

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

\_\_\_\_\_) )  
**Proceeding on Motion of the Commission )  
to Implement a Large-Scale Renewable )  
Program and a Clean Energy Standard. )**  
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**Case 15-E-0302**

**REQUEST OF LIBERTY POWER HOLDINGS, LLC FOR  
A FURTHER REDUCTION IN ITS ZERO EMISSION CREDIT OBLIGATION**

Liberty Power Holdings, LLC (“Liberty”) respectfully submits this Request for the Commission to exercise its discretion to modify Liberty’s zero emission credit obligation as set forth herein pursuant to Rules 3.6 of the Commission’s Procedural Rules, 16 N.Y.C.R.R. § 3.6 (2016).

**INTRODUCTION AND  
BACKGROUND**

Liberty is an Energy Services Company (“ESCO”) providing electric service to residential, commercial and industrial consumers in New York State using the facilities of New York State’s electric distribution utilities. In its July 14, 2017 Order Modifying Compliance Payment in this proceeding (the “July 14 Order”), the Commission approved a 35% reduction in the amount of Zero Emissions Credits (“ZECs”) that Liberty was required to purchase from the New York State Electric Research and Development Authority (“NYSERDA”), which administers the REC program for the Commission.<sup>1</sup> In approving that reduction in Liberty’s REC purchase obligation, the Commission found that “[w]hile it is anticipated that some load

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<sup>1</sup> See 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).

loss and load gain would be experienced among the LSEs, Liberty's load loss is substantial."<sup>2</sup> Specifically, the Commission found that Liberty's load decreased approximately 35% between the May 2015 to April 2016 base period and the April 2017 to March 2018 ZEC compliance period (the "2017-18 Compliance Period").<sup>3</sup> Recognizing that this load decrease represented a "material change" to Liberty, but only approximately 0.25% of statewide load, the Commission directed the new York State Energy Research and Development Authority, which administers the ZEC program, to temporarily suspend 35% of Liberty's ZEC compliance obligation monthly payment obligation for the remainder of the 2017-18 Compliance Period.<sup>4</sup>

While Liberty greatly appreciates the understanding shown by the Commission in reducing Liberty's ZEC payment obligations for the 2017-18 Compliance Period, Liberty has unfortunately continued to experience further declines in its retail load in New York State since the issuance of that Commission order. As a result, the payments that Liberty will be required to make to NYSERDA during the period from April 1, 2018 to March 31, 2019 (the "2018-19 Compliance Period") will exceed its actual ZEC obligations under the November 17 Order for the twelve-month period ending March 31, 2019 by over 50% and by nearly one million dollars on an annual basis. Accordingly, Liberty is now requesting that the Commission once again exercise its discretion and order a further decrease in its monthly ZEC payment obligations for the 2018-19 Compliance Period.

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<sup>2</sup> July 14 Order, slip op. at 5

<sup>3</sup> July 14 Order, slip op. at 6.

<sup>4</sup> *Id.*

## ANALYSIS

As before, this overpayment of ZEC costs results from a significant decrease in Liberty's New York customer load from the NYSERDA projected calculation of 555,124 MWh, which was based on Liberty's July, 2016 -- June, 2017 NY load data, and Liberty's projection for the 2018-2019 compliance period of 243,197 MWh. This material decrease in projected load results in a projected monthly ZEC payment of \$63,534 as opposed to the NYSERDA estimate of \$145,024 monthly.

While Liberty recognizes that this overpayment will ultimately be refunded, as the Commission recognized in the July 14 Order, this over-payment requirement represents a substantial burden to a competitive, privately-held LSE, which by definition has no captive customers from whom to recover these costs in the interim. The expected over-payments will create actual interest expense to Liberty that will not be recoverable, and similarly the over-payments represents a zero-interest loan subsidy that benefits other LSEs.

To minimize the burdens imposed on Liberty by ZEC charges based on out-of-date sales data, Liberty respectfully requests that the Commission direct NYSERDA to temporarily suspend, beginning with the August 2018 payment, 50% of Liberty's monthly ZEC compliance obligation payments for the 2018-19 compliance period. Those payment obligations are unjust and unreasonable as applied to Liberty, in that they bear no relation to the number of ZECs reasonably required to satisfy Liberty's responsibility under the Commission's Clean Energy Standard with respect to its actual retail load in New York State and create actual, material financial costs and burdens on Liberty without reasonable compensation. Those charges are unduly discriminatory in that as a result of the over-collection of ZEC costs from Liberty, other LSEs with whom Liberty must compete to sell electricity and natural gas will have their ZEC

costs unfairly reduced. There is no evidence in the record in this proceeding that could possibly support this unfair and discriminatory result.

As the Commission found in the July 14 Order, granting Liberty's Petition will eliminate the unfair and unduly discriminatory application of the ZEC obligation with respect to Liberty without adversely affecting NYSERDA or the overall objectives of the Commission's ZEC program.

Respectfully submitted,

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