



## I. REQUEST FOR TEMPORARY RELIEF

Astral requests that the Commission issue a temporary order reducing Astral's ZEC obligation by 47% while its Petition is pending. Absent an order from the Commission, Astral risks waiting six months for relief from the Commission, which represents half the ZEC Compliance Year. Astral's prior request for the same relief took six months. With respect to its April 1, 2017 – March 31, 2018 Compliance Year, Astral submitted a petition requesting relief on September 29, 2017 ("2017 Petition"). Its 2017 Petition was not published in the State Register until November 1, 2017, with comments due January 2, 2018. The Commission subsequently issued an order granting Astral the requested relief on February 22, 2018, nearly six months after the date it originally filed its 2017 Petition.

Astral's request for such temporary relief is also needed to ensure that Astral will not be characterized as non-compliant for non-payment of its full ZEC Compliance Payment while its Petition is pending. In the February 2018 Order, the Commission clearly stated that, "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."<sup>3</sup> Astral took this order seriously and has communicated with Staff about their concerns and sought explicit commission permission to have their ZEC payment reduced. In addition, Astral shared with them an analysis with data points showing why they are seeking a reduction. In response, DPS Staff advised Astral that: "Astral will need to file a petition, with supporting documentation, for the Commission to consider reducing the 2018-2019 ZEC payments based on a claimed reduced load." Staff also indicated that it could not lower Astral's payment

---

<sup>3</sup> Case 15-E-0302, *Order Modifying Compliance Payment*, (Issued and Effective February 22, 2018).

without a Commission ruling and not making their required payment could subject them to sanction. This is of great concern to Astral because they fear not being able to come up with the cash to make a full payment. In the event this happens and they are sanctioned, Astral is concerned this would be used to deny their petition currently pending that seeks to reinstate their ability to market to and enroll commercial customers.

Issuance of a Temporary Order will protect Astral against further harm, and will also ensure that sanctions are not levied under circumstances where ESCOs are complying with the Commission's rules in good faith.

## **II. REQUEST FOR EXPEDITED RELIEF AND SHORTENED COMMENT PERIOD**

If the above requested relief for a Temporary Order is not granted, Astral respectfully requests a waiver under 16 NYCRR 3.3(a)(1) for a shortened 20-day public comment period to allow the Commission to rule on Astral's request before May 29, 2018, two days before the May ZEC Compliance Payment is due. Under rule 3.3(a)(1), such requests are granted under circumstances to, "promot[e] the fair, orderly, and efficient conduct of the case."<sup>4</sup> In this case, granting such relief will avoid unnecessary administrative process. For example, granting Astral relief will preclude the need for a Notice of Apparent Failure, should Astral default on its compliance payments, due to the burdensome nature of the requirements. Granting Astral expedited relief will not adversely impact the public, given that the instant Petition for Reduction is substantially the same as previously filed. Accordingly, a shortened 20-day public comment period of this Petition is justified and in the public interest.

---

<sup>4</sup> 16 NYCRR 3.3(a)(1) ("Any filing deadline . . . may be modified by the Secretary for the purpose of promoting the fair, orderly, and efficient conduct of the case.")

### III. BACKGROUND

In its August 1, 2016 *Order Adopting a Clean Energy Standard* in this proceeding, the Commission required all Load Serving Entities (“LSEs”), including ESCOs, to purchase certain Renewable Energy Credits (“RECs”) and Zero Energy Credits (“ZECs”) from the New York State Energy Research and Development Authority (“NYSERDA”) pursuant to the Clean Energy Standard adopted by the Commission in the CES Order.<sup>5</sup> Subsequently, in the *Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles* issued in the above-captioned proceeding on November 17, 2016 (the “November 17 Order”), the Commission directed that:

NYSERDA will determine and make available to each LSE the number of ZECs the LSE will be required to purchase for compliance, assuming the maximum eligible generation from the zero-emission facilities. Each LSE’s requirement will be determined based on data provided by NYGATS regarding the load served by the LSE during the previous 12 months.<sup>6</sup>

On September 29, 2017, Astral Energy LLC (“Astral”) submitted a petition requesting that the Commission reduce the company’s 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 projections through March 31, 2018. On February 22, 2018, the Commission granted Astral relief, and ordered NYSEDA to suspend 64.4% of Astral’s monthly ZEC compliance obligation payments for the April 1, 2017 through March 31, 2018 ZEC compliance period.<sup>7</sup>

---

<sup>5</sup> Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Issued and Effective August 1, 2016) (“CES Order”).

<sup>6</sup> Case 15-E-0302, *Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles*, slip op. at 6 (Issued and Effective November 17, 2016).

<sup>7</sup> Case 15-E-0302, *Order Modifying Compliance Payment*, (Issued and Effective February 22, 2018).

By the same Order, the Commission stated that LSE's April 1, 2018 through March 31, 2019 ZEC obligation would be calculated in the same manner as the previous ZEC obligation.<sup>8</sup> Astral received its ZEC payment schedule from NYSERDA on March 19, 2018 (see attached **Confidential Exhibit B**).

#### IV. RELIEF REQUESTED

The ZECs that Astral is required to purchase in order to use the delivery facilities of New York's electric distribution utilities regulated by the Commission are unjust, unreasonable and unduly discriminatory as applied to Astral. The number of ZECs Astral is directed to purchase in order to satisfy Astral's ZEC obligation for the current Compliance Year under the Commission's Clean Energy Standard, when compared to its actual retail load in New York State for the last Compliance Year, creates actual, material financial costs and burdens on Astral without reasonable compensation. This is because a Commission Order issued in November 2015 suspended Astral's ability to market to and enroll residential customers. The suspension makes it financially difficult to simply pass the ZEC cost on to the customer because their customer base is much smaller than the ZEC load and would lead to unfair increase on their rate payers. At the same time, Astral cannot enroll more residential customers to help compensate for the costs from a revenue perspective. These circumstances put Astral at significant disadvantage with other LSEs operating in the market places and thus creates a real financial hardship on their business. For this extra-ordinary situation, Astral believes the charges significantly harm Astral in a manner that does not apply to other LSE and that as a result of the over-collection of ZEC

---

<sup>8</sup> *Id.* at 7.

costs from Astral, other LSEs with whom Astral must compete with to sell electricity will have their payment obligations for ZEC costs reduced.

Based on current projections for the April 1, 2018 – March 31, 2019 Compliance Year, Astral will experience another significant drop in its retail load, equaling a nearly 47% reduction (see attached **Confidential Exhibits A-C**). As a result, the ZEC payments that Astral is currently required to make to NYSERDA will exceed its actual ZEC obligations for the twelve-month period ending March 31, 2019 (i.e., the “Compliance Year”) by a significant amount.

These over-payments currently, and will continue to, unjustly discriminate against Astral as it is being required to bear an actual interest expense not required of other LSEs. Furthermore, the overpayments represent a zero-interest loan subsidy that benefits other LSEs. While Astral recognizes that over-payments will ultimately be refunded, this over-payment requirement represents a substantial and costly burden to Astral, which as a competitive LSE, has no captive customers from whom to recover these additional costs. For the reasons listed above, Astral submits reducing its ZEC payment requirement for the April 1, 2018 –March 31, 2019 Compliance Year is just and reasonable.

Astral respectfully submits that the relief it has requested is consistent with the relief the Commission provided to Astral in the February 22, 2018 Order Modifying Compliance Payment,<sup>9</sup> and Liberty Power in its July 14, 2017 Order Reducing Compliance Payment.<sup>10</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> 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 July 14, 2017).

Consistent with the Commission's actions reducing Astral's and Liberty's ZEC Compliance Obligation, Astral respectfully requests that the Commission:

1. Issue a temporary order reducing Astral's obligation to make ZEC compliance payments by 46.48% a while the instant Petition is pending; or in the alternative grant its request for a shortened comment period and issue an order granting its requested relief not later than May 29, 2018.
2. Order NYSEDA to reduce Astral's April 1, 2018 through March 31, 2019 ZEC compliance obligation by 46.48% in total, and adjust the remainder of its monthly payments for the current compliance year accordingly.
3. Order NYSEDA to absorb the ZEC revenue shortfall that will result from the suspension of this portion of Astral's ZEC obligation until the ZEC reconciliation occurs in September 2019.

## V. CONCLUSION

For the reasons stated herein, we request that the Commission reduce Astral Energy, LLC's ZEC compliance payment obligation and provide the additional relief requested above .

Respectfully submitted,

*/s/ Natara G. Feller*  
Natara G. Feller, Esq.  
Feller Law Group, PLLC  
159 20<sup>th</sup> St, Suite 1B  
Brooklyn, New York 11232  
Phone: (212) 590-0145  
Email: [natarafeller@feller.law](mailto:natarafeller@feller.law)

*Attorney for Astral Energy, LLC*

Dated: April 27, 2018