

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.³

Subsequent to the issuance of the November 17 Order, Lexington was informed by NYSERDA that its required payment for ZECs for the Compliance Year from April 1, 2017 to March 31, 2018 would be based on Lexington's sales during the period from April 1, 2015 to March 31, 2016.

Lexington has experienced a significant drop in its retail load in New York State since April of 2016, equaling a 39.77% reduction (see attached **Confidential Exhibits A-C**). As a result, the ZEC payments that Lexington is currently required to make to NYSERDA will exceed its actual ZEC obligations for the twelve-month period ending March 31, 2018 (i.e., the "Compliance Year") by a significant amount.

These over-payments currently, and will continue to, unjustly discriminate against Lexington 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 Lexington recognizes that over-payments will ultimately be refunded, this over-payment requirement represents a substantial and costly burden to Lexington, which as a competitive LSE, has no captive customers from whom to recover these additional costs. For the reasons listed above, Lexington submits reducing its ZEC payment requirement for the April 1, 2017 –March 31, 2018 Compliance Year is just and reasonable.

³ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles, slip op. at 6 (Issued and Effective November 17, 2016).

RELIEF REQUESTED

The ZECs that Lexington 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 Lexington. The number of ZECs Lexington was directed to purchase in order to satisfy Lexington'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 Compliance Year, creates actual, material financial costs and burdens on Lexington without reasonable compensation. Those charges are unduly discriminatory in that as a result of the over-collection of ZEC costs from Lexington, other LSEs with whom Lexington must compete with to sell electricity will have their payment obligations for ZEC costs reduced.

Lexington respectfully submits that the relief it has requested is consistent with the relief the Commission provided to Liberty Power in its July 14, 2017 Order Reducing Compliance Payment. In its request, Liberty would be required to make to NYSERDA, pursuant to the November Order, payments that would exceed its anticipated ZEC obligations for the 12-month period ending March 31, 2018, by a substantial amount. In response to Liberty's request for a reduction of its ZEC Compliance Payment for the April 2017-March 2018 Compliance Year, the Commission temporarily suspended Liberty's ZEC Compliance Obligation by 35%.⁴

Consistent with the Commission's action reducing Liberty's ZEC Compliance Obligation, Lexington respectfully requests that the Commission:

1. Issue a temporary order suspending Lexington's obligation to make ZEC compliance payments while the instant request is pending.

⁴ 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).

2. Order NYSERDA to reduce Lexington's April 1, 2017 through March 31, 2018 ZEC compliance obligation by 39.77% in total, and adjust the remainder of its monthly payments for the current compliance year accordingly.
3. Order NYSERDA to absorb the ZEC revenue shortfall that will result from the suspension of this portion of Lexington's ZEC obligation until the ZEC reconciliation occurs in September 2018.

CONCLUSION

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

Respectfully submitted,

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