

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 13, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

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

ORDER MODIFYING COMPLIANCE PAYMENT

(Issued and Effective July 14, 2017)

BY THE COMMISSION:

INTRODUCTION

On December 19, 2016 Liberty Power Holdings LLC ("Liberty"), an energy service company (ESCO), submitted a request for clarification, and in the alternate, a request for rehearing to the requirements of the Commission's November 17, 2016 Order (November Order).¹ The November Order directed the New York State Energy Research and Development Authority (NYSERDA) to determine and make available to each load serving entity (LSE) the number of zero emissions credits (ZECs) it will be required to purchase for compliance of the ZEC program. The November Order also directed that the number of ZECs an LSE must obtain be based on each LSE's proportional share of the

¹ Case 15-E-0302, Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016).

statewide load served by the LSE during the previous 12 months, as reported by the New York Generation Attribute Tracking System (NYGATS). On January 6, 2017, Liberty submitted a letter amending its request for rehearing, to a request for the Commission exercise its discretion to modify the November Order.

By this Order, the Commission directs NYSERDA to temporarily suspend, beginning with the August 2017 payment, 35% of Liberty's monthly ZEC compliance obligation payments for the compliance period beginning April 1, 2017 and ending March 31, 2018.

BACKGROUND

On August 1, 2016 the Commission adopted the Clean Energy Standard (CES)² requiring all LSEs, including ESCOs, to purchase renewable energy credits (RECs) and ZECs from NYSERDA. The Commission's November Order required, among other things, all LSEs to enter into standard contract agreements with NYSERDA for the sale and purchase of RECs and ZECs on a monthly basis, beginning January 1, 2017 for RECs and April 1 2017 for ZECs, based on load served by each LSE during the previous 12 months. NYSERDA will then true-up the sales and purchases of RECs and ZECs for each LSE to the actual load served after a separate reconciliation for each compliance period for each program.³

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

³ NYSERDA will use the NYGATS to verify CES compliance for each LSE. The primary source of generation and load data for NYGATS is a monthly data transmittal from the New York Independent System Operator (NYISO) databases, related to wholesale energy transactions subject to the NYISO's tariffs. This data is transmitted from the NYISO to NYGATS on a five-month lag.

THE PETITION

In its petition, Liberty states that, after the issuance of the November Order, it was informed by NYSERDA that its required payment for ZECs during the period from April 1, 2017 to March 31, 2018 would be based on Liberty's sales during the period from April 1, 2015 to March 31, 2016.⁴

Liberty indicates that it had experienced a material drop in its retail load in New York since April 2016 and that the payments that Liberty will be required to make to NYSERDA pursuant to the November Order will exceed its anticipated ZEC obligations for the 12-month period ending March 31, 2018, by more than a million dollars. Liberty acknowledges that this over-payment will ultimately be refunded through the true-up process, but states that this over-payment requirement represents a substantial burden to a competitive LSE, which has no captive customers from whom to recover these costs in the interim. Liberty states that the expected over-payments will create actual interest expense to Liberty that will not be recoverable and, simultaneously, the over-payments represents a zero-interest loan subsidy that benefits other LSEs.

Liberty requests that the Commission modify the November Order by requiring an estimation method that reduces the variance between the estimated ZEC payment and actual ZEC payment obligation. Liberty suggests that the Commission update the ZEC obligation, and offers the following options:

1. Base the estimated ZEC payments for April 1, 2017 to March 31, 2018 on the most recent 12-month history of LSE deliveries, as reported by the NYISO and including

⁴ Liberty incorrectly identifies the 12-month base period used to develop the ZEC compliance obligation. The base period is May 1, 2015 through April 30, 2016.

only such months where the most current settlement data is available.

2. Retain the current estimation method, using the May 1, 2015 to April 30, 2016 settlement data, but only until settlement data for April 1, 2016 to March 31, 2017 is available, and then update the balance of period payments including a true-up for any estimated overpayments made prior to that update.

Alternatively, Liberty states that the Commission could establish a process for updating the ZEC responsibility of any ESCO that can demonstrate a substantial loss of load between the applicable base period and the period during which ZEC payments must be made. Liberty suggests that any reduction in ZEC revenues resulting from such an expansion could be recovered from distribution utilities customers through the financial backstop mechanism previously authorized by the Commission.

NOTICE OF PROPOSED RULE MAKING AND SUMMARY OF COMMENTS

Pursuant to the State Administrative Procedure Act, (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on February 15, 2017 [SAPA No. 15-E-0302SP26]. The time for submission of comments pursuant to the Notice expired on April 3, 2017. One comment, by the Joint Utilities,⁵ was submitted. The Joint Utilities urge that any changes in methodology for calculating each LSE's ZEC procurement obligation should include all LSEs, including electric distribution companies (EDCs) for their full service customers.

