

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 15, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

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

ORDER APPROVING 2023 CLEAN ENERGY STANDARD ADMINISTRATIVE
FUNDING AND RECONCILIATION OF YEAR 2021 ADMINISTRATIVE COSTS

(Issued and Effective December 15, 2022)

BY THE COMMISSION:

INTRODUCTION

The New York State Energy Research and Development Authority (NYSERDA) has been designated as the administrator of the Clean Energy Standard (CES) Program and is required to file a petition yearly to recover the costs associated with administering the CES Program.¹ On July 29, 2022, NYSERDA filed a petition seeking Public Service Commission (Commission) approval of \$38,847,491 in funds to cover its estimated costs

¹ Case 15-E-0302, et al., Order Adopting A Clean Energy Standard (issued August 1, 2016) (CES Framework Order); see also Case 15-E-0302, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016).

and fees for administering the CES Program for the 2023 CES Compliance Year, including the Renewable Energy Standard (RES) (comprised of Tiers 1, 2, and 4, and an Offshore Wind (OSW) Standard), and the Zero-Emissions Credit (ZEC) program (the Petition). The Petition further proposes an administrative adder for CES Compliance Years 2023-2024 of the ZEC program. The Petition also includes reconciliation of the CES Compliance Year 2021 administrative expenses, as well as anticipated CES Program surpluses at the end of 2022.

In this Order, the Commission approves, with modifications, NYSERDA's request for the 2023 CES administrative funds. We also approve NYSERDA's ZEC administrative adder. As detailed below, the approved funds will allow NYSERDA to hire additional staff and to effectively manage the ever-increasing and more complex renewable energy contracts, while also overseeing increased technical services.

BACKGROUND

In the CES Framework Order, the Commission established the CES Program to increase the State's renewable energy supply and to preserve New York's existing zero-emissions generation. The Commission divided the CES into a RES and ZEC requirement. The RES includes a Tier 1 component that obligates each load-serving entity (LSE) to serve its retail customers by procuring new renewable resources, evidenced by the procurement of qualifying Tier 1 Renewable Energy Certificates (RECs) from NYSERDA or other sources, or by making Alternative Compliance Payments (ACPs). The RES also includes a Tier 2 Maintenance program to provide financial support for existing baseline eligible renewable facilities that are at risk of ceasing operations. Under the ZEC program (i.e., Tier 3), each LSE that serves end-use customers in New York must purchase ZECs from

NYSERDA in proportion to the load they serve relative to the total statewide load. NYSERDA administers this program by purchasing ZECs from qualifying nuclear generators during each compliance year and duly billing LSEs for their share.

The Commission established the OSW program and accompanying Standard in 2018 by requiring LSEs to support the procurement of 2.4 gigawatts (GW) of OSW resources by 2030. As with Tier 1, the OSW Standard obligates each LSE to serve its retail customers by procuring new OSW resources, evidenced by the procurement of OSW Renewable Energy Certificates (ORECs) from NYSERDA.² On April 23, 2020, to maintain New York's trajectory in meeting its clean energy goals, the Commission authorized NYSERDA to issue an additional OSW solicitation for up to 2,500 MW.³

On October 15, 2020, the Commission issued the CES Modification Order, which adopted the clean energy deployment targets within the Climate Leadership and Community Protection Act (CLCPA), including the goal that at least 70% of statewide load is served by renewable energy resources by 2030, and that 9,000 MW of OSW be procured by 2035.⁴

The CES Modification Order also created two new programs to facilitate achievement of these goals. The first was the Competitive Tier 2 program designed to support non-state-owned wind and run-of-river hydroelectric generating

² Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) (OSW Framework Order).

³ Case 18-E-0071, supra, Order Authorizing Offshore Wind Solicitation in 2020 (issued April 23, 2020) (2020 Offshore Wind Order).

⁴ Case 15-E-0302, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) (CES Modification Order).

facilities that commenced operation prior to January 2015. The second was the Tier 4 program designed to support renewable energy delivered into New York City.

