

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on the Motion of the Commission to
Implement a Large-Scale Renewable Program and a Clean
Energy Standard

Case 15-E-0302

**STATE ADMINISTRATIVE PROCEDURE ACT COMMENTS OF
AP GAS AND ELECTRIC (NY), LLC AND AP GAS AND ELECTRIC (TX), LLC**

Respectfully submitted,

PHILLIPS LYTTLE LLP
Attorneys for Petitioners
AP Gas & Electric (NY)
AP Gas & Electric (TX)
Omni Plaza
30 South Pearl Street
Albany, New York 12207

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on the Motion of the Commission to
Implement a Large-Scale Renewable Program and a Clean
Energy Standard

Case 15-E-0302

**STATE ADMINISTRATIVE PROCEDURE ACT COMMENTS OF
AP GAS AND ELECTRIC (NY), LLC AND AP GAS AND ELECTRIC (TX), LLC**

I. Introduction

AP Gas and Electric (NY), LLC and AP Gas and Electric (TX), LLC¹ (collectively “APG&E”) respectfully submit the following comments on its *Request for Acceleration of Adjustment of Zero Energy Credit Obligation* (the “Request”), filed on March 8, 2018 in the above-referenced proceeding.

As stated in the Request, APG&E is an Energy Service Company (“ESCO”) providing electric service to residential, commercial and industrial customers in New York. Pursuant to Commission’s August 1, 2016 *Order Adopting a Clean Energy Standard*, all load serving entities (“LSEs”), including ESCOs, are required to purchase, among other things, Zero Emission Credits (“ZECs”) from the New York State Energy Research and Development Authority (“NYSERDA”) in an amount proportionate to each LSE’s retail sales.

To establish the process by which ZEC payments would be made, the Commission issued an *Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles* on November 17, 2016 which directed NYSERDA to determine the number of

¹ Note that in 2016 APG&E (TX), LLC was known as Affordable Power, L.P.

ZECs each LSE would be required to purchase for each ZEC compliance year based on load data provided by the New York Independent System Operator (“NYISO”) and recorded in the New York Generation Attribute Tracking System (“NYGATS”) for load served by the LSE during the previous 12 months.

As stated more fully below, APG&E has experienced a material drop in its retail load in New York which has resulted, and will continue to result in, significant overpayments to NYSERDA which exceed its actual ZEC obligations. Such overpayments create an unrecoverable interest expense, and a subsidy to other LSE’s which represents an unreasonable and uncompetitive burden on APG&E. Furthermore, because APG&E is scaling back operations in New York, it does not plan to add new small commercial or residential customers from which it could recover these costs.

APG&E remains cognizant of the Commission’s statement that LSEs may not reduce or eliminate monthly ZEC payments without explicit Commission authorization. *See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Modifying Compliance Payment at 7* (issued Feb. 22, 2018). Throughout ZEC Compliance Year One, APG&E has made timely and consistent payments despite incurring this burden. Given that the most recently available load data clearly demonstrates APG&E’s substantial load loss, APG&E now respectfully requests the Commission reduce its ZEC obligation as described more fully below.

II. ZEC Compliance Year One

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

² See Exhibit A: APG&E (NY), LLC NYSERDA Confirmation Notice (Dec. 13, 2016); Exhibit B: APG&E (TX), LLC NYSERDA Confirmation Notice (Dec. 13, 2016)

³ See Exhibit C: APG&E (NY), LLC and APG&E (TX), LLC Load Data

⁴ Calculated by multiplying the drop percentage by NYSERDA's total purchase price for each entity for ZEC Compliance Year One, then subtracting that value from NYSERDA's estimated purchase price.

III. ZEC Compliance Year Two

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁵ See Exhibit D: APG&E (NY), LLC NYSERDA Confirmation Notice (March 19, 2018); Exhibit E: APG&E (TX), LLC NYSERDA Confirmation Notice (March 19, 2018).

⁶ See Exhibit C: APG&E (NY), LLC and APG&E (TX), LLC Load Data

⁷ Calculated by multiplying the drop percentage by NYSERDA's total purchase price for each entity for ZEC Compliance Year Two, then subtracting that value from NYSERDA's estimated purchase price.

[REDACTED]

IV. Requested Relief

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ Or such sum as further calculated to offset current compliance year overpayments.

[REDACTED]

Dated: Albany, New York
June 11, 2018

PHILLIPS LYTTLE LLP

By: *Thomas F. Puchner*

Thomas F. Puchner

Attorneys for Petitioners
AP Gas & Electric (NY)
AP Gas & Electric (TX)
Omni Plaza
30 South Pearl Street
Albany, New York 12207
(518) 472-1224
tpuchner@phillipslytle.com