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

Also, the Joint Utilities oppose Liberty's proposal that customer-migration-related ZEC shortfalls should be addressed by collecting such funding shortfalls from all utility customers via a delivery surcharge in non-bypassable delivery rates. It notes that this remedy would be inconsistent with the Commission's strategy to collect CES-related charges via the supply portion of the customer bill. The Joint Utilities urge that the Commission reject this relief due both to its administrative complexity and the fact that the utilities are only permitted to modify their ZEC rate, per their tariffs, for their full-service customers once annually. The Joint Utilities contend that an increased ZEC payment obligation to NYSERDA without an adjustment to the ZEC tariffed rate could result in a significant mismatch between what the utilities collect for ZEC costs from their full-service customers and the amount owed to NYSERDA.

Instead, the Joint Utilities state that the Commission should calculate each LSE's ZEC procurement obligation using the most current load profile of all suppliers. The Joint Utilities believe that this approach is consistent with Commission's strategy for collecting CES charges, substantially addresses Liberty's concerns, and avoids inadvertently sending a price signal to customers to switch ESCO suppliers frequently in order to avoid paying for ZEC costs directly in supply charges.

DISCUSSION AND CONCLUSION

While it is anticipated that some load loss and load gain would be experienced among the LSEs, Liberty's load loss is substantial. A review of the monthly transactional load data transferred from the NYISO into NYGATs for the calendar year

2016⁶, indicates that Liberty's load decreased approximately 35% from its reported load for the May 1, 2015 through April 30, 2016 base period that was used by NYSERDA to calculate monthly ZEC payments. In support of its request, Liberty has submitted information to indicate that its anticipated load for the compliance period may be even lower than its actual calendar year 2016 load, by as much as an additional 50%. This change to Liberty's anticipated load for the April 1, 2017 through March 31, 2018 ZEC compliance period is very substantial and its request for monthly ZEC payment relief due to its material decrease in load it serves is reasonable. As a result, NYSERDA is directed to temporarily suspend 35% of Liberty's 2017-2018 ZEC compliance obligation monthly payment amounts. The actual 2017-2018 compliance obligation amount will be trued-up during the ZEC reconciliation period, which is to occur in September 2018.

While the calendar year 2016 load decrease is a material change to Liberty, it only represents approximately 0.25% of the statewide load. Also, Liberty is the only LSE to seek relief of its 2017-2018 ZEC obligation as a result of a material drop in the load it served. Therefore, at this time, the Commission is providing relief to only Liberty for a material change in its load due to the administrative burden of recalculating every LSEs' ZEC obligation and the potential marketplace confusion that could result from changes in customers' bills. Staff is, however, required to consult with NYSERDA following the completion of the first ZEC reconciliation period to see if any programmatic changes in calculating LSE loads for future compliance periods are warranted. Upon

⁶ Calendar year 2016 is the most recent 12-month period of monthly transactional load data transferred from the NYISO into NYGATS.

consultation with NYSERDA, if programmatic changes are needed, Staff will propose those changes to the Commission prior to the next ZEC reconciliation period.

Lastly, Liberty's proposal to fund shortfalls in ZEC revenues, from LSEs that experience load loss, via a delivery surcharge in non-bypassable delivery rates of EDC's customers is rejected. The Joint Utilities appropriately note that such action would be inconsistent with the overall strategy to collect CES charges via the supply portion of customer bills. Because these revenue shortfalls are temporary in nature, NYSERDA, through its cash balances, should be able to provide this bridge funding to the ZEC generators. Therefore, NYSERDA is directed to absorb the ZEC revenue shortfall that will result from the suspension of a portion of Liberty's 2017-2018 ZEC obligation until the ZEC reconciliation occurs in September 2018.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) shall suspend 35% of Liberty Power Holdings LLC (Liberty) April 1, 2017 through March 31, 2018 Zero Emission Credit (ZEC) compliance obligation monthly payments beginning with the August 2017 payment.
2. NYSERDA shall absorb the ZEC revenue shortfall that will result from the suspension of a portion of Liberty's ZEC obligation until the ZEC reconciliation occurs in September 2018.
3. Upon the close of the first reconciliation period for the Zero Emissions Credit Program, Staff, in consultation with NYSERDA, shall review the results of the reconciliations to determine if programmatic changes in calculating LSE loads for future compliance periods are warranted.

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