In the CES Modification Order, the Commission approved NYSERDA's administrative expenses for the 2021 CES compliance year. The Commission also authorized a REC and ZEC administrative adder that included anticipated administrative costs for 12 months, plus the shortfall or surplus from previous years, with the adders being reduced by any revenues received in previous years. Through the adder mechanism, administrative costs are allocated across the attributes NYSERDA annually sells to LSEs in each year, via a commensurately-increased attribute price or an increased LSE rate depending on the program. The Commission also directed NYSERDA to combine administrative funding requests for all CES programs into one comprehensive annual funding petition for years 2022 and beyond.

THE PETITION

2023 CES Compliance Year Budget Proposal

NYSERDA requests administrative funding of \$38,847,491 to support the 2023 CES Compliance Year for the RES and ZEC programs. It explains that the administrative funding is used for salaries and overhead, system development to maintain the systems to operate CES programs, technical and implementation support, and the New York State Cost Recovery Expense.⁵ According to the Petition, NYSERDA would fund the RES

⁵ The New York State Cost Recovery Fee is a fee (approximately 1% of total program expenditures) 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 corporation pursuant to Section 2975 of the Public Authorities Law. It is applicable to all CES spending and is allocated to each program's annual expenditures.

administrative budget with surplus revenues received during previous years, including bid fees, contract security forfeitures, ACPs, and interest income. For the ZEC program, NYSERDA proposes to continue to fund the program's administrative functions through an adder of approximately 1.29%.

According to NYSERDA, the chief reason for the increase in the budget is due to expansion of the RES program workload, including the volume of contracts to be created and managed, complexity of the contract terms, and computations pertaining to the related analyses. This increased workload is due, in large part, to meeting the increased renewable energy requirements under the CLCPA. NYSERDA argues that while staffing has incrementally increased over the past few years, it has not kept pace with the exponential increase in both workload and complexity of managing the CES programs. Moreover, NYSERDA notes that, in 2023, the gap in staffing ratios versus workload volume is expected to further widen as the CES programs continue to solicit and procure projects, including CES program awards from the 2022 solicitations. The contracting and settlement of the REC agreements associated with projects that have achieved commercial operation has become more complex with the implementation of Index RECs, according to NYSERDA. Moreover, NYSERDA points out that new initiatives, such as the New York Buy American Act, layered on top of the CES general requirements, including prevailing wage, necessitate additional analysis, skillset, planning, and processes for the operation of the CES programs. NYSERDA also notes that it has to approve payment for each of the monthly invoices submitted by the operating generators to ensure correct payments are authorized. This reflects the increasing complexity of the overall contract management process because, for Index REC contracts, NYSERDA

must validate the energy and capacity prices paid to the generator by the NYISO, and then ensure the REC price component to be paid by NYSERDA aligns with the contractual Strike Price.

Regarding the Tier 1 program, the Petition states the need for six additional Project Managers and explains that although Project Managers perform a variety of supporting tasks, their primary task is the active management of contracts awarded to generators throughout the contract term. Contracts resulting from the completed NYSERDA Tier 1 solicitations from 2017 through 2021 have created a current portfolio of 107 agreements and over 8,400 MW of renewable capacity under contract. Project Managers are also responsible for project agreement maintenance activities such as managing the conversion from fixed to indexed REC process and requests for contract modifications, as well as oversight and management of quarterly milestones and progress updates for each project under contract. The six Project Managers would have responsibility for these existing contracts and awards plus new contracts resulting from the upcoming 2022 solicitation (RESRFP22-1) and future Tier 1 annual solicitations. According to NYSERDA, each annual solicitation typically results in 18-25 new contracts to manage. Based on this projection, NYSERDA states that the number of projects under active management is expected to exceed 170 by 2025. This would represent a nearly 60% increase in Tier 1 projects to be managed, analyzed, supported, and overseen.

NYSERDA reports that Project Managers also assist in conducting each annual Tier 1 solicitation and that the solicitation process has become more complex as the CES program has evolved. NYSERDA asserts that the annual Tier 1 solicitation has evolved into a two-part application and evaluation process due to the complex scoring criteria designed to reduce costs, while also supporting historically

disadvantaged communities in accordance with the CLCPA. The increasing complexity of the annual solicitation, NYSERDA continues, means that it is a major workstream on its own with 1.5 full-time employees (FTEs) dedicating most of their time to the solicitation throughout the year. The annual cycle means that, as one solicitation is concluding, the next is beginning, and there is little time available for these staff to actively manage projects in development. In addition, NYSERDA explains that support staff including communications, marketing, and finance are partially funded and responsible for Tier 1 support.

For Tier 2, NYSERDA explains that this staff (currently comprised of 1.25 FTEs) is primarily a project manager who dedicates a sizeable portion of their time to conducting Tier 2 solicitations, managing contracts with awarded generators, and administering contracts originating from the Tier 2 Maintenance program periodically. The third and final solicitation was recently held with no contracts awarded due to all bid prices coming in above the confidential maximum bid price. In light of the current Tier 2 activity, NYSERDA plans to initiate new actions to support market activity directly between generators and purchasers of RECs to increase Tier 2 REC availability. The non-Tier 1 REC market, often informally referred to as the Tier 2 or voluntary market, is experiencing a substantial increase in demand according to NYSERDA. Support from NYSERDA would help create a more robust and sustained competitive marketplace for those offering Tier 2/voluntary RECs for Energy Service Company green offerings, Community Choice Aggregation programs, and other market participants. NYSERDA asserts that there is also a small portion of time from several supporting areas accounted for in the Tier 2 program budget, including legal, operations, communications, and leadership.

The goal of the Tier 3/ZEC program is to place a value on New York's upstate nuclear plants which avoid the emission of over 15 million tons of carbon dioxide per year, according to the program's original design. New York State's LSEs must purchase ZECs from NYSERDA every year. This annual obligation is based on an LSE's proportional amount of statewide load in each compliance year. NYSERDA explains that the Tier 3/ZEC program staff is currently comprised of 1.35 FTEs, which is primarily a project manager who dedicates a sizeable portion of time to determining LSE obligations, establishing LSE collections, making payments to the ZEC sellers, and reconciling the program at the end of each compliance year. As with other tiers, NYSERDA notes that there is also a small portion of time from several supporting areas accounted for in this total, including legal, operations, communications, and leadership.

Regarding Tier 4, NYSERDA notes that the Commission approved two projects that combine renewable generation and new transmission lines to increase the penetration of renewable energy in New York City and reduce reliance on fossil fuels.⁶ As explained by NYSERDA, support is requested in this budget proposal to initiate analysis related to assessing transmission constraints, monitoring New York Independent System Operator, Inc. (NYISO) market developments and procedures related to internal controllable lines, evaluating coincident generation with OSW, as well as deliverability, and forecasting ratepayer impacts and the volume of voluntary RECs that may be available. An in-depth analysis of these issues may be required in future years and 2023 will allow for an initial assessment of these needs. The Tier 4 contracts and related orders invoke requirements pertaining to the CLCPA to ensure that

⁶ Case 15-E-0302, Order Approving Contracts for the Purchase of Renewable Energy Contracts (issued April 14, 2022).

disadvantaged and traditionally underserved communities are engaged with and benefit directly from NYSERDA's projects, including a workforce development component and utilization of project labor agreements. NYSERDA asserts that support from subject matter experts is anticipated to facilitate and develop the new opportunities and challenges presented by these initiatives within the Tier 4 contracts and the funds for this are included in the Technical Support budget line.

For the OSW program, New York has five offshore wind projects (four NYSERDA-awarded projects and one Long Island Power Authority project) and five ports under active development. With over 4,300 MW of offshore capacity procured, the State is nearly halfway toward the 9,000 MW CLCPA goal by 2035. In July of 2022, NYSERDA issued its third OSW solicitation, ORECRFP22-1, to procure at least 2,000 MW more of OSW energy toward the CLCPA goal. Awards are expected in early 2023 according to NYSERDA. As a result, NYSERDA states that funds relating to facilitation and technical reviewer services will be required to evaluate the proposals and the related supply chain development investments of up to \$500 million provided by other State funds. Also in 2023, NYSERDA continues, key programmatic workstreams are expected, including those related to OSW supply chain development, stakeholder engagement and outreach, and environmental research initiatives as well as future planning for the New York Bight. Funding is requested to support the coordination, facilitation, and technical support of four OSW Technical Working Groups (TWGs) as well as support for a recreational fisheries liaison and regional environmental and fisheries research. NYSERDA asserts that these efforts are vital to New York's leading role in OSW development in the Northeast and Mid-Atlantic and will help to assure that projects continue to advance efficiently with minimal disruption to

existing industries. NYSERDA further asserts that ensuring companies can connect during conferences, such as the Offshore Wind International Partnering Forum (IPF), and that supply chain matters are addressed through the creation and maintenance of a Supply Chain database, are important programmatic needs to support NYSERDA's existing OREC contracts and projects. Funding will partially support two Labor Liaisons to ensure contractually-obligated project labor agreement negotiations and the gains toward a diverse, inclusive workforce are advanced with benefits accruing to disadvantaged communities.

As illustrated below, Table 1 includes the proposed administrative budget for the 2023 CED compliance year, which includes the additional FTEs and the increased funding for technical and system support. Tables 2, 3, and 4 show the reconciliation of the 2021 CES compliance funds, by program. Table 5 demonstrates the preliminary estimated of the CES RES surplus funding from REC proceeds, ACPs, and previous collected funds from bid fees, contract security payments, and investment income.

Table 1. Proposed CES Year 2023 Budget

Program Salary, Overhead and Cost Recovery Fee Expenses	RES	ZECR	OREC	Tier 2	Tier 4	Totals
Salaries and Overhead	\$6,657,522	\$547,750	\$5,767,203	\$546,108	\$581,760	\$14,100,343
NYS Cost Recovery Expense	\$488,969	\$6,596,761	\$164,296	\$14,199	\$13,623	\$7,277,848
Technical Support	\$4,438,800	\$279,900	\$10,662,400	\$357,700	\$780,500	\$16,519,300
System Development	\$202,046	\$711,521	\$0	\$36,433	\$0	\$950,000
Totals	\$11,787,337	\$8,135,932	\$16,593,899	\$954,440	\$1,375,883	\$38,847,491

**Table 2. Unspent CES Compliance Period Funds
Tier 1 and ZECR (2021)**

Program Salary, Overhead and Cost Recovery Fee Expenses	Year 5 Budget (2021)	End of Year 5 Committed	Unspent Funds
Tier 1 Salary and Overhead	\$4,495,607	\$3,880,806	\$614,801
Tier 1 NYS Cost Recovery Fee	\$632,473	\$189,690	\$442,783
Tier 1 Non-Recurring Charges	\$0	\$0	\$0
Tier 1 Technical Support	\$3,175,000	\$3,152,507	\$22,493
Tier 1 System Development	\$340,000	-\$14,224	\$354,224
Tier 1 Total	\$8,643,080	\$7,208,779	\$1,434,301
ZECR Salary and Overhead	\$492,945	\$426,771	\$66,174
ZECR NYS Cost Recovery Fee Expenses	\$6,400,492	\$5,984,526	\$415,966
ZECR Non-Recurring Charges	\$0	-\$24,016	\$24,016
ZECR Technical Support	\$225,000	\$4,407	\$220,593
ZECR System Development	\$660,000	\$476,228	\$183,772
ZECR Total	\$7,778,437	\$6,867,916	\$910,521
Total	\$16,421,517	\$14,076,695	\$2,344,822

Table 3. Unspent CES Compliance Period Funds – Tier 2 (2021)

Program Salary, Overhead and Cost Recovery Fee Expenses	Yr. 1 (2020) Approved Budget	Revised Budget	End of Year 1 Committed	Unspent Funds
Tier 2 Salary and Overhead	\$406,972	\$211,883	\$211,883	\$0
Tier 2 NYS Cost Recovery Fee Expenses	\$407,222	\$5,772	\$5,772	\$0

Tier 2 Technical Support	\$500,000			\$0
Tier 2 Capital System Development Costs	\$270,000	\$253,620	\$253,620	\$0
Total	\$1,584,194	\$471,275	\$471,275	\$0

Table 4. Unspent CES Compliance Periods Funds – Tier 4 (2021)

Program Salary, Overhead and Cost Recovery Fee Expenses	Yr. 1 (2020) Approved Budget	End of Year 1 Committed	Unspent Funds
Tier 4 Salary and Overhead	\$406,972	\$132,481	\$274,491
Tier 4 NYS Cost Recovery Fee Expenses	\$18,962	\$20,988	-\$2,026
Tier 4 Technical Support	\$900,000	\$3,306,204	-\$2,406,204
Tier 4 Capital System Development Costs	\$300,000	\$0	\$300,000
Total	\$1,625,934	\$3,459,673	-\$1,833,739

Table 5. Preliminary Estimates of CES RES Surplus Funding

Beginning Surplus/(Deficit), January 1, 2022	\$56,054,909
Revenue/Source of Funds (Tier 1)	
Renewable Energy Credits Proceeds	\$37,525,000
Alternative Compliance Payments	\$5,000,000
Management/Bid Fees	\$4,100,000
Contracts Security and Bid Deposits	\$0
Investment Income	\$484,000
Tier 1 Revenue	\$47,109,000
Expenses/Use of Funds (Tier 1)	
Program Administration	\$5,419,430
Program Support	\$3,164,600
System Development Costs	\$149,925
REC Payments to Generating Facilities	\$37,598,514

NYS Cost Recovery Fee	\$1,072,738
Total Tier 1 Expense	\$47,405,207
Transfers to Other Funds	
Transfer to OREC	\$8,012,186
Transfer to Tier 2	\$627,154
Transfer to Tier 4	\$0
Total Transfer from Tier 1 to Other Funds	\$8,639,340
Surplus/(Deficit), 1/1/22-12/31/22	-\$8,935,547
Cumulative Surplus/(Deficit), December 31, 2022	\$47,119,362

NOTICE PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on August 24, 2022 [SAPA No. 15-E-0302SP55]. The time for submission of comments pursuant to the Notice expired on October 24, 2022. Comments were received by the Alliance for Clean Energy of New York (ACE NY) and the Clean Energy Parties (CEP).⁷ These comments are summarized and addressed below.

SUMMARY OF COMMENTS

ACE NY supports NYSERDA's petition to ensure that appropriate staffing levels are in place to achieve the goals of the CLCPA. ACE NY argues that it is becoming difficult for existing NYSERDA staff to continue to meet their project management workload while dedicating sufficient time to conduct solicitations. Further, ACE NY notes that the solicitations have evolved and require a more specialized skillset with many additional scoring requirements, and rigorous quality assurance

⁷ CEP is comprised of: National Resources Defense Council, New York League of Conservation Voters, The Nature Conservancy, Sierra Club, Environmental Advocates of New York, Scenic Hudson, New Yorkers for Clean Power, and American Farmland Trust.

and quality control. According to ACE NY, these new requirements increase staff time commitments and necessitate NYSERDA's request for more staff. ACE NY explains that additional staff will aid in the procurement process, contract negotiations, management, and settlements. It also states that there are other critical staff functions such as technical support and analysis that need to be supported and argues that NYSERDA needs the appropriate staff to support the work of the Climate Action Council. Therefore, ACE NY supports NYSERDA's 2023 administrative petition request.

CEP agrees with the points discussed in the ACE NY comments and argues that as the CES continues to grow, the demands of NYSERDA increase and support the need for additional staff and technical support. CEP adds that the NYSERDA portfolio will require a broader range of expertise and also notes that an additional 8 to 16 large-scale renewable projects will become operational in 2023. CEP states that it is important that NYSERDA can administer the CES programs effectively to achieve the State's energy goals. In addition, NYSERDA must administer the CES programs in compliance with requirements of the Accelerated Renewable Energy Growth and Community Benefit Act, the New York Buy American Act, and Labor Law Section 224-d. CEP maintains that there is a need for additional staff to handle solicitations, contract negotiations, project management, and OSW-related programs. CEP supports NYSERDA's 2023 funding request and recommends approval by the Commission.

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,⁸ environmental stewardship, and the conservation of resources.⁹ 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

⁸ See International R. Co. v Public Service Com., 264 AD 506, 510 (1942).

⁹ 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).

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.”¹⁰ 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.”

DISCUSSION

The NYSERDA-proposed budget for 2023 of \$38,847,491 represents an increase of approximately \$8.6 million or approximately 29% over the 2022 authorized budget of \$30,209,000. NYSERDA proposes to fund its 2023 administration of Tiers 1, 2, and 4, and OSW programs with revenues received in the previous years, including bid fees, ACPs, contract security forfeitures, and interest income. NYSERDA explains that the Commission has previously authorized the use of these sources to offset the costs of administering the CES programs.¹¹ NYSERDA plans to fund the ZEC program with the ZEC adder charge, as done in previous years. The cumulative estimated surplus as of the end of 2022 shown above in Table 5 of approximately \$47 million is comprised chiefly of ACPs received by NYSERDA during 2020 and 2021. NYSERDA states that Table 5 illustrates the necessary transfer of surplus amounts to the OREC, Tier 2, and Tier 4

¹⁰ PSL §66(5).

¹¹ Case 15-E-0302, Order Approving Phase 2 Implementation Plan, (issued November 11, 2017).

programs to ensure proper funding while mitigating the ratepayer impact of CES program costs. These surplus funds will therefore be used to offset the cost of administering these programs.

While the cumulative program surpluses are important in funding 2023 program and CLCPA goals, the requested positions and technical support additions must be carefully considered from a need perspective and conservatively balanced against current ratepayer obligations, including rising electricity costs.

ACE NY and CEP agree with NYSERDA's request for additional staff to assist with the workload. ACE NY agrees with NYSERDA that the CES solicitation process will necessitate increased staff time review, scoring and quality assurance, and quality control. CEP notes that the NYSERDA portfolio will require a broader range of expertise to effectively administer the CES programs. Further, CEP argues that new CES compliance requirements, such as the New York Buy American Act and the prevailing wage laws, add a new layer of complexity to contract negotiations.

Generally, we agree with NYSERDA and commenters that additional personnel are necessary to carry out the functions of the CES programs thoughtfully and effectively. The Commission recognizes the need for additional FTEs in the areas of contract management, solicitation support, legal, and offshore wind support. The growth in NYSERDA's CES responsibilities is apparent, and we recognize that the staffing levels should keep pace with the workload. However, we find that the staffing request for an incremental 19 FTEs shall be reduced based on our detailed review of the need. Therefore, the modified budget herein provides the funding to add necessary FTEs.

It is clear from NYSERDA's Petition and Department of Public Service Staff (Staff) discussions with NYSERDA that the workload associated with contracts to be settled and

subsequently managed has increased to date and that trend is expected to continue further in the upcoming years. The anticipated increase of 60% in Tier 1 contracts by 2025 is not unrealistic given the number of pending projects in the NYSERDA Open New York Data Base.¹² In addition, the Commission previously adopted the transition from the Fixed-price REC to the Index-price REC for the Tier 1 and OREC programs, which added a level of complexity to the settlement payment process with the NYSERDA-contracted generators. Furthermore, although all developers are required to sign the standard NYSERDA Tier 1 and OREC contracts, investors and financiers of these contracts do not have a standardized set of requirements due to different risk profiles, risk tolerances, and business models. Accordingly, NYSERDA must negotiate contract terms, unrelated to those in the bid proposal, to ensure developers are able to secure the financing needed to build the projects. For example, other factors which may require inclusion in the agreement include whether or not: 1) energy storage is to be included; 2) the project is proposed for a greenfield; 3) the project is an incremental upgrade or a repowering; 4) the project includes economic benefits to a Disadvantaged Community; and 5) the project has obtained site control and if the seller intends to accommodate another off-taker from the facility (and the degree to which that transpires). Lastly, the OSW program is creating a new offshore industry where no industry had existed before in the State, requiring specialized resources and technical support beyond what currently exists at NYSERDA to support major OSW supply chain investments being made in New York.

¹² The New York Open Database, maintained by NYSERDA is located at: <https://data.ny.gov/Energy-Environment/Large-scale-Renewable-Projects-Reported-by-NYSERDA/dprp-55ye>.

Specifically, referring to the increased number of contracts and their complexity, we approve of the hiring of the two Origination FTEs listed in the Appendix to the Petition. Regarding the two analyst positions requested, we find that the additional Senior Analyst, along with the increased contracted technical support should be able to adequately support existing staff and its analysis needs. For this reason, we decline to support the Junior Analyst position.

In the Petition, NYSERDA has requested an additional three FTE Strategy and Policy Development Project Managers to provide direction and leadership in these increased program areas referenced above. This does not include the OSW program, which is discussed further below. While we understand the additional workload experienced by NYSERDA, it should be noted that two of the current programs, Tier 2 and ZEC, are not expanding. Tier 2 has no scheduled solicitations during 2023, while NYSERDA is reaching back out to generators and LSEs to broaden and enhance the Tier 2/voluntary market. The ZEC program is focused on maintaining the billing of LSEs and making payments to the nuclear generators. Given this situation, we find that the existing 6 FTE project managers plus one additional Strategy and Policy Development Project Manager approved here, can accommodate the current two dynamic programs (Tier 1 and Tier 4) and the increased workload described above.

Further, NYSERDA has requested one communication manager and one marketing manager to handle all CES communications and marketing materials. As stated in the Petition, a communication manager and marketing manager already exists on staff to handle CES related matters. In addition, NYSERDA currently has 7 FTEs in its Communications department and 10 FTEs in its Corporate Marketing department. The Commission finds that it is not necessary to add two more FTEs

to the communication and marketing departments, respectively. A robust communication team currently exists within NYSERDA that can handle communications regarding the CES.

With the increased contracted technical and support staffing, existing and incoming Project Managers can attend to management functions in a more thorough manner and these include: 1) assessing progress toward key milestones such as permitting and interconnection; 2) intake and review of quarterly progress reports including updates to NYSERDA's project management database; 3) conducting project site visits; 4) monitoring adherence to agreement terms including host community benefits and prevailing wage requirements, among others; and 5) ensuring each project is integrated into the New York Generating Attributes Tracking System (NYGATS) and NYSERDA's invoicing system, and contributing to creation of required CES progress and financial reports, among a number of other duties.

The Petition also requests adding five FTEs for the OSW program. As noted in the Petition, New York is set to become a major hub for the OSW industry, having previously procured over 4,300 MW of capacity with an upcoming solicitation of 2,000 MW to help in reaching the CLCPA goal of 9,000 MW by 2035. As pointed out by NYSERDA, the OSW industry is a multi-faceted undertaking which will involve garnering expertise in a wide variety of topics including wind turbine and electric grid technology, fishery ecosystems, and workforce development, among numerous others. For example, current workforce funding supports training institute and curriculum development, but NYSERDA points out that market intelligence and engagement with potential trainees (such as members of disadvantaged communities), requires substantial staff support and coordination with a wide variety of parties to reach CLCPA

goals. NYSERDA is now undertaking an updated OSW Master Plan (MP 2.0) called for in the 2022 State of the State address, somewhat analogous to the original OSW Master Plan, to study contours of the outer continental shelf to determine where additional OSW lease areas could be sited. The MP 2.0 will describe emerging needs and generally describe the necessary transmission planning, workforce development, and disadvantaged community involvement necessary to support progress of the OSW program. In light of the increased expansion of the OSW program and the increased range of issues, programs, and regulations which must be addressed, we approve of the OSW requested positions including: Assistant Director, Labor and Economic Development Manager, and two Project Managers as requested in the Petition.

The Cost Recovery Fee (CRF) requested in the proposed budget of approximately \$7.2 million is based on the requirements of the Public Authorities Law. It should be noted that the CRF is based on total program expenditures, not just the administrative expenses which are shown in Table One. The additional program expenditures for Tier 1 include approximately \$37 million for Tier 1 contract payments and approximately \$590 million for payments to nuclear generators. Based on modifications made in the body of this Order, the requested CRF amount may need to be adjusted since the CRF is based on CES programmatic funding. Given uncertainty into the total CRF, the Commission is unable to determine the exact dollar amount of the modified budget. Thus, NYSERDA is directed to file a revised budget reflecting the modifications made in this Order within ten days of the effective date of this Order.

With respect to system development, the Petition notes that this includes: 1) annual costs of the administration, operation, and maintenance of NYGATS; 2) anticipated revisions

to NYGATS and other business systems to implement and manage the suite of CES programs; and 3) the related LSE compliance activities. For example, each generator agreement must be set up in NYSERDA's Salesforce and contracting system with unique information specific to the proposer/seller in order to comply with NYSERDA's contracting requirements. As these programs expand and become more complex, as noted above, the corresponding business and reporting systems must remain current and permit NYSERDA to accurately and timely provide reports on program achievements and the related costs compared to budgeted amounts.

The Petition also requests funding for technical support, which includes costs associated with ongoing consultant support, development of procurements, and technical evaluation panels for NYSERDA procurements. The request for these services represents an increase of approximately 38% over the 2022 budgeted level. The scope of this work includes long-term forecasting for solicitation evaluations, various analyses required to meet the State's climate goals, assessing transmission constraints, and monitoring new NYISO market development and procedures. The complicated issues described above regarding CES programs often require specialized consultant support, purchase of proprietary data sets, such as forecasts of future energy and capacity prices, and conducting technical evaluation panels. NYSERDA states that technical community meetings, reference materials, transmission and grid analyses, planning, and policy development will be needed for continued development of the OSW industry. The Commission finds that the need for continued technical support is of utmost importance as the amount of reviewable generation increases in combination with the need to build and plan transmission and distribution investments in the most efficient and economic

manner. However, the Commission is concerned with the significant, 38% increase in the technical support budget over the 2022 budget.

Similar to the reductions in the requested increases to the salary and overhead budget lines, the Commission adopts an overall reduction of \$4,129,825 in the requested 2023 technical support budget, which represents a 25% reduction in the technical support budget requested and will result in an increase in this budget line of 3.3% compared to the 2022 budget. The Commission finds that this reduction is justified given that several of the technical support items proposed by NYSERDA are either insufficiently justified or represent an excessive commitment to resources outside NYSERDA. A reduction to the technical support budget commensurate with the reduction in the number of FTEs is appropriate given the relationship between these categories of support. The increased FTEs authorized in this Order should provide NYSERDA with the internal technical resources to reduce the need for third party technical support. This modification results in a 2023 budget for technical support of \$12,389,475, and represents a balance between the need for increased investment in technical support with mitigating the impact to ratepayers.

CONCLUSION

The Commission approves NYSERDA's proposed administrative budget for the 2023 CES Compliance Year, as modified in the body of this Order. We reject the addition of five of the 19 FTEs requested by NYSERDA including: two Strategy and Policy Development Project Managers; one Communications Project Manager; one Marketing Project Manager; and one Junior Analyst. The reduction to the overall budget associated with the removal of these positions totals \$1,264,478. With this

reduction, the requested addition to salary and overhead now represents a 31.3% increase in salary and overhead over the 2022 budget. Additionally, the Commission reduces the technical support budget as described above by \$4,129,825. The Commission finds that the modifications to the proposed budget will balance the need to administer and implement the CES programs effectively, while minimizing ratepayer impacts. Finally, the Commission agrees that the use of previously-collected funds to cover the RES administrative costs is appropriate.

The Commission orders:

1. The 2023 Clean Energy Standard administrative budget proposed by the New York State Energy Research and Development Authority is approved, with modifications, as discussed in the body of this Order. The New York State Energy Research and Development Authority is directed to file a revised 2023 Clean Energy Standard administrative budget reflecting these modifications within ten days of the effective date of this Order.

2. The New York State Energy Research and Development Authority is authorized to use previously collected revenues including bid fees, forfeited contract security funds, Alternative Compliance Payments received, and interest income to fund the 2023 Clean Energy Standard compliance period of the Renewable Energy Standard, and is authorized to fund the 2023 Clean Energy Standard compliance period of the Zero-Emission Credit program through the Zero Emission Credit adder, as discussed in the body of this Order.

3. The New York State Energy Research and Development Authority shall continue to file quarterly reports containing itemized expenses associated with the administration of the Renewable Energy Standard and Zero-Emission Credit programs.

4. 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.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary