

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 12, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

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 and Effective July 16, 2018)

BY THE COMMISSION:

INTRODUCTION

On March 8, 2018, AP Gas & Electric (NY), LLC (APG&E NY), AP Gas & Electric (TX), LLC (APG&E TX), and AP Gas & Electric (NJ), LLC (APG&E NJ), (collectively, APG&E Companies), which serve load in the State as energy service companies (ESCOs), submitted a petition requesting a refund for overpayments made under the Zero-Emission Credit (ZEC) compliance program (the Petition). The Petition seeks a refund for the 12-month period ending March 31, 2018, and a reduction, by up to 50%, of its ZEC obligation for the 12-month period ending March 31, 2019.¹

¹ APG&E NJ does not operate in New York and is not part of the ZEC obligation adjustment requested.

By this Order, the Public Service Commission (Commission) directs the New York State Energy Research and Development Authority (NYSERDA) to suspend 55% of APG&E NY's and 16% of APG&E TX's monthly ZEC compliance obligation payment for the April 1, 2018 through March 31, 2019 ZEC compliance period. The Commission denies APG&E's request for an accelerated refund or, alternatively, to receive credits for potential ZEC overpayments for the April 1, 2017 through March 31, 2018 ZEC compliance period.

BACKGROUND

On August 1, 2016, the Commission adopted the Clean Energy Standard (CES) Framework Order, which requires load serving entities (LSEs), including ESCOs, to purchase ZECs from NYSERDA to preserve existing zero-emissions nuclear generating resources as a bridge to the clean energy future.² In the Commission's November 2016 Order, all LSEs were required to enter into contracts with NYSERDA for the purchase of Renewable Energy Credits (RECs) and ZECs on a monthly basis, beginning January 1, 2017 for RECs, and April 1, 2017 for ZECs.³

The November 2016 Order directed NYSERDA to determine the number of ZECs each LSE must purchase for compliance with the ZEC program. NYSERDA establishes the number of ZECs each LSE must purchase based on each LSE's proportional share of the statewide load served by the LSE during the previous 12 months, as reported by the New York Generation Attribute Tracking System (NYGATS). NYSERDA trues up the quantity of ZECs acquired by

² Case 15-E-0302, Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

³ Case 15-E-0302, supra, Order Approving Cost Recovery, Standardized Agreements and Backstop Principles, (issued November 17, 2016) (November 2016 Order).

each LSE to the actual load served after a separate reconciliation for each compliance period.

THE PETITION

APG&E argued that the companies experienced a material drop, greater than 50%, in its retail load in New York State since April 2016.⁴ As a result, APG&E stated that the combined payments it was required to make to NYSEDA for both APG&E NY and APG&E TX pursuant to the November 2016 Order exceeded its actual ZEC obligation for the 12-month period ending March 31, 2018 by more than \$500,000. Additionally, the APG&E Companies indicated that they expect their obligation for the ZEC compliance period ending March 31, 2019 to be 90% higher than its actual NYISO load share ratio.

The APG&E Companies recognized that the overpayment will be refunded in September 2018, but argued that the overpayments for the first two compliance periods creates actual interest expense to APG&E that will not be recoverable and puts a significant strain on its cash flow and liquidity. The Petition requested the Commission accelerate an adjustment to its ZEC obligation based on actual or more recent sales data, and immediately refund the overpayment for the 12-month period ending March 31, 2018. In addition, the APG&E Companies requested the Commission reduce their ZEC obligation by up to 50% for the 12-month period ending March 31, 2019.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was

⁴ The April 1, 2017 through March 31, 2018 compliance period obligation was based on LSE's actual sales for the 12-month period ended April 30, 2016.

published in the State Register on April 11, 2018 [SAPA No. 15-E-0302SP34]. The time for submission of comments pursuant to the Notice expired on June 11, 2018. The APG&E Companies filed comments to support and supplement the Petition. A portion of its comments were filed under the Commission's procedures for the filing of confidential documents, and therefore only the public comments are summarized below.

COMMENTS

The APG&E Companies reiterated that they had experienced a material drop in retail load in New York which has resulted, and will continue to result in, significant overpayments to NYSERDA for its ZEC obligations. Further, the APG&E Companies advised that it will be scaling back operations in New York and does not plan to add new small commercial or residential customers from which it could recover these costs. The APG&E Companies emphasized that they made timely and consistent payments throughout the ZEC program, despite incurring a financial hardship.

