

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 19, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, concurring
James S. Alesi
Tracey A. Edwards
John B. Howard

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

ORDER APPROVING ZERO-EMISSIONS CREDIT IMPLEMENTATION PLAN
WITH MODIFICATIONS

(Issued and Effective September 20, 2019)

BY THE COMMISSION:

INTRODUCTION

The Public Service Commission's (Commission) Clean Energy Standard (CES) Framework Order directed all Load-Serving Entities (LSEs) under its jurisdiction to purchase an amount of Zero-Emissions Credits (ZEC) from the New York State Energy Research and Development Authority (NYSERDA) representing each LSEs' proportional share of the statewide load multiplied by the numbers of ZECs purchased annually by NYSERDA.¹ To address the concerns raised in a petition filed by Astral Energy, LLC, the Commission directed NYSERDA and Department of Public Service Staff (Staff) to submit, for consideration, an implementation plan that would modify the way in which LSEs remit ZEC payments

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

to NYSERDA from a payment structure utilizing a fixed ZEC obligation that is calculated based on the LSE's historical load, to a flexible "pay-as-you-go" model that is based on each LSE's known actual load.²

On August 3, 2018, NYSERDA and Staff submitted the Clean Energy Standard Zero Emissions Credit Implementation Plan proposal (ZEC Plan). On June 28, 2019, NYSERDA submitted a supplement to the ZEC Plan. NYSERDA's Supplemental Letter states that NYSERDA would have access to the Version 1 load data from the New York Independent System Operator, Inc. (NYISO), which would significantly improve the ZEC Plan's proposed methodology.³ In this order, the Commission approves the ZEC Plan, as modified, and requires submission of a final plan in accordance with this Order within 30 days of its issuance.

SUMMARY OF FILING

The ZEC Plan proposes to modify how each LSE's initial ZEC obligation is calculated and how LSEs remit ZEC obligation payments from the current payment structure, which is based on using the LSE's historical share of the total statewide load, to a model based on the LSEs' actual load.

Proposed ZEC Compliance Approach

Under the ZEC Plan, each LSE's ZEC obligation would be calculated using each LSE's actual load as opposed to an obligation to purchase predetermined portions of ZECs from

² Case 15-E-0302, Order Modifying Compliance Payment (issued February 22, 2018).

³ NYISO Version 1 load data is part of the NYISO settlement process. There is an approximate 15-day lag between when the load occurs and when it is available to the New York Generation Attribute Tracking System (NYGATS). Version 2 load data is the current version used to determine LSE obligations under the CES, which has a five-month lag between when the load occurs and when it is available to NYGATS.

NYSERDA. The actual load would be applied to a uniform wholesale per megawatt hour (MWh) charge to determine each LSE's monthly ZEC obligation amount payable to NYSERDA. Annually, NYSERDA would determine the dollar per MWh rate (LSE ZEC Rate) to be used by each LSE for the next compliance year of the ZEC program. As originally filed, the monthly obligation would be subjected to an interim reconciliation once the Version 2 generation data is provided by NYISO and recorded in NYGATS, which occurs approximately five months following the close of each month. According to the ZEC Plan, the interim reconciliation would avoid significant underpayments or overpayments by LSEs as is sometimes the case under the current structure due to variations in load served by LSEs. As discussed below, the changes proposed in the Supplemental Letter eliminate the need for an interim reconciliation. However, NYSERDA would continue to conduct a final reconciliation at the close of each program year.

The ZEC Plan states that the change from the historical method to the LSE ZEC Rate would place considerable importance on the load forecast that is used to determine the LSE ZEC Rate. To increase transparency, NYSERDA and Staff propose to use the published forecast such as the NYISO's Goldbook as the basis of determining the statewide load component.⁴ Further, NYSERDA and Staff propose to adjust the published forecast by the three-year historic average variance between the published forecast load and the actual NYISO Version 2 generation data for the same historic period. NYSERDA would notify each LSE of the next year's LSE ZEC Rate, including the

⁴ NYSERDA and Staff propose to use the NYISO's Goldbook "Baseline Forecast of Annual Energy and Coincident Peak Demand that Reflects Impacts of Energy Savings Programs and Behind-the-Meter Generation."

administrative adder costs, by email at least two months before the beginning of the compliance year.

ZEC Obligation Payment Determination

The ZEC Plan proposal stated that with the "pay-as-you-go" methodology, LSEs would have the option to use their total forecasted load as submitted to the NYISO, or Version 1 of the total LSE load data, as settled by the NYISO each month, as the basis for their monthly payment. LSEs would then submit their payment to NYSERDA by the 15th of the following month to ensure NYSERDA's receipt of LSE payments before NYSERDA's ZEC payment to the generator are due.

The ZEC Plan proposal would create an online system through which LSEs would record their estimated load for the month and the payment amount due to NYSERDA. NYSERDA would use this system to reconcile the amounts paid by each LSE with the Version 2 load data.

Verification and Reconciliation

The ZEC Plan proposed to develop a verification process to ensure that the LSEs' estimated loads are reasonably accurate, based on actual data received. This process would be in addition to the annual reconciliation process. The ZEC Plan proposed to use a quarterly review process to verify the accuracy of the submitted estimated load. LSEs would be required to make-up any shortfalls in the monthly ZEC payments through payments to NYSERDA within 15 days of notification. The ZEC Plan recognizes that there are conditions outside the LSEs control, such as weather conditions, that could cause the actual load to vary from the LSE's forecasted load. Should an LSE's aggregated estimated quarterly load for any quarter be less than 90% of the LSE's actual Version 2 load for that quarter, the LSE would be required to make-up the shortfall within 15 days of being notified by NYSERDA. The ZEC Plan proposed that the LSEs

would be required to pay a penalty if their aggregated estimated load for any quarter is less than 85% of their actual load for that quarter. The penalty would be equal to 15% of the difference between the payment amount for the aggregated estimated load for the quarter and the payment amount of the actual load for the quarter, with a minimum penalty of no less than \$1,000.

NYSERDA's yearly reconciliation would take into account the actual adjusted statewide load as well as the number of ZECs created by the generators. NYSERDA would determine the actual dollars per MWh charge based on the total dollars expended by NYSERDA to purchase ZECs and the actual Version 2 load data, including load modifiers. NYSERDA would reconcile the payments received from each of the LSEs against the ZEC obligation determined using the actual load data.

NYSERDA Agreements with the LSEs

The ZEC Plan states that NYSERDA would need to replace its agreements with the LSEs to reflect the terms of any Commission order resulting from this implementation plan.

NYSERDA Supplemental Letter

On June 28, 2019, NYSERDA filed a Supplemental Letter to the ZEC Plan proposal outlining revisions to the original plan. The Supplemental Letter states that NYGATS would now have access to the Version 1 data from the NYISO, alleviating many of the concerns addressed in some parties' early comments. NYSERDA argues that using Version 1 load data from the NYISO in the "pay-as-you-go" methodology as opposed to requiring LSEs to submit load data would obviate the need for a quarterly review process and the imposition of compliance penalties. NYSERDA expects that the use of the Version 1 data would significantly reduce the potential for both underpayments and overpayments by

the LSEs. NYSERDA notes that a final annual reconciliation would still be necessary.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on May 22, 2019 [SAPA No. 15-E-0302SP38]. The time for submission of comments pursuant to the Notice expired on July 22, 2019. Comments were filed by the City of New York, Joint Utilities,⁵ Multiple Intervenors, the New York Power Authority, and the New York Retail Choice Coalition.

SUMMARY OF COMMENTS

The City of New York (the City) generally supports the new approach by NYSERDA but recommends two changes to the proposal. The City believes that the proposal to implement penalties is not justified or warranted and should be stricken from the proposal. The City argues that there is no support in the CES Framework Order, or subsequent orders, identifying the need for penalties for a variance between forecasted and actual load. Additionally, the City notes that NYSERDA may use the backstop mechanism or the administrator adder to ensure sufficient funds are available to make timely payments to the generators. Further, the City states that the penalty fee does not advance the preservation of the at-risk nuclear facilities or bolster the state's greenhouse gas emissions reduction goals. Lastly, the City recommends that reconciliations should be

⁵ The Joint Utilities include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

symmetrical - the overcollections should be treated similarly to under collections, and both should be reconciled quarterly.

The Joint Utilities (JU) agree with the modifications NYSERDA made in the Supplemental Letter dated June 28, 2019, which requires LSEs to purchase ZECs based on the Version 1 load data from the NYISO. The JU argue that the penalty structure should not be adopted and instead the Commission should adopt the methodology outlined in NYSERDA's Supplemental Letter. The JU believe the revised process would be a more accurate, fair, and equitable process for both LSEs and all customers.

The JU urge NYSERDA to clarify its invoicing process, as well as how the reconciliation would take place. The 15-day payment timeline, the JU comment, does not allow sufficient time to receive the Version 1 data, adjust this data to account for load modifiers, or other factors and then process and issue payment to NYSERDA. The JU state that for some utilities, the load modifier data is not verified and made available for these purposes until the 20th of each month following the close of the month in question. Thus, the JU recommend the payment due date be extended to 45 days following the end of the month. The JU recognize this change in payment dates may result in a mismatch between when payments are due from NYSERDA to nuclear plants and when NYSERDA receives payments from LSEs. Therefore, the JU suggest NYSERDA use the unspent funds from the legacy Renewable Portfolio Standard (RPS) to address this timing issue.

Multiple Intervenors (MI) oppose the proposed penalty structure because NYSERDA and Staff have not offered any justification for why the penalty structure is even necessary or appropriate. MI state that because LSEs have the option of utilizing NYISO estimates to develop estimated load for ZEC payments, LSEs would be penalized if the NYISO data contains errors. MI suggest this policy is unreasonable and unfairly

punitive, particularly if the LSEs pass the penalty costs through to its customers. Lastly, MI points out that the proposal provides no indication on how the penalty funds would be used.

The New York Power Authority (NYPA) supports NYSERDA's proposal to closely align the LSE ZEC costs with actual load monthly and to eliminate the previously proposed penalty structure. NYPA recommends that the Commission adopt the final ZEC payment reconciliations based on the NYISO's Six-Month Close-Out Settlement LSE Metering Data (Version 3 load data) and not the Version 2 invoice data as proposed by NYSERDA.⁶ NYPA points out that, in the past, they have issued challenges during the 150-day challenge period to ensure that the final reconciliation ZEC payments are based on actual MWhs delivered by an LSE.

The New York Retail Choice Coalition (Coalition) supports the proposal to change the methodology as to how each LSE's initial ZEC obligation is calculated, and how LSEs remit ZEC payments. The Coalition suggests a 60-day remediation period to correct any shortfall before the penalty is assessed. The Coalition further recommends that NYSERDA should provide a payment schedule of the penalty assessed to allow for equal payments of the penalty over the duration of the compliance period. Additionally, the Coalition states that this would alleviate any cash flow issues that a substantial penalty could impose.

LEGAL AUTHORITY

The Commission's authority derives from the New York State Public Service Law (PSL), through which numerous

⁶ There is a six-month lag with the Version 3 load data between when the load occurs and when it's finalized by the NYISO.

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 carry out 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,⁷ environmental stewardship, and the conservation of resources.⁸ Further, PSL §65 provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service,

⁷ See *International R. Co. v Public Service Com.*, 264 AD 506,510 (1942).

⁸ 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).

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."⁹

DISCUSSION

Penalties

The initial ZEC Plan proposal included penalties as a mechanism to ensure that LSEs were accurate when submitting their monthly estimated load and payments to NYSERDA. Because NYSERDA only had access to the NYISO Version 2 load data, NYSERDA would not have timely load data to compare with the LSEs payments until that data was available. Due to the comments by stakeholders opposing the penalty structure, NYSERDA reached an agreement with the NYISO to have access to the Version 1 load data used by the NYISO in the initial settlement with the LSEs, thereby eliminating the need for penalties for underpayment and the quarterly review process. The Commission finds that this change in procedure regarding the use of Version 1 load data would improve the ZEC payment process and reduce potential overpayments and underpayments. Moreover, eliminating the penalties reduces potential costs to LSEs and their customers. Therefore, the Commission approves the initial monthly settlement process, as modified in NYSERDA's Supplemental Letter, using the Version 1 load data with the elimination of a quarterly review and the penalty structure.

⁹ PSL §66(5).

Reconciliation

The ZEC Plan proposes a quarterly review process as an interim reconciliation. In its comments, the City supports symmetrical quarterly reconciliations, where underpayments as well as overpayments would be returned quarterly. As previously discussed, NYSERDA's Supplemental Letter eliminates the need for a quarterly review and reconciliation.

Verification

The ZEC Plan proposes a verification process to ensure that LSE's estimated loads are reasonably accurate, based on data received. In their comments, the JU requested that NYSERDA clarify its invoicing and reconciliation process. Additionally, the JU expressed concern that the 15-day payment timeline does not allow enough time to receive the Version 1 load data and make adjustments to account for the effects of load modifiers. The ZEC Plan, as modified by the Supplemental Letter, anticipates that NYSERDA would receive the Version 1 load data on or around the 15th day of the following month. Using the Version 1 data, NYSERDA would provide each LSE with an invoice detailing each LSE's monthly ZEC obligation. Each LSE would have 15 days from the issuance of the invoice to submit payment to NYSERDA.

The Commission recognizes the JU's concerns regarding the need to adjust the load reported by the NYISO using its Version 1 data for the effects of load modifiers on the utilities' final monthly load. Therefore, the Commission directs NYSERDA, in consultation with Staff, to discuss a process with the affected LSEs that accurately and efficiently incorporates load modifier data while maintaining timely monthly ZEC payments. This implementation detail shall be incorporated, as a modification to the standard agreement, into the revised

Agreements for the Sale of Zero-Emission Energy Certificates between NYSERDA and the LSEs.

Further, the Commission recognizes concerns that, even with such a process, there remains a potential for disparity between when NYSERDA payments to the nuclear generators are due, and submission of LSEs payments to NYSERDA are received. Therefore, the Commission reaffirms its previous authorization for NYSERDA to use the uncommitted Systems Benefits Charge, Energy Efficiency Portfolio Standard, and Renewable Portfolio Standard program funds to temporarily offset cash flow issues that may arise with the ZEC payments due to the timing of the initial LSE settlements. The ZEC Plan proposal would continue to incorporate a final reconciliation to address any inaccuracies in load data.

Additionally, the JU raises the issue of the potential for a mid-year LSE ZEC Rate adjustment should there be an unexpected outage at one of the nuclear facilities, leading to lower annual ZEC production than initially forecasted. The Commission notes that there are several factors that must be evaluated beyond an unexpected plant outage before it can be determined if the LSE ZEC Rate should be adjusted mid-year.

Initially, as previously discussed, the LSE ZEC Rate would be based on the NYISO Goldbook load forecast. This forecast would inevitably be subject to some degree of variance from the actual load for the period covered by that forecast. The magnitude of such a variance must be factored into any potential rate adjustment. Additionally, the CES Framework Order calculation of the MWhs that would be subject to the annual ZEC cap was based on the historic period of July 1, 2015 through June 30, 2016. During this period, two separate facilities were off-line for refueling outages; each lasting approximately one month. Therefore, it is possible that, in

aggregate, in a given year, the combined output of the facilities could exceed the annual ZEC cap and, therefore, the generation lost by one facility due to an unexpected outage could be offset by the output of another facility. Further, the anticipated duration of the unexpected outage and the timing of the outage in the program cycle must also be considered before any mid-year LSE ZEC Rate adjustment could be considered.

As part of its ZEC contract administration, NYSERDA maintains a working relationship with the operator of the at-risk nuclear facilities and should be readily aware of any unplanned outage that occurs at such facilities. In the event of an unexpected outage at one of these facilities, NYSERDA and Staff should evaluate the criteria discussed above, as well as any other pertinent information, and determine whether an LSE ZEC Rate adjustment is necessary and warranted. A final reconciliation would take place at the end of the compliance year to true up any potential overcollections.

In their comments, NYPA suggests that the Commission adopt the final ZEC reconciliation based on the NYISO's Version 3 load data. According to NYPA, while the Version 2 load data is based on the refinement and true-ups to the LSE metering data, it is still subject to challenges up to 150 days after the initial service month invoice, which can result in substantially modified load data. Staff has consulted with the NYISO on the variance in the load data between Version 2, which is currently used in the final reconciliation, and Version 3 load data. While it may be true that substantial modifications to the load data is possible from the initial service month invoice, the NYISO has advised that the magnitude of the changes between the Version 2 and Version 3 load data is minimal; the average true-up is less than 0.5% percent each month from the period between January 2014 to November 2018.

Using the Version 3 load data could add marginally greater accuracy to the settlement process; however, it would also add administrative difficulties. Foremost, using the Version 3 load data would add an additional month to the reconciliation process and delay the issuance of any potential refunds to LSEs. Additionally, NYGATS was built using the Version 2 load data and the Renewable Energy Standard (RES) also relies on the use of the Version 2 load data for the end of the year reconciliation. Changing the reconciliation process for the ZEC program would require the Commission to reevaluate the reconciliation process for the RES program. It would be administratively burdensome and costly to reprogram NYGATS to accommodate Version 3 load data, with potentially only minimal benefits to ratepayers. Therefore, the Commission authorizes NYSERDA to continue to use the NYISO Version 2 load data in the final ZEC reconciliation process to verify compliance with the program.

CONCLUSION

The ZEC Plan addresses a program design issue that has affected several LSEs since the inception of the ZEC program; namely LSEs ZEC payment obligations were not responsive to changes in LSEs' loads. Under the "pay-as-you-go" model, changes in LSE load, and thus an LSE's ZEC obligation payment amount can be automatically adjusted, eliminating the need for LSEs to petition the Commission for relief. Therefore, the Commission approves the ZEC Plan, as modified by NYSERDA's Supplemental Letter dated June 28, 2019.

The Commission orders:

1. The Zero Emissions Credit Implementation Plan (ZEC Plan) submitted by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service Staff (Staff) is approved, as modified and in accordance with the discussion in the body of this Order.

2. NYSERDA and Staff shall file a final Plan no later than 30 days of the issuance of this order, making the necessary revisions discussed in the body of this Order.

3. Within 90 days of the issuance of this order, NYSERDA shall provide each effected Load-Serving Entity (LSE) with a revised Agreement for the Sale of Zero-Emission Energy Certificates reflecting the changes to the program as described in the body of this order. All LSEs are directed to provide NYSERDA with an executed copy of the Agreement for the Sale of Zero-Emission Energy Certificates as soon as possible, but in no event later than February 1, 2020.

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 one day prior to the affected deadline.

5. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary