

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 18, 2024

COMMISSIONERS PRESENT:

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

CASE 15-E-0302 - Proceeding on Motion of the Commission to
Implement a Large-Scale Renewable Program and a
Clean Energy Standard.

ORDER APPROVING PHASE 6 IMPLEMENTATION PLAN

(Issued and Effective July 22, 2024)

BY THE COMMISSION:

INTRODUCTION

On June 23, 2023, the Public Service Commission (Commission) issued the Financial Backstop Order, which directed the New York State Energy Research and Development Authority (NYSERDA) to create "an efficient true-up process to enable program true-ups to be remedied in an efficient and straightforward manner to prevent large year-to-year deficits from accumulating."¹ On February 20, 2024, NYSERDA filed a Phase 6 Implementation Plan, which proposes a "Rolling Backstop Collection" process to serve as a true-up method to facilitate timely resolution of outstanding receivables that may result

¹ Case 15-E-0302, Order Approving Financial Backstop Collection Mechanism (issued June 23, 2023) (Financial Backstop Order).

from past Clean Energy Standard (CES) invoices (Phase 6 Implementation Plan or Petition). To address the Commission's directives in the Financial Backstop Order, the Phase 6 Implementation Plan provides a comprehensive true-up plan to accommodate any program deficits in an efficient manner and avoid large deficits that precipitated the Financial Backstop Order in the first place. In this Order, the Commission approves the Phase 6 Implementation Plan and directs NYSERDA to file a final Phase 6 Implementation Plan within 30 days of the effective date of this Order.

BACKGROUND

On August 1, 2016, the Commission adopted a CES comprised of a Renewable Energy Standard (RES) and a Zero-Emissions Credit requirement.² The CES Framework Order adopted a goal whereby 50% of electricity consumed in New York by 2030 would be generated by renewable energy sources (referred to as the "50 by 30" goal). The Commission anticipated additional measures would be needed to fully implement the CES and instituted an implementation phase to address issues and approve changes as necessary. In October 2020, the Commission, in response to the Climate Leadership and Community Protection Act, adopted a goal of 70% renewable energy by 2030 in the CES Modification Order.³

The Phase 1 Implementation Plan included details and processes regarding the RES eligibility, certification of eligibility, the long-term procurement of Renewable Energy

² Case 15-E-0302 et al., Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

³ Case 15-E-0302, Order Adopting Modifications to The Clean Energy Standard (issued October 15, 2020) (CES Modification Order).

Certificates (RECs), Load Serving Entity (LSE) demonstration of compliance, and other reporting requirements.⁴ It also included details pertaining to the eligibility of upgrades, return to service, and repowering.

The Phase 2 Implementation Plan included modifications to the annual targets for LSE obligations for 2018 through 2021, clarification of the treatment of voluntary purchases and baseline resources in determining progress toward CES goals, and protocols for the application of an annual Divergence Test.⁵ Additionally, the Phase 2 Implementation Plan included revised program design and procedures for the sale in 2018 of Tier 1 RECs procured by NYSERDA under long-term contracts, direction for post-2018 design modifications, establishment of a method to calculate the alternative compliance payment (ACP) for 2018, and a description of how NYSERDA would utilize any ACPs received.

The Phase 3 Implementation Plan clarified how load subject to the various CES obligations is calculated, provided a certification process for Value of Distributed Energy Resources (VDER) resources, extended the commercial operation milestone date for Tier 1 procurements, and provided design and procedures for the sale in 2019 and beyond of Tier 1 RECs procured by NYSERDA.⁶

The Phase 4 Implementation Plan addressed further implementation procedures for the CES, which primarily focused on impacts to pricing and disposition of the Tier 1 RECs that

⁴ Case 15-E-0302, Order Approving Phase 1 Implementation Plan (issued February 22, 2017) (Phase 1 Implementation Order).

⁵ Case 15 -E-0302, Order Approving Phase 2 Implementation Plan (issued November 17, 2017) (Phase 2 Implementation Order).

⁶ Case 15-E-0302, Order Approving Phase 3 Implementation Plan (issued December 4, 2018) (Phase 3 Implementation Plan).

NYSERDA procures under an Indexed REC structure.⁷ The Phase 4 Implementation Plan allowed LSEs to purchase Tier 1 RECs from NYSERDA on a quarterly basis, instead of the original yearly disposition of RECs.

The Phase 5 Implementation Plan⁸ details the transition of the CES Tier 1 RES compliance obligation for LSEs away from the then-current approach and toward a load share obligation approach similar to other existing LSE obligations under the CES, as approved in the Tier 1 Transition Order.⁹ Pursuant to the Tier 1 Transition Order, and beginning with the 2025 compliance year, LSEs will be obligated to procure all Tier 1 RECs made available by NYSERDA, after the completion of voluntary sales, in a proportion equivalent to their share of the State load or load share.

THE FILING

NYSERDA proposes that a "true-up" process be put in place to allow significantly overdue uncollectible CES receivables to be incorporated into the next compliance period when determining the annual LSE obligations. The proposed process would replace the current process of accumulating large deficits and petitioning the Commission for approval of the funds to be collected by the electric distribution companies

⁷ Case 15-E-0302, Order Approving Phase 4 Implementation Plan (issued August 13, 2020) (Phase 4 Implementation Plan).

⁸ Case 15-E-0302, CES Phase 5 Implementation Plan (filed August 30, 2023) (Phase 5 Implementation Plan).

⁹ Case 15-E-0302, Order Modifying Clean Energy Standard Tier 1 Obligation (issued April 20, 2023) (Tier 1 Transition Order).

(EDCs).¹⁰ NYSERDA states that the Rolling Backstop Collection process would be more efficient and timelier in comparison. Further, NYSERDA proposes that if the longer-term cashflow forecasts indicate that expected expenditures will exceed all sources of cash available, it would follow the backstop invocation process as defined in the Financial Backstop Order. NYSERDA indicates that it would identify any LSE obligation not paid in full after the reconciliation process and determine if the past due amount should be considered "uncollectible." After all reasonable collection efforts are exhausted, NYSERDA would recommend incorporation into the Rolling Backstop Collection process.

NYSERDA proposes to work with Department of Public Service Staff (DPS Staff) to review delinquent LSE accounts and take measures to collect and ensure compliance with LSE obligations. Each year, NYSERDA and DPS Staff would consult to review cost and load projections to determine annual initial rates for each CES compliance program. NYSERDA states that if it receives recovery from an uncollected amount which has been included in a true-up reconciliation, then NYSERDA would apply an offsetting credit to the following compliance obligation calculation. Once NYSERDA and DPS Staff agree on past due collectible accounts, NYSERDA would then include these amounts as a new cost component when determining the initial rate for the upcoming compliance year. If approved, NYSERDA proposes that it would enact the Rolling Backstop Collection process for the next compliance year (2025 compliance year) for each CES program with an LSE obligation that is load share based.

¹⁰ The EDCs include Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid.

NYSERDA suggests that any uncollectible amounts at the end of the CES program be collected through the EDCs. NYSERDA would submit a reconciliation statement to the Commission identifying the uncollectible amount remaining at the end of the program to be collected from the EDCs, over a reasonable timeline to align with the completion of the program.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) was published in the State Register on March 27, 2024 [SAPA No. 15-E-0302SP64]. The time for submission of comments pursuant to the Notice expired on May 28, 2024. No comments were received.

LEGAL AUTHORITY

The Commission's authority derives from the New York State Public Service Law (PSL), through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of ... electricity." PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carryout long-range programs, individually or cooperatively, 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." PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying ... electricity ... and have power to order such reasonable improvements as well as promote the public

interest, preserve the public health and protect those using such gas or electricity ...”

PSL §4(1) also expressly provides the Commission with “all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]” including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,¹¹ environmental stewardship, and the conservation of resources.¹² Further, PSL §65 provides the Commission with authority to ensure that “every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” The Commission also has authority to prescribe the “safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public” whenever the Commission determines that the utility’s existing equipment is “unsafe, inefficient or inadequate.”¹³ In addition to the PSL, the New York State Energy Law §6-104(5) (b) requires that “[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update.”

¹¹ See, International R. Co. v Public Service Com., 264 AD 506, 510 (1942).

¹² PSL §5(2); see also, Consolidated Edison Co. v Public Service Commission, 47 N.Y.2d 94 (1979) (overturned on other grounds) (describing the broad delegation of authority to the Commission and the Legislature’s unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5).

¹³ PSL §66(5).

DISCUSSION AND CONCLUSION

The Financial Backstop Order, which established the CES backstop mechanism, directed NYSERDA to develop a true-up method for uncollectable amounts to avoid large over-or-under collections. The Commission adopted a very detailed process for the backstop mechanism to be invoked, requiring NYSERDA to file a petition for Commission approval. That process can be administratively burdensome for both NYSERDA and DPS Staff to file the petition, conduct due diligence, and bring a recommendation before the Commission for approval. Further, that process takes considerable time and effort including the time and effort for the EDCs to collect the funds from ratepayers and then transfer to NYSERDA. The proposed true-up method is a much more efficient approach to resolve any uncollectible expenses in the CES programs. The proposed Phase 6 Implementation Plan provides a reasonable process designed to avoid the accumulation of large program deficits and is therefore approved.

Since transitioning to the load share approach, NYSERDA will receive monthly payments from all LSEs based on their New York Independent System Operator, Inc. (NYISO) Version 1 load data.¹⁴ This approach will greatly reduce the likelihood that NYSERDA would have a cashflow shortfall situation, while smoothing the collection of funds from LSEs. Another benefit of the Rolling Backstop Collection process is that it moves the collection of the uncollectible receivables to the supply side collection to ensure delivery customers are not paying for the deficits of LSEs. The Commission finds that this process will proactively resolve the occasional issue of uncollectible CES obligations. Moreover, forecasted longer-term large cashflow

¹⁴ NYISO Version 1 load data is generated within 15 days after the end of the previous month.

issues shall be dealt with through the Commission-approved backstop mechanism.

The Commission directs NYSERDA to consult with DPS Staff to identify the past due receivables and to exhaust all efforts to collect and ensure compliance with LSE obligations. Further, as stated in other CES implementation plans, NYSERDA and DPS Staff shall review costs and load projections to determine annual initial LSE rates for each CES compliance program. As part of this analysis, the Commission directs NYSERDA to include the identified uncollectible receivables as part of the cost component beginning with the 2025 compliance year. Should NYSERDA receive recovery of an uncollected amount which was included in a true-up process, it shall apply the offsetting credit to the following compliance period cost recovery rates. As the CES programs come to an end, NYSERDA shall submit a reconciliation statement of all CES programs to the Commission identifying the uncollected amount and collect the remaining funds from ratepayers, through the EDCs, over a reasonable timeline to align with the completion of the programs.

In conclusion, the Phase 6 Implementation Plan is approved. The Rolling Backstop Collection process shall take effect for the 2025 CES Compliance year for all CES programs. The Commission directs NYSERDA to file the Final Phase 6 Implementation Plan within 30 days of the effective date of this order.

The Commission orders:

1. The Clean Energy Standard Phase 6 Implementation Plan proposal submitted by the New York State Energy Research and Development Authority is approved, as discussed in the body of this Order.

2. The New York State Energy Research and Development Authority shall file a final Phase 6 Implementation Plan within 30 days of the effective date of this Order, as discussed in the body of this Order.

3. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary