

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on February 22, 2018

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 February 22, 2018)

BY THE COMMISSION:

INTRODUCTION

On September 29, 2017, Astral Energy LLC (Astral), an energy service company (ESCO) submitted a petition requesting that the Commission reduce the company's Zero Emissions Credit (ZEC) obligation amount by 43% for the April 1, 2017 through March 31, 2018 ZEC compliance period. On January 16, 2018, Astral amended its petition to request a 64.4% reduction in its ZEC obligation based on new load data projection through March 31, 2018.

By this Order, the Commission directs NYSERDA to suspend 64.4% of Astral's monthly ZEC compliance obligation payments for the April 1, 2017 through March 31, 2018 ZEC compliance period.

BACKGROUND

On August 1, 2016, the Commission adopted the Clean Energy Standard (CES Framework Order)<sup>1</sup> which requires load serving entities (LSEs), including ESCOs, to purchase ZECs from NYSERDA in order to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future. The Commission's November 17, 2016 Order Approving Cost Recovery, Standardized Agreements and Backstop Principles in the same proceeding (November 2016 Order) required all LSEs to enter into contracts with NYSERDA for the purchase of renewable energy credits (RECs) and ZECs monthly, beginning January 1, 2017 for RECs and April 1, 2017 for ZECs.

The November 2016 Order directed NYSERDA to determine and make available to each LSE the number of ZECs it must purchase for compliance with the ZEC program. The number of ZECs a LSE must purchase is based on each LSE's proportional share of the statewide load served by the LSE during the previous 12 months, as reported by the New York Generation Attribute Tracking System (NYGATS). NYSERDA will then true-up the quantity of RECs and ZECs acquired by each LSE to the actual load served after a separate reconciliation for each compliance period for each program.<sup>2</sup>

NYSERDA notified Department of Public Service Staff (Staff) that Astral had become delinquent on its ZEC obligation and on January 4, 2018, Staff sent Astral a Notice of Apparent

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<sup>1</sup> Case 15-E-0302, Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016).

<sup>2</sup> 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.

Failure (NOAF) for failing to make its required ZEC payments to NYSERDA. The NOAF directed Astral to make all outstanding ZEC payments to NYSERDA by January 31, 2018. In response, Astral made a payment to NYSERDA to bring its ZEC balance to 64.4% of its required ZEC obligation, through December 2017.

THE PETITION

Astral complains that since April 2016, its load has dropped significantly. The company's September 2017 petition indicates a 43% reduction and the January 2018 petition states Astral's load has dropped a total of 64.4% since the 12 month period used to calculate each LSE's percentage of total load and, in turn, its ZEC obligation.<sup>3</sup> Astral states that the number of ZECs it is required to purchase for the current compliance year, when compared to its actual retail load in New York State for that year, creates a financial burden on Astral without reasonable compensation.

Astral acknowledges that this over-payment will ultimately be refunded through the true-up process, but states that this over-payment represents a substantial burden, as it is being required to bear an actual interest expense not borne by other LSE's. Astral argues that the overpayments effectively serve as a zero-interest loan subsidy benefiting other LSEs while Astral, as a competitive LSE, has no captive customers from whom to recover these additional costs.

Astral requests relief it claims is consistent with the treatment that the Commission provided to Liberty Power Holdings

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<sup>3</sup> Astral's petition 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.

LLC (Liberty) in its July 14, 2017 Order.<sup>4</sup> Specifically, Astral requests that the Commission:

- i) issue a temporary order suspending Astral's obligation to make ZEC compliance payments while its petition is pending;
- ii) direct NYSERDA to reduce Astral's April 1, 2017 through March 31, 2018 ZEC compliance obligation by 64.4% in total, and adjust the remainder of its monthly payments for the current compliance year accordingly; and
- iii) direct NYSERDA to absorb the ZEC revenue shortfall that would result from suspending Astral's ZEC obligation until the ZEC reconciliation occurs in September 2018.

#### NOTICE OF 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 November 1, 2017 [SAPA No. 15-E-0302SP29]. The time for submission of comments pursuant to the Notice expired on January 2, 2018.

#### SUMMARY OF COMMENTS

In response to Astral's September 29, 2017 petition, NYSERDA filed comments on December 18, 2017. NYSERDA did not take a position on Astral's requested relief. Rather, NYSERDA introduced an alternative method for calculating future ZEC obligation payments for all LSEs. NYSERDA indicates that the

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<sup>4</sup> Case 15-E-0302, supra, Order Modifying Compliance Payment (issued July 14, 2017).

proposed method could be efficiently implemented for tranche 2 of the ZEC program.<sup>5</sup>

The alternative approach NYSERDA proposed has no bearing on the method of calculating the ZEC price paid to eligible nuclear generating facilities, as approved in the CES Framework Order. The proposed method simply modifies the way in which LSEs remit ZEC payments to NYSERDA to a "pay-as-you-go" model, based on an LSE's known actual load.

As described in the comments, under the proposed approach, NYSERDA and Staff would annually calculate a fixed dollar per MWh rate that each LSE will use to determine their financial obligation based on the actual monthly load served, as opposed to an obligation to purchase a fixed number of ZECs from NYSERDA based on a dated assessment of an LSE's load share ratio. This process is intended to eliminate the need for the Commission to adjust LSE ZEC compliance obligations and reduce the dollar magnitude of the settlements between NYSERDA and the LSEs during the annual reconciliation process.

#### DISCUSSION AND CONCLUSION

Astral's load loss is substantial.<sup>6</sup> Data provided by Astral, which includes actual load for April 2017 through December 2017, plus a forecasted load for January 2018 through

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<sup>5</sup> Tranche 2 will be in effect for the third and fourth program years; April 1, 2019 through March 31, 2020 and April 1, 2021 through March 31, 2022, respectively.

<sup>6</sup> See Case 15-E-0556, Proceeding to Seek Consequences Against Astral Energy, LLC for Violations of the Uniform Business Practices, Order Suspending Astral Energy LLC's Authority to Market to and Enroll Residential and Non-Residential Customers (issued November 6, 2015) and Order Reinstating Astral Energy, LLC's Authority to Market to Non-Residential Customers (issued December 16, 2016).

March 2018,<sup>7</sup>, indicates that Astral's annual load is likely to decline by approximately 64.4% 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. Given the substantial change, Astral's request for ZEC payment relief due to its material decrease in load is reasonable. However, prior to receiving Commission authorization, Astral stopped making its monthly ZEC payments to NYSERDA.

To address this situation, Staff issued a January 4, 2018 Notice of Apparent Failure (NOAF). The NOAF directed Astral to make all outstanding ZEC payments to NYSERDA by January 31, 2018 and indicated that Staff would seek a Commission Order to Show Cause for violating the CES Framework Order and would seek remedies as set forth in the Uniform Business Practices §2.D.5.i and §2.D.6 if the payments were not made. In response to Staff's NOAF, Astral made a payment to its ZEC obligation to NYSERDA. With that payment, in total, Astral has paid 35.6% of its required ZEC obligation, to date, through December 2017. Further, the company has committed to regular monthly payments going forward on a similarly reduced percentage basis. Astral indicated that, due to its declining sales, it was unable to pay 100% of its outstanding original ZEC obligation.

In light of the dramatic decline in Astral's load, the Commission finds that the reduction in the ZEC obligation requested by Astral is warranted and therefore is approved. Astral shall continue making monthly ZEC payments to NYSERDA at 35.6% of the original ZEC payment amount, as calculated by NYSERDA. Should Astral fail to make the required monthly payments, it could be subject to enforcement action.

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<sup>7</sup> Astral's reported data is consistent with the most recent monthly transactional load data available in NYGATS, through August 2017.

In March 2018, LSEs will be notified by NYSERDA as to their April 1, 2018 through March 31, 2019 ZEC obligation. This obligation will be calculated in the same manner as the previous ZEC obligation. Astral and all other jurisdictional LSEs should note that these obligations must be paid in accordance with their executed ZEC agreements with NYSERDA. LSEs may not, on their own accord, and without explicit Commission authorization, reduce or eliminate monthly payments for any reason; this includes during the pendency of a petition seeking changes to a ZEC obligation.

Further, the Commission directs NYSERDA to absorb the ZEC revenue shortfall that would result from the suspension of a portion of Astral's April 1, 2017 through March 31, 2018 ZEC obligation until the ZEC reconciliation occurs in September 2018.

Finally, NYSERDA and Staff are directed to fully develop and submit to the Commission for consideration, an implementation plan that would modify the way in which LSEs remit ZEC payments to NYSERDA to a flexible, "pay-as-you-go" model, based on each LSE's known actual load.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) shall suspend 64.4% of Astral Energy, LLC's (Astral) April 1, 2017 through March 31, 2018 Zero Emission Credit (ZEC) compliance obligation amount.

2. Astral shall make all remaining monthly ZEC payments for the current compliance period at 35.6% of the originally calculated ZEC compliance obligation. The actual April 1, 2017 through March 31, 2018 compliance obligation amount will be trued-up by NYSERDA during the ZEC reconciliation period.

3. NYSERDA shall absorb the ZEC revenue shortfall that will result from the suspension of a portion of Astral's ZEC obligation until the ZEC reconciliation occurs in September 2018.

4. NYSERDA and Staff are directed to fully develop and submit to the Commission for consideration, an implementation plan that would modify the way in which LSEs remit ZEC payments to NYSERDA from a payment structure based on a fixed ZEC obligation, calculated using the LSE's historic share of the statewide to load, to a flexible, "pay-as-you-go" model, based on each LSE's known actual load.

5. 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.

6. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary