

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of Proceeding to Implement
A Large-Scale Renewable Program and a
Clean Energy Standard**

Case 15-E-0302

**COMMENTS OF THE CITY OF NEW YORK
ON THE PROPOSED ZEC IMPLEMENTATION PLAN**

Dated October 19, 2018

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PRELIMINARY STATEMENT

In response to a directive from the Public Service Commission (“Commission”),¹ the New York State Energy Research and Development Authority (“NYSERDA”) and Department of Public Service Staff (“Staff”) have developed a new approach to allocating Zero Emissions Credits (“ZEC”) to loads.² Instead of fixed payments, the new approach calls for the development of a ZEC “rate” that would be multiplied by each load serving entity’s (“LSE”) usage.

The City of New York (“City”) generally supports the new approach but recommends that two changes be made to it. First, the proposal to implement penalties is not justified or warranted and should be stricken. Second, the Commission should require that overcollections be treated similarly to undercollections – both should be reconciled quarterly.

¹ 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 February 22, 2018).

² Case 15-E-0302, *supra*, Clean Energy Standard Zero Emissions Credit (ZEC) Implementation Plan (dated August 3, 2018) (“ZEC Implementation Plan”).

COMMENTS

POINT I

THE PENALTIES PROPOSED IN THE ZEC IMPLEMENTATION PLAN ARE UNJUSTIFIED AND DO NOT HELP TO ADVANCE THE COMMISSION'S GOALS

The purpose of the Clean Energy Standard (“CES”) is to transform the State’s energy supply to reduce greenhouse gas (“GHG”) emissions and improve air quality.³ Its goal of having 50 percent of the State’s electricity be generated by renewable sources by 2030 is part of the State’s broader public policy goal of reducing statewide GHG emissions by 40 percent by 2030.⁴ Within the CES, there is a secondary purpose of preserving the carbon-free environmental attributes of the upstate nuclear facilities as part of the supply portfolio through 2029, and ZECs were created to do so.⁵

Pertinent to this matter, the Commission imposed firm obligations on all jurisdictional LSEs to purchase ZECs. To implement these obligations, the Commission required each LSE “to enter into a contractual relationship with NYSERDA to periodically purchase ZECs”⁶ NYSERDA subsequently developed and filed a standard form contract which establishes, among other things, NYSERDA’s remedies in the event an LSE defaults on its payment obligation.⁷ In approving this contract, the Commission described these provisions as “penalties for non-

³ Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (issued August 1, 2016) (“CES Order”).

⁴ 2015 New York State Energy Plan, Volume 1, issued by the New York State Energy Planning Board, pp. 112.

⁵ CES Order at pp. 14, 19.

⁶ *Id.* at p. 151.

⁷ *See* Case 15-E-0302, *supra*, Draft Agreement for the Sale of Zero-Emissions Energy Certificates (filed September 15, 20-16).

compliance.”⁸ Thus, if an LSE does not purchase ZECs as required by the CES Order and its contract with NYSERDA, the LSE is subject to both penalties under the contract and daily penalties under either or both of Public Service Law §§ 25 and 25-a.

There is no support in the CES Order, or in any subsequent Order issued by the Commission in this proceeding authorizing or even identifying the need for penalties for variances between forecasted and actual load. The contracts entered into between NYSERDA and the LSEs, if in the same form as the approved contract, do not specify any obligation for the variances to be less than 15 percent or provide for any penalties for larger variations. The ZEC Implementation Plan provides no rationale or justification for the proposal to impose additional penalties for deviations between an LSE’s forecasted and actual load, it provides no explanation as to why the existing penalties are insufficient, and it offers nothing to support the proposal to impose a minimum penalty of \$1,000.⁹ Moreover, the Plan provides no explanation as to why the Commission should, or legally can, modify the existing contracts between the LSEs and NYSERDA to impose new requirements regarding load forecasts and penalties for errors in such forecasts.¹⁰

⁸ Case 15-E-0302, *supra*, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016) (“November 16 Order”) at p. 7. NYSERDA also described these provisions as penalties for non-compliance. *See* Case 15-E-0302, *supra*, Petition of NYSERDA Pursuant to August 1, 2016 Order (filed August 25, 2016) at p. 5.

⁹ ZEC Implementation Plan at p. 6.

¹⁰ NYSERDA and Staff observe that if the Commission approves the new structure, the existing ZEC contracts will need to be replaced (ZEC Implementation Plan at p. 9). However, the existing contracts do not allow for unilateral modifications or replacements by NYSERDA, and the ZEC Implementation Plan does not explain how a Commission notice and comment process could supplant the need for the LSEs to expressly agree to any changes to the contracts.

The City respectfully submits that the Commission does not have the legal authority to abrogate or modify the existing contracts, and there is no rational basis before the Commission for adopting the proposed penalty. Accordingly, the Commission should reject this aspect of the ZEC Implementation Plan.

As a separate reason for rejecting the proposed penalties, the City respectfully submits that they do not serve any legitimate purpose. The Commission established a specific formula to calculate the amount of payments the nuclear plants would receive, and which would be paid by LSEs via the purchase of ZECs. The Commission also approved NYSERDA's request for an administrative adder to cover NYSERDA's costs of administering the ZEC program.¹¹ The Commission also approved a utility backstop guarantee "to ensure NYSERDA has sufficient funds to make timely payments to the generators."¹² All payments made by NYSERDA are fully reconciled each year to ensure that the amounts collected from ratepayers match the amounts owed to the nuclear plants plus NYSERDA's approved administrative costs.

Inasmuch as the costs of the ZEC program are already fully addressed, there is no need for the additional revenues that would be collected via the penalties. Further, the proposed penalty would not advance the preservation of existing at-risk zero-emissions nuclear plants – the purpose of the ZEC program – because the plants already receive full payment of the approved by the Commission. Similarly, the proposed penalty will not support or bolster the State's GHG emissions reduction goals as they unrelated to achievement of any level of incremental GHG emissions reductions. That is, if the penalty is stricken, there would be no increase in GHG emissions, and if penalties are levied, there would be no incremental decrease in GHG emissions.

¹¹ November 16 Order at pp. 15-17.

¹² *Id.* at p. 8; *see also* pp. 20-21.

The only result of the proposed penalty is to unnecessarily and unjustly burden customers. For this reason as well, the Commission should reject the proposed penalty mechanism.

Finally, the City submits that there is a significant flaw in the proposed penalty. The ZEC Implementation Plan states that LSEs will have the opportunity to use the New York Independent System Operator, Inc.'s ("NYISO") load forecasting mechanism to develop their load forecasts for the ZEC program. If the NYISO's forecast is later determined to be in error by more than 15 percent, the LSE, not the NYISO, would be held liable for the error. Penalizing an LSE for relying on the NYISO's analysis would be unjust and unreasonable, and it would not serve any valid purpose. If anything, levying a penalty against an LSE under such circumstances would cause LSEs to refrain from relying on the NYISO's forecasts and undermine this aspect of the ZEC Implementation Plan.

POINT II

QUARTERLY RECONCILIATIONS NEED TO ADDRESS OVERCOLLECTIONS, IN ADDITION TO UNDERCOLLECTIONS

The ZEC Implementation Plan converts the fixed-in-advance ZEC payments with a pay-as-incurred methodology. The Plan specifies that LSEs will use their best estimate of their wholesale load for the prior month to estimate and report their expected ZEC obligations. The Plan recognizes the potential for collection variances to occur due to differences between the estimated monthly loads the LSEs will record with NYSERDA and their actual loads.¹³

As part of this new approach, NYSERDA proposes to change the annual reconciliation periods to quarterly reconciliation periods. In relevant part, the ZEC Implementation Plan states

¹³ ZEC Implementation Plan at p. 5.

that “LSEs will be required to make-up any shortfalls in the monthly ZEC payments”¹⁴ However, there is no similar requirement to return overcollections to LSEs. The reconciliations should be symmetrical, and whether an LSE has overpaid, the overpayment should be returned quarterly, not annually or according to some other schedule. It would not be reasonable or rational for NYSERDA to conduct quarterly reviews of the payments made by LSEs and require that only shortfalls be ameliorated.

Because the ZEC Implementation Plan is silent on symmetrical quarterly reconciliations, the City respectfully requests that the Commission clarify that undercollections and overcollections will be treated similarly, and any refunds owed to LSEs will be distributed quarterly.

¹⁴ *Id.*

CONCLUSION

For the reasons set forth in these Comments, the City respectfully recommends that the Commission reject the penalty provisions of the ZEC Implementation Plan, and clarify that overcollections will be reconciled on a quarterly basis in a similar manner as undercollections.

Respectfully submitted,

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