The APG&E Companies ask the Commission to rely on the most recent available load data to calculate the adjusted ZEC payment obligations as a reasonable and prudent method of minimizing the burden imposed on ESCOs that have experience substantial load loss. The APG&E Companies demonstrated that they have experienced substantial losses since the ZEC compliance period ended March 31, 2018, and demonstrated further that they have continued to experience load loss for the ZEC Compliance period ending March 31, 2019. They indicated that the load loss is a result of scaling back their operations in New York and halting enrollment of new small commercial and residential customers. The APG&E Companies requested that the

Commission reduce its April 1, 2018 through March 31, 2019 ZEC obligation accordingly.

DISCUSSION AND CONCLUSION

The APG&E Companies have experienced a substantial loss of load since the inception of the ZEC compliance program. Based on data provided by the APG&E Companies, which was supported by data provided by NYGATS, APG&E NY experienced a 55% reduction in load for the ZEC compliance period ending March 31, 2019, when comparing the base year (July 2016-June 2017) used by NYSERDA to calculate the current obligation to the latest available 12-month period (calendar year 2017) of settled load data from the New York Independent System Operator, Inc. (NYISO). For the same period, applying the same data comparison, APG&E TX has experienced a 16% reduction in its load from the original base year calculation. Due to these material losses in load, the APG&E Companies' requested relief to reduce their ZEC payment obligations is reasonable.

Considering the decline in the APG&E Companies' load, the Commission finds that the reduction in their ZEC obligation for the April 1, 2018 through March 31, 2019 compliance period is warranted. Therefore, the Commission approves the requested relief and directs NYSERDA, beginning with the ZEC payment due in July 2018, to reduce APG&E NY's monthly ZEC compliance payment by 55%. APG&E NY shall continue making monthly payments to NYSERDA at 45% of the original ZEC amount. Similarly, the Commission directs NYSERDA, beginning with the ZEC payment due in July 2018, to reduce APG&E TX's monthly ZEC compliance payment by 16%. APG&E TX shall continue making monthly payments to NYSERDA at 84% of the original ZEC amount.

Further, the Commission directs NYSERDA to absorb the ZEC revenue shortfall that would result from the suspension of a

portion of the APG&E Companies' April 1, 2018 to March 31, 2019 ZEC obligation until the ZEC reconciliation occurs in September 2019. However, the APG&E Companies' request for an immediate refund for ZEC payments made to NYSERDA for 2017-2018 compliance period is denied. Due to the administrative process required by the NYISO to confirm and settle LSEs' load in their systems, there is a five-month lag following the end of any given month before the NYISO can report verified (V2) data into the NYGATS platform. Due to this delay, like all other LSEs, the APG&E Companies' load data for March 2018 will not be available in NYGATS until August 2018. Once that data is received, NYSERDA will recalculate the actual load share percentages for each LSE and calculate a new, actual LSE obligation, factoring in the number of ZECs purchased by NYSERDA from the existing zero-emissions nuclear generating resources. As a result, it is not possible for NYSERDA to accurately determine the amount of APG&E's refund until the reconciliation is completed and refunds are processed in September 2018. Therefore, the Commission denies APG&E's requests for relief relating to the use of its possible ZEC overpayment for the April 1, 2017 to March 31, 2018 compliance period, including an immediate refund.

Finally, the Commission reminds all LSEs that they may not, on their own accord, and without explicit Commission authorization, reduce or eliminate monthly ZEC payments for any reason. This prohibition applies during the pendency of a petition seeking changes to a ZEC compliance obligation.

The Commission orders:

1. Beginning with the payments due to the New York State Energy Research and Development Authority (NYSERDA) in July 2018, NYSERDA shall suspend 55% of AP Gas & Electric (NY), LLC's, and 16% of AP Gas & Electric (TX), LLC's, monthly Zero

Emission Credit (ZEC) compliance obligation payments for the April 1, 2018 through March 31, 2019 ZEC compliance period, as discussed in the body of this Order.

2. The Commission denies the request by AP Gas & Electric (NY), LLC and AP Gas & Electric (TX), LLC for an accelerated refund of Zero Emission Credit payments for the 12-month compliance period ending March 31, 2018, as discussed in the body of this Order.

3. This proceeding shall be continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary