York Independent System Operator, Inc. published its 2025 Power Trends Report on June 2, 2025, and (3) NYSERDA filed an updated Clean Energy Fund cash flow projection on June 9, 2025. The supplemental comments also provide an analysis of NYSERDA's Clean Energy Fund cash flow filing as it relates to solar development in New York.

LEGAL AUTHORITY

The Commission's authority to grant or refuse an interested person's request for rehearing of an order is established by PSL §22 and governed by regulations implementing that statute that are contained in 16 NYCRR §3.7. A party seeking rehearing bears the burden of establishing that the Commission committed an error of law or fact or that new circumstances warrant a different determination.[8] A petition for rehearing must separately identify and specifically explain and

[7] Some commenters opined on issues beyond the scope of the Petition, such as the Order's directive that the $150 million surplus be used to incentivize Statewide Solar for All projects.

[8] Sixteen NYCRR §3.7(b).

support each alleged error or new circumstance said to warrant rehearing.

DISCUSSION AND CONCLUSION

Petitioner alleges that several errors in law, as well as new circumstances, necessitate rehearing of the Commission's decision in the Order to reduce the total NY-Sun program budget. The Commission addresses each of Petitioner's arguments below.

Petitioner first argues that rehearing is warranted based on "a significant change of circumstance since NYSERDA's original proposal was filed and the public comment period occurred."[9] However, many of the circumstances referenced by Petitioner, such as the federal elections that occurred in 2024, and federal actions regarding import tariffs that have been ongoing since early 2025, do not constitute new circumstances under 16 NYCRR §3.7 insofar as they did not occur subsequent to issuance of the Order itself. Petitioner also referenced economic factors such as escalating interconnection costs and the aforementioned import tariffs that could impact solar development. The Order broadly acknowledged such economic uncertainty, and it was factored into the Commission's decision making.[10]

Regarding the Congressional budget reconciliation measure referenced by Petitioner, the Commission acknowledges that revised legislation has since been signed into law and could result in impacts to clean energy development across the country. Nevertheless, changes in federal policy do not negate the fact that the Commission, in issuing the Order, carefully considered the balance between continuing ratepayer funded, up-

[9] Petition, p. 3.

[10] Order, p. 22.

front incentives within New York State through a NY-Sun program that has already achieved tremendous successes, and taking the opportunity to utilize a portion of ratepayer collections to directly address other important policy matters such as energy affordability.[11] Solar development is but one of New York State's numerous policy objectives, and the decisions in the Order reflect the Commission's multi-faceted approach to advancing the achievement of all of those objectives, even in the face of changing priorities at the federal level.[12] The Commission further noted that solar development in New York State is still supported through other mechanisms, such as the Value of Distributed Energy Resources compensation methodology and the Statewide Solar for All program.[13] Regarding the impacts that recent and future changes to federal policy will have on New York, the Commission will continue to actively monitor and evaluate those impacts as they relate to achieving State policy objectives. Nonetheless, based on the numerous considerations discussed in the Order and above, the Commission does not find that the circumstances cited by Petitioner warrant a reversal of the Commission's decision to modify the total NY-Sun program budget.

As to errors of law, Petitioner first alleges that the Commission erred by failing to consider the long-term goals of

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[11] See Order, pp. 22-25.

[12] The Commission's decision making also reflects the "laboratories of democracy" concept described by U.S. Supreme Court Justice Louis Brandeis, which posits that states, as smaller units within the federal system, can experiment with innovative approaches to governance and public policy. See New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). The concept has since taken hold as a touchstone of American legal and governmental discourse. See generally Reeves, Inc. v. Stake, 447 U.S. 429, 441 (1980).

[13] Order, pp. 25-26.

the CLCPA, and instead arbitrarily limited its focus to whether New York is "on track" for the 10 GW Goal. To the contrary, the Commission's actions in the Order took the 70 by 30 Target, as well as the broader requirements of the CLCPA, into account. Having already achieved the CLCPA's technology-specific target for 6 GW of solar generation and ensuring sufficient funding to meet a 10 GW target (i.e., 4 GW beyond the CLCPA's requirement), the Order expressly stated that the phasing out of ratepayer-funded incentives through the NY-Sun program is "not intended to slow or stop distributed solar development in New York once the 10 GW Goal is achieved," but instead the Commission "fully expects that the maturing market and other Commission-approved mechanisms will result in continuing distributed solar development, to continue the progress towards the renewable energy targets in PSL §66-p."[14] The Order also explicitly identified that, by reallocating NY-Sun surplus program funds back to the NYSERDA portfolios from where they originated, those funds will further the State's broader clean energy policies.[15]

Petitioner's reliance on Freepoint Solar v. Town of Athens is misplaced. In that case, the Town of Athens declined to grant a use variance necessary to develop the proposed solar project, finding that there was no public need for the project because the State was on track to meet the CLCPA's goal of 6 GW of distributed solar by 2025.[16] The Appellate Division reversed

[14] Governor Hochul Announces New York State Has Achieved Major Solar Milestone a Year Early (October 17, 2024), available at: https://www.governor.ny.gov/news/governor-hochul-announces-new-york-state-has-achieved-major-solar-milestone-year-early; Order, n. 25.

[15] See Order, p. 24 (explaining that restoring funding to the NYGB will ensure that "the full funding originally intended for NYGB is available to continue to support the State's clean energy objectives").

[16] Freepoint Solar, 23 A.D.3d at 129-130.

the Town's determination, concluding, among other things, that the Town irrationally refused to take into account the CLCPA's broader decarbonization objectives in its public-need analysis. Here, the Commission is neither denying any sort of land use application by Petitioner, nor reaching any conclusion as to the need for a specific solar project. Rather, as already noted above, the Commission modified an existing solar financial incentive program after carefully considering and balancing multiple factors, including, critically, the availability of other mechanisms to support solar development in New York and the achievement of other important State policy objectives, including energy affordability. The NY-Sun program is but one part of a broader suite of Commission programs, policies, and actions designed to help achieve the CLCPA's goals and targets. In that regard, in issuing the Order, the Commission necessarily considered the long-term goals of the CLCPA, and did not otherwise arbitrarily limit its focus to achievement of the 10 GW Goal.

Petitioner also argues that the Commission's decision to reduce the total NY-Sun program budget constitutes multiple violations of SAPA. First, Petitioner asserts that the Commission decision to use surplus program funds for purposes other than NY-Sun was not specified in the SAPA Notice or recommended by commenters.[17] To the contrary, the Post 10 GW Report prepared by NYSERDA, which was submitted in this case, and referenced in the public notices, itself presented multiple illustrative options for how the Commission could use the projected surplus NY-Sun funds (e.g., for covering the then-estimated budget shortfall of $75 million using the surplus

[17] Notably, NYSEIA expressly acknowledges that the Commission has the authority to approve and alter funding for programs under its purview. See Petition, p. 8.

funds, and/or reallocating $118.3 million back to the NYGB and NYSERDA legacy fund portfolios).[18] The SAPA Notice itself clearly explains that the Commission "may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters."[19] Likewise, the October 2024 Notice posed several questions regarding alternative options for how surplus NY-Sun funds could be spent, including, but not limited to, use of those funds to create synergies with other ratepayer-funded programs focused on energy affordability and/or access to clean energy solutions in the low-to-moderate income market segment.[20] Thus, the Commission provided clear and ample notice that it could consider and adopt a modified version of what was presented in the Post 10 GW Report.

Petitioner also incorrectly asserts that the Commission violated SAPA requirements by failing to minimize unnecessary adverse impacts on existing jobs, or to issue a Jobs Impact Statement. The actions taken by the Commission in the Order clearly fall within the definition of a "rule" as set forth in SAPA §102(a)(ii), which relates to rules that address

[18] NYSEIA argues that the Commission must grant rehearing and restore the full $271 million to the NY-Sun program. Notably, however, the Post 10 GW Report itself proposed in the first instance that a portion of that amount (i.e., up to $118.3 million) be reallocated back to the NYGB or NYSERDA legacy portfolios.

[19] SAPA Notice, pp. 25-26.

[20] See October 2024 Notice. As NYSEIA acknowledges, the Commission did receive comments, in response to the October 2024 Notice, suggesting that some of the surplus NY-Sun funds could be used for alternative purposes (e.g., a retrofit readiness program that addresses common barriers to both solar adoption and energy efficiency and building electrification).

topics including, but not limited to, rates.[21] SAPA §201-a(6)(a)(i) expressly exempts such rules from the requirements of SAPA §201-a(2), including the requirement to prepare a Jobs Impact Statement. To the extent that Petitioner argues that the "sudden elimination" of NY-Sun support for certain market segments will have significant employment impacts, the solar industry had knowledge that the NY-Sun program's declining MW Block approach was specifically structured to accelerate the pace to a self-sustained and, importantly, subsidy-free solar industry.[22] Specifically, the solar industry supported this structure as the most effective method to building a self-sustaining distributed solar industry "post incentive environment."[23] The Order did not suddenly eliminate NY-Sun support; rather, by design, ratepayer-funded, upfront solar incentives have been declining for years based on the MW Block approach. Moreover, as part of the transitional phase-out of ratepayer funded NY-Sun incentives, the Order specifically authorized NYSERDA to spend $150 million of the estimated NY-Sun budget surplus on incremental solar projects beyond the 10 GW Goal. This directive strikes an appropriate balance between phasing out NY-Sun program subsidies as intended, in light of the program's demonstrated successes,[24] while still preserving a

[21] See SAPA Notice, p. 26 (identifying the proposed rule as "within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act").

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

[23] Id., p. 11 (quoting the comments of the Solar Energy Industries Association).

[24] Even after the Order's budget modifications, the NY-Sun program will have provided nearly $3.0 billion in ratepayer support to the distributed solar industry once fully expended.

portion of the expected NY-Sun budget surplus to provide the solar industry with a ramp-down period for upfront incentives.

Consistent with the "laboratory of democracy" concept, the Commission, through discretionary regulatory authority and decision making, developed a program to provide short term financial incentives to encourage the attainment of the 10 GW Goal. The program made clear that the financial incentives would decline over time as the State progressed toward the 10 GW Goal. The 10 GW Goal is within reach. The program achieved success. As laboratories of democracy, states have the flexibility to conclude, adjust, or refocus their policies to address multiple public interest priorities. Given the discretionary nature of the program, Petitioner lacks any legal basis to compel the Commission to continue the discretionary program as a long-term annuity and devote some or all of the financial surplus according to Petitioner's preference.

Based on all the foregoing, the Commission concludes that there are no allegations in the Petition warranting rehearing of the Order. Accordingly, the Petition is denied.

The Commission orders:

1. The petition, filed in this proceeding by the New York Solar Energy Industries Association on May 19, 2025, is denied, as discussed in the body of this Order.

2. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary