

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF THE ADVANCEMENT
OF DISTRIBUTED SOLAR**

CASE 21-E-0629

**PETITION FOR REHEARING OF THE NEW YORK PUBLIC SERVICE
COMMISSION'S APRIL 24, 2025 ORDER APPROVING NY-SUN PROGRAM
MODIFICATIONS**

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I. Introduction

On April 24, 2025, the New York Public Service Commission (“PSC” or “Commission”) issued an Order that, among other actions, eliminated \$271M of previously authorized funding from NY-Sun¹, a NYSERDA program that supports distributed solar projects across New York State. The Commission decision eliminates NYSERDA support for certain forms of distributed solar projects while reducing the total amount of available funding, creating near-term program incentive cliffs that imperil New York’s most successful clean energy sector at a time of unprecedented federal policy risk.

In the Order Approving NY-Sun Program Modification, Commission action #2 reduces the overall NY-Sun budget, eliminating \$271M of previously authorized funding from the program. This action was unjust and unwarranted, threatening irreparable harm to hundreds of local businesses, trade unions, workers, and other impacted parties who reasonably planned around the full program budget authorized by the Commission in the 2022 Order Expanding NY-Sun Program.² Solar companies invested in New York in good faith based upon the approved NY-Sun budget, hired and trained staff, and adapted their business models to align with New York policy objectives and labor requirements of the NY-Sun program established by the Commission.

New York Solar Energy Industries Association (“NYSEIA”) does not object to a gradual phaseout of capacity-based incentives, enabled through cost cutting measures such as interconnection reform and siting reform paired with rate design improvements. However, NYSEIA strongly objects to the sudden and dramatic reduction in NYSERDA NY-Sun program funding without public notice or a transition plan. This Commission action will not only harm hundreds of small businesses participating in the NY-Sun program; it will negatively impact New York’s 15,490-person solar workforce³, whose jobs are now less secure. It will deprive tens of thousands of families and businesses access to solar utility bill savings at a time of rapidly increasing electricity rates when affordability concerns are paramount. This decision also impedes New York’s progress toward renewable energy targets mandated by the legislature in the Climate Leadership and Community Protection Act (“CLCPA”) at a time when offshore wind faces new federal policy threats and distributed solar is one of the few sectors where New York has demonstrated its ability to deploy clean energy resources at-scale.

In this petition for rehearing, NYSEIA respectfully requests that the Commission: 1) allow NYSERDA to proceed with certain actions outlined in the Order in order to minimize further

¹ Case 21-E-0629. In the Matter of the Advancement of Distributed Solar. ORDER APPROVING NY-SUN PROGRAM MODIFICATIONS. April 24, 2025.

² Case 21-E-0629. In the Matter of the Advancement of Distributed Solar. ORDER EXPANDING NY-SUN PROGRAM. April 14, 2022.

³ NYSERDA. New York Clean Energy Industry Report. 2024.

market disruption and harm to industry and program participants; and 2) grant a rehearing of the Commission decision to divert \$271M of authorized funding from the NY-Sun program.

II. Basis for Rehearing

NYSEIA asserts that reconsideration of the Commission decision to divert \$271M from the NY-Sun program is warranted under Public Service Law Section 22 (“PSL §22”) and pursuant to New York Codes, Rules, and Regulations Tit. 16 § 3.7 - Rehearings (“NYCRR §3.7”). NYCRR §3.7 states that “any person interested in an order of the commission may request rehearing within 30 days of service of the order” and that “rehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination.” NYSEIA is filing this rehearing request within 30 days of the Commission’s April 24, 2025 Order. NYSEIA asserts that the Commission committed an error of law, including violation of the State Administrative Procedure Act (“SAPA”), and also that new circumstances warrant a different determination. The following section explains these assertions for the Commission’s consideration.

New Circumstance

There has been a significant change of circumstance since NYSERDA’s original proposal was filed and the public comment period occurred, most notably the election of President Donald J. Trump and a U.S. Congress that continues to implement policies that reduce or eliminate federal support for clean energy sources. In January 2024, NYSERDA filed a report which estimated that the NY-Sun program would have a ~\$421M surplus after achieving New York’s ten-gigawatt distributed solar goal. As of April 2025, New York has installed 6,692 megawatts of distributed solar⁴, 3,308 megawatts less than the current 10-gigawatt goal. NYSERDA’s January 2024 estimate of the size of the budget surplus once these projects are installed was speculative, and did not contemplate significant attrition of projects with reserved incentives that are not yet operational. Between New York utilities’ rapidly escalating interconnection costs, import tariffs that increase solar component costs, and US Congress’s active consideration of a budget reconciliation deal that would eliminate or reduce federal solar tax credits as early as the end of 2025 based on placed in service date⁵, it is likely that future attrition rates will be higher than the NY-Sun program’s historically low rates. Additionally, the proposed changes to federal clean energy tax credits are likely to have different impacts on different segments of the distributed solar market segments, making it critical for NYSERDA to have maximal flexibility.

⁴ NYSERDA. Statewide Distributed Solar Projects. <https://www.nyserda.ny.gov/All-Programs/NY-Sun/Solar-Data-Maps/Statewide-Distributed-Solar-Projects>. Accessed May 8, 2025.

⁵ United States House of Representatives. Ways & Means Committee. TITLE XI—COMMITTEE ON WAYS AND MEANS, “THE ONE, BIG, BEAUTIFUL BILL”. May 12, 2025.

In the Commission's May 15, 2025 Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings, the Commission authorizes NYSERDA to procure 30% more Tier 1 renewable energy credits (RECs) than would be necessary in anticipation of a 30% rate of attrition for "contracted and yet-to-be-procured projects."⁶ The Commission's May Order also affirms NYSERDA's ability to continue its current practice of offering large-scale renewable energy projects REC strike price adjustments to account for inflation between contracting and commercial operation date; a procurement mechanism intended to reduce attrition in an inflationary environment. The Commission has heretofore declined to offer any similar dispensation for distributed solar projects, despite these projects being similarly impacted by inflation, especially community solar projects which take 3-4 years to develop in New York State due to permitting red tap with local zoning board and cumbersome approval processes with State agencies such as the NY Department of Environmental Conservation. The combination of factors described above paired with a NY-Sun program design that does not provide mechanisms to support projects in an inflationary environment suggested that distributed solar attrition rates may be higher moving forward than they were in the past. Surely the same strategies of over-procurement and flexibility afforded to large-scale renewables should apply to distributed solar as well; in the event of higher-than-expected rates of attrition, NYSERDA may require the full NY-Sun budget authorized by the Commission in 2022 to achieve New York's 10 GW goal.

Additionally, the Commission Order references the availability of New York's \$249M Solar for All award from the federal Environmental Protection Agency (EPA) without acknowledging the significant risk associated with this funding. On January 20, 2025, President Trump's first day in office, the White House issued an executive order directing all agencies to "immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169)."⁷ In compliance with this executive order, EPA Administrator Lee Zeldin froze the disbursement of New York's EPA Solar for All award and only resumed disbursement of funds after a temporary restraining order was issued by a federal judge. When a federal judge ruled that the EPA could not stop the disbursement of other Greenhouse Gas Reduction funds appropriated by the U.S. Congress, EPA Administrator Zeldin stated that the "EPA would not rest until the grant funds had been recovered."⁸ On May 2, 2025, the Trump Administration proposed 55% cuts to the EPA budget⁹, demonstrating the Administration's intent to follow through on Administrator Zeldin's threat. While NYSEIA hopes New York will receive the full \$249M award through the

⁶ Case 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard. New York State Public Service Commission. Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings. May 15, 2025.

⁷ The White House. Executive Order - Unleashing American Energy. <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>. January 20, 2025.

⁸ Federal judge blocks EPA from taking back billions in clean energy grants. Courthouse News Service. Ryan Knappenberger. <https://www.courthousenews.com/federal-judge-blocks-epa-from-taking-back-billions-in-clean-energy-grants/>. March 18, 2025.

⁹ Trump budget proposes slashes to renewable energy, farms, EPA. Reuters. Timothy Gardner, Valerie Volcovici and Leah Douglas. <https://www.reuters.com/sustainability/climate-energy/trump-budget-proposes-slashes-renewable-energy-farms-epa-2025-05-02/>. May 2, 2025.

EPA Solar for All program, it would be imprudent for the Commission or market participants to presume these funds will be reliably available to support solar projects that benefit low-income New Yorkers. Finally, even if New York were to receive these funds, many programmatic details have not been defined and the federal funds have prescriptive requirements that make these funds less flexible and therefore less valuable in the event that federal policy or economic conditions require additional resources to achieve New York's ten-gigawatt goal.

The PSC Decision Conflicts with the Climate Leadership and Community Protection Act

One of the key arguments for the Commission decision to eliminate \$271M of previously authorized funding from the NY-Sun program budget is that New York is already on track to achieve the ten-gigawatt distributed solar goal, and was projected to have a surplus once this goal is reached. As outlined above, NYSEIA questions whether New York will, in fact, achieve its ten-gigawatt goal \$421M under budget in light of federal policy changes and other risks. However, even if New York were to achieve its ten-gigawatt by 2030 goal without using the full authorized NY-Sun program budget, this would not be adequate justification for diverting funds from the program. In July 2024, the Clean Energy Standard Biennial Review noted that New York is projected to have a large renewable electricity supply gap by 2030. Recent federal actions, such as the stop work order at Empire Wind I, threaten to increase New York's electricity supply gap further, creating an even greater public necessity to continue supporting distributed solar, one of the only clean energy resources New York has demonstrated it can deploy at-scale. In this context, diverting previously authorized funds from a program that has reliably delivered gigawatts of clean power ahead of schedule defies the letter and the spirit of the CLCPA.

With respect to distributed solar, the CLCPA requires more than a narrow consideration of the 10-gigawatt by 2030 goal, but also the statute's requirement to have 70 percent renewable electricity by 2030 and a zero-emission grid by 2040. The Appellate Division Third Department recently made this same finding in *In the Matter of Freepoint Solar LLC v. Town of Athens*, 234 A.D.3d 127 (3d Dep't Dec. 19, 2024). In that case, the Town of Athens had denied a developer a land use variance for a proposed community solar project. The Town found there was no public necessity for the project because, at that time, "New York State was on track to exceed [the stated goal of the CLCPA] of installing six gigawatts of distributed solar by 2025 and on progress toward installing 10-gigawatts by 2030."¹⁰ The Third Department rejected this finding as arbitrary and capricious and unsupported by substantial evidence. According to the Third Department, "Not only did [the Town's] finding focus on established floors rather than ceilings but, perhaps most importantly, it side-steps the consideration of the overarching goals of the CLCPA and future,

¹⁰ Justice Pritzker. New York State Supreme Court. Appellate Division, Third Judicial Department. https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=NNFzkNvYCFg0c/BGvkER_PLUS_A==. December 19, 2024.

long-term goals and targets.” Id. In considering those specific goals, the Third Department found that the developer had “established the public necessity of the project.”

The same logic should apply here. Before eliminating previously authorized funding to support distributed solar projects through the NYSEIDA NY-Sun program, the Commission must consider the long-term goals of the CLCPA and not arbitrarily limit its focus on whether New York is “on track” for the 10-gigawatt distributed solar goal.

The PSC Decision Violates the State Administrative Procedure Act

The Commission decision to eliminate \$271M of previously authorized funding was procedurally flawed, with multiple violations of the State Administrative Procedure Act (SAPA).

SAPA Violation 1: The Commission Action was Not Contemplated in the SAPA Notice or the NYSEIDA Proposal that was Subject to Public Comment

In January 2024, pursuant to the Commission’s NY-Sun Mid-Point Review Order issued in June 2024, NYSEIDA filed a report titled *NY-Sun Program: Impacts of the Inflation Reduction Act and the Potential for Incremental Distributed Solar Capacity Beyond the 10 GW Goal*. In this filing, NYSEIDA stated that the NY-Sun program was on track to achieve New York’s 10 GW goal approximately \$421M under budget. NYSEIDA’s report recommended that \$346M of the anticipated program surplus be reinvested in the NY-Sun program, with up to \$75M paid to the New York Green Bank to support their portfolio of work. In the report, NYSEIDA outlined six different potential scenarios for how to invest \$346M of the projected NY-Sun surplus back into the program. On February 28, 2024, the Department of State issued a Notice of Proposed Rulemaking in the State Register describing NYSEIDA’s proposal to reinvest the \$346M into NY-Sun and invited public comments for a period of 60 days. The filing was commented on by several parties, none of whom opined on whether previously authorized funds should be diverted from the NY-Sun program beyond the \$75M reallocation to the New York Green Bank which was identified in NYSEIDA’s filing. The reason no parties opined on diverting additional funds is because it simply was not presented in the SAPA notice or in NYSEIDA’s report which was the subject of public comment. Had this question been presented, NYSEIDA posits that the Commission would have received significant stakeholder feedback voicing concerns about eliminating funding for the NY-Sun program without a credible transition plan, even before the change of federal administration.

On October 17, 2024, DPS issued a second notice soliciting comments in the proceeding. The second notice was not published in the State Register and the comment period was just 14 calendar days, with comments due on October 31, 2024 (before the results of the presidential and Congressional elections). The notice included a series of brief questions for stakeholders to

respond to, including questions regarding alternative uses of the anticipated NY-Sun program surplus after achieving 10-gigawatts. The majority of parties that commented (Public Utilities Law Project, NYSEIA, Coalition for Community Solar Access, New York Power Authority, City of New York) did not recommend diverting any funds from the NY-Sun program. The one exception was a comment filed by Alliance for a Green Economy and WE ACT for Environmental Justice, which recommended that “\$100 million be used to fund a retrofit readiness program that addresses common barriers to both solar adoption and Energy Efficiency/Building Electrification.”¹¹ This commenter recommendation was not published in the NY State Register nor did the Department solicit reply comments. If the Commission wanted to seriously consider the commenters’ proposal to divert previously authorized funding from the NY-Sun program budget to pay for an alternative program, this proposal should have undergone a full public comment period.

SAPA Violation 2: The Commission Neglected to Minimize Unnecessary Adverse Impacts on Existing Jobs or to Issue a Jobs Impact Statement

It is common knowledge among Commissioners and DPS Staff that New York’s solar industry employs more than 15,000 workers and the vast majority of these jobs are in distributed solar, spread across the residential, small commercial, multifamily, community solar, and large commercial sectors. It is also common knowledge that NYSERDA’s NY-Sun incentives are an impactful tool to support the economic viability of diverse solar projects, with incentive levels ranging from as high as \$1.60/Watt-DC for solar on affordable housing in Con Edison territory to as low as \$0.15/Watt-DC for solar on market-rate residential rooftops. The incentive levels are established by the Commission and NYSERDA to provide appropriate levels of support for each market sector based upon financial need and state policy priorities. Therefore, 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. SAPA CHAPTER 82, ARTICLE 2, § 201-a requires that “in developing a rule, an agency shall strive to accomplish the objectives of applicable statutes in a manner which minimizes any unnecessary adverse impacts on existing jobs and promotes the development of new employment opportunities, including opportunities for self-employment, for the residents of the state.”¹²

The Commission Order does not suggest that diverting funds from the authorized NY-Sun budget is statutorily required. However, if a substantial funding cut to NY-Sun were truly necessary, the Commission would be obligated to minimize unnecessary adverse impacts to New York’s solar workforce. This could be accomplished by developing a transition plan to achieve cost reductions and rate design improvement to reduce reliance on NY-Sun incentives. Such a plan could include:

¹¹ 21-E-0629. In the Matter of the Advancement of Distributed Solar. Alliance for a Green Economy and WE ACT for Environmental Justice. Comments on NYSERDA NY-SUN Report. October 31, 2024.

¹² New York State Administrative Procedure Act. CHAPTER 82, ARTICLE 2, § 201-a. Accessed May 9, 2025.

interconnection reforms to counteract New York utilities' rapidly increasing distribution upgrade costs; improvements to the Value of Distributed Energy Resources (VDER) tariff; and a gradual phase out of NY-Sun incentives, starting with the market segments and project types that are least reliant upon NY-Sun to be economically competitive. Such a strategy could be developed in consultation with NYSERDA and with input from the impacted industry and other stakeholders.

The Commission decision to eliminate \$271M of previously approved funding from NY-Sun created immense uncertainty for solar employers that persists today, jeopardizing the economic viability of entire business models, such as: installing large onsite or offsite solar for industrial businesses or municipal customers; providing discounted community solar to renters; or installing solar on multifamily/small commercial buildings in Con Edison territory. Pursuant to the Commission's April 2025 Order, large distributed solar projects serving municipal or industrial facilities are no longer eligible for any support, most notably the Prevailing Wage adder that was authorized by the Commission in 2022. This elimination of support will undermine improvements in wages and benefits for the solar workforce that were the direct result of the Commission's 2022 *Order Expanding NY-Sun Program*, which required the payment of Prevailing Wages for projects above 1-megawatt and created the Prevailing Wage adder to assist industry to make this important investment in the workforce. Prior to April 2025, approximately 71% of the NY-Sun incentive for an Upstate Remote Crediting project was the Prevailing Wage Adder (\$0.125/Watt-DC of \$0.175/Watt-DC total). Eliminating this support will directly harm the growing union workforce, which is constructing a significant portion of Upstate Commercial and Industrial solar projects. The sectors of the distributed solar industry harmed by the Commission's April 2025 decision employ thousands of New Yorkers, and the Commission decision does not appear to minimize adverse impacts on existing jobs as required by SAPA.

Additionally, the Commission failed to file the required Jobs Impact Statement, which must be filed along with a SAPA notice when it is *apparent from the nature and purpose of the rule that it may have a substantial adverse impact on jobs or employment opportunities*. NYSEIA acknowledges that the Commission has the authority to approve and alter funding for programs under its purview; however, such a large cut to a program that supports more renewable energy jobs in New York than any other sector certainly warrants the Commission's careful consideration, and New York's clean energy workforce should be afforded full protections under SAPA before such a decision is made.

III. Request for Reconsideration

For the reasons outlined above, NYSEIA urges the Commission to grant a rehearing specifically of directive two in its April 24, 2025 Order Approving NY-Sun Program Modifications, which reduced the total NY-Sun budget. Should this rehearing be granted, NYSEIA respectfully requests that the Commission limit the scope of the rehearing to directive two in the Order, i.e., the diversion

of previously authorized funds away from the NY-Sun program budget. This is critical for preventing any further delays and adverse impacts to solar companies and the workforce. Solar development has continued over the last few years, predicated on the availability of the full NY-Sun budget authorized by the Commission in 2022 and as proposed by NYSERDA in January 2024. The Upstate C&I megawatt block was fully subscribed in April 2025, disrupting development for these projects. NYSEIA urges the Commission to maintain NYSERDA's authority to continue issuing clarifications and to proceed with making the recently reauthorized \$150M available to projects even as the Commission considers this rehearing request, which only pertains to the \$271M that the Commission Order sought to divert from the NY-Sun program.

IV. Conclusion

The Commission's April 24, 2025 decision to divert previously authorized funds from NYSERDA's NY-Sun program should be reconsidered in light of the significant risk that the federal government will eliminate or phase out federal clean energy tax credits. This change in federal policy, precipitated by the November 2024 federal elections, constitutes a clear change in circumstance, creating significant attrition risk for the 3.3-gigawatt pipeline of projects with reserved NY-Sun incentives that are not yet operational. Further, the decision to divert \$271M from NY-Sun was made without due process for impacted workers and other stakeholders as required by the SAPA, and without full consideration of New York's CLCPA obligation to build more renewable energy capacity. For the reasons outlined herein, NYSEIA respectfully requests that the Commission: 1) allow NYSERDA to proceed with certain actions outlined in the Order in order to minimize further market disruption and harm to industry participants and the solar workforce; and 2) grant a rehearing of the Commission decision to divert \$271M of authorized funding from the NY-Sun program.

NYSEIA thanks the Commission for its attention to this important matter.