STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on December 18, 2025

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 24-M-0482 - Proceeding on Motion of the Commission to Seek Consequences against Polaris Power Services LLC for Violations of the Uniform Business Practices.

ORDER DENYING REHEARING AND RECONSIDERATION AND CONFIRMING DENIAL OF ELIGIBILITY

(Issued and Effective December 23, 2025)

BY THE COMMISSION:

INTRODUCTION

On November 20, 2024, the New York State Public Service Commission (Commission) issued an Order to Show Cause (OTSC) after the New York State Department of Public Service (Department or Staff) investigated Polaris Power Services LLC (Polaris Power or the Company) and identified sufficiently credible evidence indicating that Polaris Power apparently failed to comply with the Uniform Business Practices (UBP) and the December 12, 2019 Commission Order Adopting Changes to the

Retail Access Energy Market and Establishing Further Process[1] (December 2019 Order). In the OTSC, the Commission ordered Polaris Power to show cause within thirty days why its eligibility to operate as an energy service company (ESCO) in the State of New York should not be revoked or, in the alternative, why other consequences set forth in the UBP should not be imposed. On April 10, 2025, approximately 100 days after the initial deadline, the Company belatedly submitted Polaris Power Services LLC's Response to Order Instituting Proceeding and to Show Cause (Response to the OTSC).

On July 22, 2025, the Commission issued an Order Revoking Polaris Power Services LLC's Eligibility to Serve Customers in New York (Revocation Order). The Revocation Order revoked Polaris Power's eligibility to operate as an ESCO in New York State and directed the Company to return each of its customers to full utility service in the utility services territories in which the Company operates within 60 days of the effective date of the Revocation Order.

On August 21, 2025, Polaris Power filed a Petition for Rehearing of the Revocation Order. For the following reasons, the Commission denies rehearing and reconsideration of the Revocation Order and maintains its determination to deny Polaris Power eligibility to operate as an ESCO in New York State.

LEGAL AUTHORITY

The Commission has authority over the tariffed rules and regulations of electric and gas distribution utilities and has placed conditions on when the distribution utilities may

[1] Case 15-M-0127 et al., In the Matter of Eligibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019).

allow ESCOs to use utility infrastructure to distribute electricity and natural gas to ESCO customers.[2] Therefore, the Commission has jurisdiction and authority to establish and modify the conditions under which ESCOs may offer electric and gas commodity service to customers, and to impose consequences when ESCOs fail to abide by those conditions.[3] Indeed, New York State courts have determined that the Commission has broad "authority to condition ESCO's eligibility to access utility [distribution systems] on such terms and conditions that the [Commission] determines to be just and reasonable."[4]

Consistent with this authority, the Commission's UBP sets forth various eligibility conditions for ESCOs to begin accessing, and to continue accessing, utility distribution systems for the purpose of selling energy services to customers in New York. The Commission has authority to enforce these conditions by imposing consequences on ESCOs that fail to abide by the terms of the UBP,[5] including revocation of an ESCO's ability to operate in New York.[6] Pursuant to UBP Section 2.D.5.B, an ESCO may be subject to the consequences listed in the UBP – including revocation under UBP Section 2.D.6.b - for "failure to adhere to the policies and procedures described in its Sales Agreement."[7]

In addition, on December 12, 2019, the Commission issued the December 2019 Order, which "strengthen[ed]

---

[2] Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Comm'n, 33 N.Y.3d 336, 350, reargument denied, 33 N.Y.3d 1130 (2019).

[3] Id.; Matter of Atlantic Power & Gas v. Pub. Serv. Comm'n, 203 A.D.3d 1352, 1355-56 (3d Dept 2022).

[4] Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Comm., 33 N.Y.3d 336, 343, 351, reargument denied, 33 N.Y.3d 1130 (2019); see generally UBP §2.D.6.a.1.b.

[5] UBP §2.D.6.a.1.b.

[6] UBP §2.D.6.b.6.

[7] UBP §2.D.5.b.

protections for residential and small commercial customers (mass-market customers) in the retail energy market."[8] The December 2019 Order instituted stricter eligibility requirements to ensure that ESCOs complied with regulations, rules, and the overarching policy goals of New York State and that their operations demonstrated a consistent commitment to regulatory compliance. The December 2019 Order specified that:

> ESCOs shall enroll new residential or small non-residential customers (mass market customers) or renew existing mass market customers for gas and/or electric service only if at least one of the conditions is met: (1) enrollment includes a guaranteed savings over the utility price, as reconciled on an annual basis; (2) enrollment is for a fixed-rate commodity product that is priced at no more than 5% greater than the trailing 12-month average utility supply rate; (3) enrollment is for a renewably sourced electric commodity product that (a) has a renewable mix that is at least 50% greater than the ESCO's current Renewable Energy Standard (RES) obligation, (b) the ESCO complies with the RES location and delivery requirements when procuring Renewable Energy Credits (RECs) or entering into bilateral contracts for renewable commodity supply, and (3) there is transparency of information disclosures provided to the customers with respect to pricing commodity sourcing.[9]

The December 2019 Order established a new paradigm for ESCO business practices and reined in undesirable ESCO conduct. Following petitions for clarification or rehearing on some ordering clauses of the December 2019 Order, ESCO requirements applicable here went into effect on April 16, 2021.

[8] December 2019 Order, p. 1.
[9] Id., p. 108.

BACKGROUND

Staff initially approved Polaris Power's ability to operate as an ESCO in New York State on August 28, 2020. During the revised eligibility application process, which occurred following the December 2019 Order, all ESCOs were required to submit a new application package to Staff for review that included samples of sales agreements for each compliant product offering they wished to market.[10] As part of that revised application process, on March 19, 2021, Staff granted Polaris Power eligibility to provide and serve New York customers with two different products: (1) a fixed-rate commodity product priced at no more than 5 percent greater than the trailing 12-month average utility supply rate; and (2) a renewably sourced electric commodity product.

THE PETITION FOR REHEARING

A party may only seek rehearing on the grounds that the Commission committed an error of law or fact, or that new circumstances warrant a different determination.[11] Pursuant to 16 NYCRR §3.7(b), a petition for rehearing must separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.[12] Petitioners seeking rehearing also have the burden of establishing each of their contentions and arguments.

The Petition for Rehearing contends that the Commission committed several errors of law and fact when it issued the Revocation Order. Specifically, Polaris Power contends on rehearing that: (1) the Company's failure to pay its 2022 Voluntary Compliance Payment (VCP) obligation does not

[10] Id., pp. 15, 109-110.
[11] 16 NYCRR §3.7(b).
[12] Id.

warrant revocation of its eligibility because Staff allegedly failed to follow established procedures to permit Polaris Power to cure, and Polaris Power offered to cure; (2) the Revocation Order allegedly made no findings as to specific aggregated customers, and those customers' enrollment with Polaris Power complies with the Commission's aggregation policy; (3) the Revocation Order purportedly misstates facts to bolster its narrative; and (4) the Revocation Order deprived Polaris Power of its rights under the Public Service Law (PSL), the New York State Constitution, and the United States Constitution. Polaris Power further states that new circumstances - including alleged revisions to compliance procedures, recent compliance with Commission requirements, and the Company's offer to refund impacted customers – warrant rehearing.

As discussed in further detail below, the Petition for Rehearing does not meet the rehearing standard articulated in 16 NYCRR §3.7(b). The Commission therefore affirms its decision to revoke Polaris Power's eligibility to operate as an ESCO in New York State, as articulated in the Revocation Order.

DISCUSSION

1. Staff and the Commission Properly Notified Polaris Power About its Outstanding 2022 VCP Obligation and Issued the Order to Show Cause

A. Polaris Power Admittedly Failed to Timely Pay Its 2022 VCPs

As Polaris Power admits in its Petition for Rehearing, the Company did not respond to Staff's emails regarding the 2022 renewable energy review, which inquired about any renewable load Polaris Power may have sold to its customers during that calendar year.[13] This is undisputed. Polaris Power also

[13] Petition for Rehearing, p. 7.

acknowledges that it did not notify Staff that the Company had served any renewable load in 2022 until February 2024. Instead, the Company claims that it "did not understand that it was subject to the [2022 renewable energy review] because of its focus on non-mass-market business and because of the [2022 renewable energy review's] focus on [the December 2019 Order's] mass-market policies."[14]

The Commission finds this argument unpersuasive. Regardless of what Polaris Power characterizes as its "focus on non-mass-market business," the Company admittedly – and therefore undisputedly - served a renewable product to mass market customers in 2022. As reiterated in the OTSC, Polaris Power submitted mass market customer contracts for Staff's review into Matter 14-02554 in connection with Staff's investigation into the Company's non-compliance with 2022 VCP retirements.[15] These contracts describe how Polaris Power was to fulfill obligations to its customers, including by retiring Renewable Energy Credits (RECs) for energy generated from renewable sources. As Staff observed, an active Polaris Power customer sales agreement from 2022 contained language stating that "50% of customer's usage during the term of this contract will be offset by the purchase and retirement of renewable energy credits."[16] Since Polaris Power failed to timely purchase and retire RECs, the only way for the Company to ensure that it met its contractual obligations to customers was by purchasing VCPs.

However, Polaris Power admittedly did not acknowledge that terms of its mass market contracts required the Company to

[14] Id., p. 30.
[15] OTSC, p. 6.
[16] Id., pp. 5-6 (citing to Polaris Power customer sales agreement, Matter 22-00900, Item No. 191 (filed March 1, 2024)).

fulfill renewable energy purchase obligations until February 2024. The Petition for Rehearing also does not explain why the Company ignored Staff's inquiries in 2023 and only responded when prompted by Staff in February 2024. Instead, Polaris Power references its mistaken "belief" that a response was not required.[17]

Polaris Power further claims that it informed Staff "throughout spring and summer 2024, that it would satisfy its [Renewable Energy Credit] compliance obligations when it was forwarded its shortfall invoice."[18] The Company asserts that, purportedly "for unknown reasons," the Commission declined to permit Polaris Power "to address its admitted 2022 VCP shortfall."[19] However, the Revocation Order clearly stated that Staff and the New York State Energy Research & Development Authority (NYSERDA) could not address this shortfall given how much time had lapsed - not only since the end of the 2022 REC compliance year itself, but also from when the time to make payments for that year expired.[20] Thus, contrary to Polaris Power's assertion that the Commission "ignored" the Company's

[17] Petition for Rehearing, p. 7.
[18] Id., p. 10.
[19] Id., pp. 11-12.
[20] See Revocation Order, p. 8 (noting that "Polaris Power admittedly failed to adhere to the [REC retirement] process by not reporting its renewable contract load obligations according to the timeline for its [VCP] obligation, until after the close of the 2022 compliance years' reconciliation process" and that "Polaris Power ... delayed in providing the relevant data at the appropriate time in June 2023, at the close of the compliance year for VCPs ...."). The Company even included a copy of a letter from Staff, dated May 9, 2023, directing it to provide information regarding renewable electric products "by June 15, 2023," as well as an email chain in which Staff informed the Company on June 30, 2023, that Polaris Power "must file an audit response immediately" if it sold any renewable load to customers in 2022. See Petition for Rehearing, Exhibits A, B.

request that Staff and NYSERDA provide an invoice reflecting its 2022 VCP obligation, such an invoice could not be generated because the renewable load data for 2022 had already been tabulated and reconciled. Staff and NYSERDA cannot administer this program if ESCOs such as Polaris Power fail to timely and accurately report their voluntary renewable loads and make associated VCPs.[21] The Company's undisputed conduct and omissions frustrated the administration of the program.

Like all other ESCOs offering renewable products to mass market customers, Polaris Power was required to promptly report to Staff whether it served any renewable load in 2022 and purchase VCPs to cover that load, pursuant to the language in its contracts. By offering a renewable energy product to mass market customers, belatedly informing Staff of its renewable load, and failing to timely purchase the corresponding number of VCPs, Polaris Power breached its obligation to these customers. Accordingly, the Commission finds Polaris Power's arguments on this subject unpersuasive.

B. Staff and the Commission Followed Established Cure Procedures

i. Staff and the Commission Can Proceed to an Order to Show Cause Without First Issuing a Notice of Apparent Violation

The Commission acknowledges that Staff from time-to-time issues NOAVs to regulated entities, including ESCOs. These

[21] Polaris Power contends that NYSERDA's 2022 compliance page states that "LSEs will have the option of making [Alternative Compliance Payments] after NYSERDA and the LSEs have reconciled the 2022 RES compliance year REC obligations in 2023." Petition for Rehearing, p. 30. This statement does not contain any specific deadline for reconciliation, nor does it explain or excuse the Company ignoring Staff's directives and repeated requests for renewable load information in 2023 and failing to fulfill contractual obligations to its customers.

notices often request documents and an explanation for how entities under investigation did not violate Commission orders and/or regulations, such as the UBP.

However, the issuance of NOAVs prior to Orders to Show Cause is not mandatory but is only one of multiple options and discretionary tools that Staff can pursue in the face of potential ESCO non-compliance. Polaris Power's citation to UBP §2.D.6.a.1 for the proposition that the Department must notify an ESCO of an apparent failure to comply with the UBP and request that the ESCO take corrective action "though the issuance of an NOAV" is therefore inapposite.[22] That UBP provision states: "The Commission or Department shall ... Either (a) notify the ESCO in writing of its failure to comply and request that the ESCO take appropriate corrective action or provide remedies within the directed cure period, which will be based on a reasonable amount of time given the nature of the issue to be cured; or (b) order that the ESCO show cause why a consequence should not be imposed."[23] Thus, the UBP specifically anticipates that, upon identifying apparent non-compliance, the Commission or Department may proceed directly to an Order to Show Cause. In this case, Staff had already identified potential non-compliance based on the contracts and clarifying responses Polaris Power submitted to Staff in connection with Staff's investigation into the Company's customer enrollments. Staff therefore properly determined that its review of this information supported the issuance of the OTSC.

Polaris Power also references the Orders to Show Cause in the Astral Energy LLC (Astral), Energo Power & Gas LLC (Energo), Liberty Power Holdings, LLC (Liberty), and Premier

[22] Petition for Rehearing, p. 16.
[23] UBP §2.D.6.a.1 (emphasis added).

Empire Energy, LLC (Premier) cases,[24] claiming that the Commission traditionally issues NOAVs to ESCOs that fail to timely satisfy their RES obligations or make VCPs.[25] As noted above, the UBP authorizes the Commission to proceed directly to an Order to Show Cause in the face of potential non-compliance. Furthermore, these orders primarily concern requirements established by the Order Adopting a Clean Energy Standard, which requires load-serving entities (LSEs), including ESCOs, to purchase zero-emissions credits (ZECs) from NYSERDA, as well as the subsequent Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles, which required all LSEs to contract with NYSERDA for the monthly purchase of RECs and ZECs, beginning January 1, 2017, and April 1, 2017,

[24] See Case 23-M-0554, Proceeding on Motion of the Commission to Seek Consequences against Astral Energy LLC for Violations of the Uniform Business Practices, Order Instituting Proceeding and to Show Cause (issued November 27, 2023) (Astral Order); Case 25-M-0244, Proceeding on Motion of the Commission to Seek Consequences against Energo Power & Gas LLC for Violations of the Uniform Business Practices and Apparent Failure to Comply with a Commission Order, Order Instituting Proceeding and to Show Cause (issued June 23, 2025) (Energo Order); Case 22-E-0024, Proceeding on Motion of the Commission to Seek Consequences against Liberty Power Holdings, LLC for Violations of the Uniform Business Practices, Order Instituting Proceeding and to Show Cause (issued March 17, 2022) (Liberty Order); and Case 22-M-0489, Proceeding on Motion of the Commission to Seek Consequences against Premier Empire Energy, LLC for Violations of the Uniform Business Practices, Order Instituting Proceeding and to Show Cause (issued October 14, 2022) (Premier Order).

[25] Petition for Rehearing, pp. 10, 16-17.

respectively.[26] These Clean Energy Standard (CES) requirements apply to every LSE operating in New York State, and do not concern VCP obligations that an ESCO may choose to include in its sales agreements, as Polaris Power did.

Here, Polaris Power admittedly did not honor the terms of the contracts referenced in the OTSC and Revocation Order because it failed to timely cover its contractually obligated voluntary renewable load by making requisite retirements in NYGATS. This obligation is separate and apart from the Company's contractual CES obligations to NYSERDA that were mainly at issue in Astral, Energo, Liberty, and Premier. Furthermore, as previously noted, Staff was already in possession of additional information regarding extensive contractual enrollment problems that were not present in those Orders to Show Cause and that separately supported the issuance of the OTSC against Polaris Power.

ii. Staff Complied with the *Field* Doctrine

As the Company states, the *Field* Doctrine provides that, "absent an explanation by the agency, an administrative agency decision which, on essentially the same facts as underlaid a prior agency determination, reaches a conclusion contrary to the prior determination is arbitrary and capricious."[27] Polaris Power claims that ESCOs such as Astral,

[26] Case 15-E-0302, et al., Proceeding on the 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), p. 156 and Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016), pp. 5, 22; Order Approving Zero-Emissions Credit Implementation Plan with Modifications (issued September 20, 2019). See also Astral Order, pp. 10-11; Energo Order, p. 2; Liberty Order, pp. 5-6; and Premier Order, p. 5.

[27] Matter of Charles A. Field Delivery Service, Inc., 66 N.Y.2d 516, 518 (1985).

Energo, Liberty, and Premier were afforded an opportunity to resolve outstanding REC payments in prior cases through NOAVs, and that these cases were based on "essentially the same facts" as the instant case.[28]

The decision to proceed directly to the OTSC does not violate the *Field* Doctrine, as Polaris Power contends, because issuance of the OTSC does not represent an improper departure from "the Commission's established practice."[29] The *Field* Doctrine focuses on facts, not procedure, and the facts in the cases to which Polaris Power cites are readily distinguishable. For instance, Polaris Power improperly assumes that enforcement matters that concern failure to satisfy any ZEC, REC, or VCP purchase requirements mandate the issuance of an NOAV prior to an Order to Show Cause. Polaris Power does not distinguish between its admitted failure to timely purchase VCPs to fulfill its unique contractual commitment to its customers and its independent RES obligation to NYSERDA (which was primarily at issue in the Astral, Energo, Liberty, and Premier cases).[30]

Polaris Power's limited interpretation also does not account for Staff and the Commission's discretion to determine the proper course of action in an enforcement proceeding.[31] In this case, and as summarized above, Staff was already in possession of information that normally would have been

---

[28] Petition for Rehearing, p. 18.

[29] Id.

[30] See OTSC, p. 8 (observing that Polaris Power only satisfied its 2022 RES payments in a timely manner and did not report its VCPs until after the close of the calendar year 2022 reconciliation process).

[31] See, e.g., General Business Law (GBL) §349-d (preserving the Commission's authority "to limit, suspend or revoke the eligibility of an energy services company to sell or offer for sale any energy services for violation of any provision of law, rule, regulation or policy enforceable by such commission or authority.").

requested of an ESCO in response to an NOAV. That information included apparent violations of contract terms and Commission requirements that supported the issuance of the OTSC. As the *Field* Doctrine does not bear upon procedural questions and this matter contains additional facts not at issue in the cases to which Polaris Power cites, the Commission rejects the Company's argument on this subject.

2. The Revocation Order Made Factual Findings to Support Revocation of Polaris Power's Eligibility

A. The Revocation Order Explained that Polaris Power Enrolled Customers in Non-Compliant Contracts

Polaris Power claims that the Revocation Order improperly failed to identify the customers the Company enrolled in non-compliant contracts.[32] In particular, Polaris Power asserts that its customer misclassifications did not occur on a large scale, the Commission did not address classification of Polaris Power's small commercial customers, and "the Revocation Order invalidated a large number of Polaris' customer contracts which were valid enrollments."[33]

The record shows that Polaris Power communicated with Staff regarding these admitted enrollment errors. For example, in correspondence with Staff, dated March 19, 2024 (but filed on October 9, 2024) - which is also referenced in both the OTSC and the Revocation Order - the Company confirmed that it had "identified approximately 888 ... accounts that are categorized by the utilities as mass-market, or non-demand metered, but that are linked to a demand-metered customer account," and that "[t]his accounts for the majority of the discrepancy identified

[32] Petition for Rehearing, p. 13.
[33] Id., pp. 19-20.

by Staff."[34] Among other things, Polaris Power also admitted in that Staff correspondence that it had "identified approximately 99 mass-market accounts that were unintentionally enrolled into large commercial, or demand-metered products."[35] As summarized in the OTSC, Staff reviewed the list of customers Polaris Power provided in its April 9, 2024 response to Staff, and was unable to identify any association between demand-metered accounts and the list of mass market accounts the Company provided.[36] Given this discrepancy, Staff confirmed that the list of supposedly demand-metered accounts that Polaris Power provided were, in fact, not demand-metered accounts, and that the Company had therefore impermissibly enrolled and aggregated its mass market customers on non-compliant products.

While Polaris Power claims that its admitted customer misclassifications only impacted a "small subset" of its customer base and contends that the Commission did not specifically evaluate these misclassifications,[37] in a letter dated March 19, 2024, Polaris Power referenced a March 11, 2024 email from Staff, in which Staff advised the Company that it apparently served "approximately 420 large commercial accounts, and 831 mass market accounts."[38] Polaris Power did not dispute Staff's identified discrepancy with "approximately 800 mass-market accounts," admitted that its 888 mass market accounts encompass "a majority of the discrepancy identified by Staff,"

---

[34] Polaris Power's response to Information Request, Matter 14-02554, Item No. 6047 (filed October 7, 2024); OTSC, p. 7; Revocation Order, p. 6. Polaris Power also observes that the Commission "referenced Polaris' admission that 888 of its accounts did not have a demand meter" in the Revocation Order. Petition for Rehearing, pp. 13-14.

[35] Polaris Power's response to Information Request, Matter 14-02554, Item No. 6047 (filed October 7, 2024).

[36] OTSC, p. 8.

[37] Petition for Rehearing, p. 21.

[38] Id., Exhibit E.

and further discussed the 99 mass market accounts improperly enrolled in large commercial, or demand-metered, products.[39] Polaris Power was clearly able to identify these enrollment problems, but either attributed them to internal errors or to its incorrect understanding of the Commission's mass market aggregation rule (Aggregation Rule).[40] Although Polaris Power characterizes these errors as comprising a "small subset," the record undisputedly contains hundreds of account errors.

In sum, Polaris Power does not explain how the Commission's description of the Company's violations represents a mistake of law and fact.[41] The Commission therefore finds no error with the Revocation Order's findings.

B. Polaris Power Misinterprets the Aggregation Rule

Polaris Power further contends that the Commission misapplied the Aggregation Rule with respect to mass market customers. By way of background, the Commission first articulated the Aggregation Rule in a 2016 Order Resetting Retail Energy Markets and Establishing Further Process (2016 Order), and further defined it in a 2020 Order on Rehearing, Reconsideration, and Providing Clarification (2020 Order).[42] Specifically, Polaris Power cites to the 2020 Order's finding that, "as to aggregation for electric customers, an electric customer is not a mass-market customer if it has one or more demand metered accounts," and asserts that "[t]he same basic rule is set forth in Staff Guidance on the 2016 Order that first

[39] Id.
[40] Id.
[41] Id., p. 21.
[42] Cases 15-M-0127 et al., In the Matter of Eligibility Criteria for Energy Service Companies, Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016) and Order on Rehearing, Reconsideration, and Providing Clarification (issued September 18, 2020).

defined mass-market."[43] Polaris Power also concludes that "the Aggregation Rule exempts non-residential non-demand-metered customers from the mass-market rules, and can reasonably be interpreted to apply to residential customers as well."[44]

Polaris Power misconstrues the Aggregation Rule. As Polaris Power itself observes, the 2020 Order provides that "an electric customer" that is mass market would not have one or more demand-metered accounts (emphasis added). A reasonable reading of this rule is that each aggregated account must contain the same customer name.[45] An electric mass market customer can only be aggregated with a demand metered account if both are listed under the same account name.

Here, the Company failed to associate customers and accounts on a basic level and, in many instances, did not connect mass market customers with demand accounts under the same owner or name. Yet, even on rehearing, Polaris Power continues to apply its mistaken reading of the Aggregation Rule. The Company uses the example that "LDC account ID ######60005 is a non-residential non-demand-metered account owned by Pilgrim Realty, but it does not qualify as a mass-market customer because it is linked to LDC account ID ######10008, a large

[43] Petition for Rehearing, pp. 21-22 (citing Cases 15-M-0127 et al., supra, 2020 Order, p. 45; Cases 15-M-0127 et al., supra, Department of Public Service Staff Guidance Document for Compliance with the February 23, 2016 Order Resetting Retail Energy Markets and Establishing Further Process (issued March 2, 2016), p. 3).

[44] Petition for Rehearing, p. 23.

[45] See Matter of Glenwyck Dev., LLC v. New York Pub. Serv. Commn., 167 A.D.3d 1375, 1376 (2018) (observing that, "[s]o long as the determination is not irrational or unreasonable," courts particularly defer to agency interpretations "where the matter involves the agency's interpretation of a regulation that it promulgated and is responsible for administering." (citations omitted)).

commercial demand account also owned by Pilgrim Realty."[46] However, Staff has confirmed that account ######60005 (small commercial, non-demand billed) is in the name of Princeton Equities, whereas account ######10008 (large commercial, demand billed) is in the name of 1105 Stratford Holdings.[47] Neither of these accounts are in the account name of Pilgrim Realty. As these accounts do not share a common name, they cannot be aggregated pursuant to the Aggregation Rule. Accordingly, Polaris Power's claim that "[t]he overwhelming majority, if not all, of the aggregated customers were enrolled in compliance with the Commission's Aggregation Rule" is incorrect.[48]

The record further demonstrates that Staff was not "confused" about how to apply the Aggregation Rule.[49] As the Commission previously explained in the Revocation Order, Polaris Power reads far too much into one email exchange in which Staff simply sought to confirm that the Company had, in fact, inaccurately characterized its demand-metered and mass market accounts.[50] Given the extent of the Company's then-apparent non-compliance, it was appropriate for Staff to take initiative and confirm these enrollment discrepancies with the utility.

Finally, on rehearing, Polaris Power does not dispute the Revocation Order's findings that "[i]t appears that the Company accepted the advice of third parties and/or contract enrollments facilitated by third parties without subsequently reviewing contracts to ensure compliance with Commission orders

---

[46] Petition for Rehearing, pp. 23-24.
[47] Portions of the account numbers have been masked here.
[48] Id., pp. 21, 23; see also Revocation Order, p. 6 (noting that Polaris Power's failure to comply resulted in "customer names on commercial sales agreements that were not associated with mass-market customer names and account numbers included in the addendum to those sales agreements.").
[49] Revocation Order, pp. 7-8, 11.
[50] Id., p. 13, n. 28.

and regulations."[51] The Company conveniently does not address the problematic business practice that informed the Commission's decision to revoke the Company's eligibility. As Polaris Power admittedly enrolled hundreds of customers in improperly aggregated products and does not dispute the Commission's conclusion that the Company failed to police third parties conducting enrollments on its behalf, the Commission need not disturb the Revocation Order's findings.

3. The Revocation Order Does Not Engage in Rulemaking

Polaris Power next contends that, to the extent the Commission intends to depart from the Aggregation Rule and not permit ESCOs to enroll non-demand customers under demand-metered accounts, then it must comply with the rulemaking procedures proscribed by the New York State Administrative Procedure Act (SAPA) and the New York State Constitution.[52] Polaris Power further asserts that the Commission has improperly elevated Staff's annual renewable energy review "to the status of a rule of general applicability," in violation of these rulemaking procedures.[53]

SAPA defines a "rule" as "the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or prescribes a fee charged by or paid to any agency or the procedure or practice requirements of any agency, including the amendment, suspension or repeal thereof ...."[54] As the Court of Appeals has explained, a rule for the purposes of SAPA is "a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the

[51] Id., p. 12.
[52] Petition for Rehearing, pp. 24-25.
[53] Id., p. 25.
[54] SAPA §102(2)(a)(i).

statute it administers."[55] Case law distinguishes rulemaking from ad hoc decision-making based on individual facts and circumstances.[56] Similarly, Article IV, Section 8 of the New York State Constitution states that "[n]o rule or regulation made by any state department, board, bureau, officer of commission, except such as relates to the organization or internal management ... shall be effective until it is filed in the office of the department of state."[57]

Here, the Revocation Order did not promulgate a "rule." As stated above, LSEs such as ESCOs can only aggregate electric customers when they are associated with a demand-metered account in the same name. Polaris Power admittedly linked mass market customers to unrelated demand-metered accounts. Accordingly, the Commission is not adopting a new interpretation of the Aggregation Rule. Rather, the record reflects that Polaris Power did not follow the requirements of the Aggregation Rule because it failed to enroll mass market customers on compliant products (i.e., mass market products that are not linked to an unrelated demand-metered account). Therefore, the Commission finds the Company's arguments that the Commission failed to comply with rulemaking procedures under SAPA as well as the New York State Constitution's rule publication requirement to be unpersuasive.

4. Polaris Power's Offers to Come into Compliance Do Not Alter the Revocation Order's Determination

Polaris Power asserts that the Commission erred in issuing the Revocation Order because that order allegedly failed to address "the extensive efforts Polaris has taken to correct any instances of non-compliance," including "either dropp[ing]

[55] Cubas v. Martinez, 8 N.Y.3d 611, 621 (2007).
[56] Alca Industries, Inc. v. Delaney, 92 N.Y.2d 775, 778 (1999).
[57] New York State Constitution, Article IV, Section 8.

or transferr[ing] all 888 of the Aggregated Customers onto mass-market contracts, regardless of their qualification as non-mass-market under the Aggregation Rule."[58] Polaris Power further summarizes the Commission's decision to reject the Company's prior offer to re-rate (or refund) customers $45,000 due to its admitted enrollment mistakes, estimates a revised refund amount of $156,408.99, and asserts that this new offer represents a changed circumstance warranting rehearing.[59]

As an initial matter, Polaris Power glosses over inconsistencies with prior refund offers that were of concern to Staff. For instance, in correspondence to Staff, dated March 19, 2024, Polaris Power addressed 99 mass market accounts that it admitted "were unintentionally enrolled into large commercial, or demand-metered products," and represented to Staff that the Company "intend[ed] to drop those accounts and, if necessary, re-rate them to the utility rate for the period of time they were enrolled with Polaris."[60] However, in correspondence to Staff from April 9, 2024, Polaris Power claimed that it would "not be able to provide the rerate calculation within the initially expected timeframe," and that it had "not dropped these customers because doing so would violate the customer agreement."[61] Staff and the Commission properly considered this shift in the Company's position when rejecting Polaris Power's offer to refund the 888 mass market accounts that were linked to a demand-metered customer account to resolve this matter. In addition, if Polaris Power knew and admitted that certain customers were enrolled in improper

[58] Petition for Rehearing, pp. 26-27.
[59] Id., pp. 27-28.
[60] Id., Exhibit E.
[61] Polaris Power's response to Information Request, Matter 14-02554, Item No. 5965 (filed April 10, 2024), pp. 2-3.

contracts, the Company did not need Staff's approval to refund impacted customers.

Polaris Power further argues that the Revocation Order incorrectly states that "Polaris Power did not offer to come into compliance" because the Response to the OTSC states that the Company "acknowledged the mistakes, corrected the issue, and will re-rate customers."[62] However, Polaris Power selectively quotes from the Revocation Order to avoid meaningfully engaging with the remedy the Commission discussed. The full quote reads: "Polaris Power did not offer to come into compliance with the December 2019 Order by switching customers who were improperly enrolled on commercial contracts to compliant mass-market contracts."[63] In sum, Polaris Power has not presented any new information that would warrant rehearing on this subject.

Finally, while the Petition for Rehearing provides more detailed calculations for the refund amount than the Company set forth in its Response to the OTSC, it is notable that the revised offer of $156,408.99 is more than triple the Company's initial refund offer of $45,000. These significantly different numbers indicate that Polaris Power is or was seemingly unable to accurately calculate amounts owed to its customers. This presents additional cause for concern about the Company's business practices overall and provides further confirmation

[62] Petition for Rehearing, p. 26.
[63] Revocation Order, p. 13 (emphasis added).

that the Commission did not err in issuing the Revocation Order.[64]

5. The Revocation Order Accurately Presents the Facts and Provides Justification for Revocation

Polaris Power argues that the Revocation Order "repeatedly misstates or twists facts to bolster its outcome."[65] Not only is this claim inaccurate, the inclusion of these facts in the Revocation Order also does not present an independent basis for granting rehearing.

Polaris Power first contends that the Revocation Order unfairly admonishes the Company for multiple delays in submitting a response to the OTSC. Polaris Power was, indeed, granted several extensions to respond to the Order to Show Cause. However, the Revocation Order's statement that "[o]n April 10, 2025, approximately 100 days after the deadline, Polaris Power belatedly submitted a response to the OTSC" -

[64] Another concern that Staff has recently identified regarding Polaris Power's business practices relates to the Company's apparent failure to comply with Ordering Clause 2 of the Revocation Order. This ordering clause required Polaris Power to, "within 60 days from the effective date of this Order, return each of its customers to full utility service in the utility service territories it operates, with transfers occurring on the customers' regularly scheduled meter reading dates." Polaris Power did not request to stay the Revocation Order's 60-day compliance deadline, whether in connection with its Petition for Rehearing or otherwise. Thus, Polaris Power was required to transition its New York customers to default utility service no later than September 20, 2025 (60 days from July 22, 2025, when the Revocation Order took effect). However, a utility provided data to Staff on October 16, 2025, indicating that, as of that date, the Company had more than 750 customers, including more than 350 non-demand customers. The utility further confirmed that, as of October 16, 2025, Polaris Power had multiple pending enrollments. It therefore appears that Polaris Power failed to timely transition its customers to the default utility service, contrary to the terms of the Revocation Order.

[65] Petition for Rehearing, p. 29.

language that Polaris Power claims is "unfair and mischaracterizes the facts" – does not address the extensions themselves but the fact that the Company missed a deadline associated with an extension. The Company's third extension request, which was granted on April 1, 2025, gave the Company until April 4, 2025, to respond to the OTSC.[66] However, the Commission's Document and Matter Management system reflects that Polaris Power submitted its Response to the OTSC on April 10, 2025, nearly a week after it was due (although the Response to the OTSC itself is dated April 4, 2025).[67]

Second, Polaris Power takes issue with the Revocation Order's observation that Attachment 3 to the Company's Response to the OTSC "only includes NYSERDA invoices, not conclusive proof of payment."[68] While Polaris Power represented that it "previously paid all other NYSERDA invoices associated with its 2022 RES program requirements, including those for Tier 1 RECs and Zero Emissions Credits," the inclusion of invoices, rather than proof of payment, still does not support Polaris Power's assertion that it made these payments.[69] Invoices are not conclusive of payment.

Finally, Polaris Power asserts that the Commission misconstrues the timing of the Company's offer to meet its 2022 VCP obligation because the Revocation Order stated that Polaris Power "did not acknowledge[] that it had [] renewable load until more than a year after that compliance period ended."[70] To clarify, the "compliance period" to which the Commission

[66] Case 24-M-0482, Ruling on Extension Request, Item No. 8 (issued April 1, 2025).
[67] Response to the OTSC, p. 1; see generally Case 24-M-0482.
[68] Petition for Rehearing, p. 29 (quoting Revocation Order, p. 8, n. 17).
[69] Response to the OTSC, p. 8.
[70] Petition for Rehearing, p. 30 (quoting Revocation Order, pp. 9-10).

referred is calendar year 2022, and not necessarily the time period following the end of that year when Staff and NYSERDA review any associated and outstanding renewable obligations. Still, it is undisputed that, in 2023, Polaris Power failed to respond to multiple Staff requests for information regarding any renewable load the Company may have served in 2022. Instead, Polaris Power improperly sought to make VCPs associated with its 2022 renewable load for the first time in February 2024, several months after Staff first requested that the Company inform Staff of any renewable load during compliance year 2022. These facts were accurately presented in the Revocation Order and therefore do not warrant rehearing.

6. The Revocation Order Complied with the Requirements of the Public Service Law

Polaris Power claims that, in adopting the Revocation Order, the Commission failed to comply with applicable PSL provisions that permit the Commission to regulate ESCOs. The Company claims that PSL §§65(1), 66(5), and 66-d do not contain "express statutory authority" delegating to the Commission the ability to regulate Polaris Power or other ESCOs.[71] In particular, Polaris Power cites to PSL §66(5) for the proposition that, before the Commission determines that the Company's "acts," "rates," or "charges" were unjust, unreasonable, or "anywise" unlawful, the Commission must first make such a finding and hold a hearing, which did not occur in this case.[72]

As reiterated by the Court of Appeals in Matter of National Energy Marketers Association v. Public Service Comm'n, the Commission "has the authority to determine the terms of conditions under which ESCOs are eligible to purchase delivery

[71] Petition for Rehearing, p. 31.
[72] Id., pp. 31-32; PSL §66(5).

services – for both gas and electricity – from utilities."[73] This statement is consistent with other established case law affirming the Commission's authority to regulate ESCOs' business practices in the State of New York.[74] Furthermore, the provisions in GBL §349-d(11), which gives the Commission the "authority ... to limit, suspend or revoke the eligibility of an [ESCO]" would be "meaningless" if the Commission did not already have the ability to regulate ESCOs' ability to access public utilities' infrastructure.[75]

The Commission also observes that Polaris Power's analysis of the PSL conveniently side-steps discussing UBP requirements that supplement the PSL. In adopting the UBP, the Commission established a set of practices and procedures for ESCOs such as Polaris Power to follow. The Company notably avoids engaging with specific UBP directives in its argument regarding the Commission's PSL authority.

7. The Revocation Order Complied with the New York and Federal Constitutions

To comply with due process, the allegations in an administrative proceeding must be specific enough to give actual notice to the party being charged. However, the notice requirement in an administrative proceeding is not as extensive as the notice afforded in a criminal proceeding.[76] Rather, "in

[73] Matter of National Energy Marketers Association v. Public Service Comm'n, 33 N.Y. 3d 336, 350 (2019).

[74] See Marathon Power LLC v. Public Service Comm'n, 72 Misc. 3d 563, 564-65 (Sup. Ct., Albany Co. 2021), aff'd 209 A.D.3d 1245 (3d Dept. 2022) (observing that "[t]he PSC has the authority to regulate an ESCO's eligibility to access public utilities' infrastructure" and "[t]he UBP sets forth requirements for an ESCO to follow in order to maintain eligibility and also authorizes the PSC to determine and impose appropriate consequences for noncompliance with the UBP.").

[75] Matter of National Energy Marketers Association v. Public Service Comm'n, 33 N.Y. 3d 336, 351 (2019).

[76] Matter of Block v. Ambach, 73 N.Y.2d 323, 332 (1989).

the administrative forum, the charges need only be reasonably specific, in light of all the relevant circumstances, to apprise the party whose rights are being determined of the charges against [it] and to allow for the preparation of an adequate defense."[77]

Polaris Power claims that the Department failed to comply with due process because it "continuously changed its allegations against Polaris throughout the proceeding, making it impossible for Polaris to meaningfully address the alleged compliance issues."[78] Specifically, Polaris Power identifies what it characterizes as "New Issues" that generally concern the Company's pattern of non-compliance.

The Commission rejects Polaris Power's argument that the Commission has not provided the Company with the requisite information to comply with due process. The "New Issues" Polaris Power raises appear to only consist of the Commission's conclusion that, given the Company's established violations of the December 2019 Order and UBP, Polaris Power had a "pattern" of non-compliance.[79] The Revocation Order does not allege any new violations of the December 2019 Order, UBP, or any other law, rule, or regulation to which Polaris Power would be unable to respond. These "New Issues" simply summarize concerns the Commission addressed earlier in the Revocation Order.

The Company also claims that the OTSC and Revocation Order violated due process because the Commission did not fully explain the Company's violations. However, Polaris Power was on notice of Staff's specific concerns starting in early 2024, when

---

[77] Id. at 333; see also Matter of Ronga v. New York City Dept. of Education, 114 A.D.3d 527, 528 (1st Dept. 2014) and Wolfe v. Kelly, 79 A.D.3d 406, 410 (1st Dept. 2010), appeal dismissed 17 N.Y.3d 844 (2011).

[78] Petition for Rehearing, p. 32.

[79] Revocation Order, p. 10.

Staff began corresponding with Polaris Power on the issues articulated in those orders. In the Company's March 19, 2024 and April 9, 2024 responses to Staff, Polaris Power admitted to conducting improper enrollments, provided customer contracts demonstrating these improper enrollments as well as multiple other issues (such as the inclusion of customer names on commercial sales agreements that were not associated with individual mass market names and account numbers), and indicated that it would not drop and timely refund certain customers. Based on this information, the Commission issued the OTSC, which provided Polaris Power with the opportunity to prepare a defense to the allegations and explain "why the Commission should not revoke its eligibility to operate as an Energy Services Company in the State of New York."[80] After finding Polaris Power's response to the OTSC to be insufficient because the Company could not or otherwise failed to remedy the issues identified in that order, the Commission issued the Revocation Order. In sum, the extensive record documenting the allegations, investigation, and findings concerning Polaris Power over the past few years easily satisfies the "reasonably specific" due process requirement.[81]

Finally, the Commission finds Polaris Power's contentions that the Revocation Order violates the Fourteenth Amendment to the United States Constitution and Article I Section 6 of the New York State Constitution to be unconvincing. Polaris Power attempts to argue that the Revocation Order denied the Company its property interest in carrying on its business as well as its liberty interest to both not have its reputation stigmatized or besmirched and its liberty interest "to earn a livelihood and engage in its occupation through its continuing

[80] OTSC, p. 12.
[81] Matter of Block v. Ambach, 73 N.Y.2d 323, 333 (1989).

eligibility to operate as an ESCO."[82] However, New York courts have confirmed that ESCOs do not have an absolute right to do business in the State of New York, especially if, as in this case, the Commission otherwise satisfied the requirements of due process.[83] Polaris Power also does not specify exactly how, in issuing the Revocation Order, the Commission harmed the Company's purported property and liberty interests.

8. Polaris Power Does Not Identify Any New or Changed Circumstances That Warrant Granting Rehearing

Finally, Polaris Power contends that several new circumstances warrant granting rehearing of the Revocation Order. Specifically, Polaris Power claims that a different determination is appropriate because the Company has allegedly complied with all Commission requirements – including REC payment and customer classification requirements – since early 2024, calculated re-rates for misclassified customers, is committed to refunding impacted customers, and established additional compliance procedures.[84]

For the various reasons previously discussed in this order as well as in the Revocation Order, the Commission properly determined that Polaris Power is unlikely to comply with the UBP and the December 2019 Order should it be permitted to continue to serve ESCO customers in New York State. In sum, Polaris Power did not retire any VCPs in its Environmental Disclosure Program subaccount in NYGATS toward its voluntary renewable load for calendar year 2022, in violation of the terms

[82] Petition for Rehearing, pp. 33-34.

[83] See Sunsea Energy LLC v. Public Service Comm'n, 229 A.D.3d 1021, 1023-25 (3d Dept. 2024) (finding that the Commission fulfilled due process requirements by providing notice to petitioner of its problematic business practices and issuing an Order to Show Cause, requesting petitioner to state why its eligibility to operate as an ESCO should not be revoked).

[84] Petition for Rehearing, pp. 3-4.

of its sales agreements that stated the Company would purchase and retire RECs for 50 percent of its customers' contracts. Polaris Power did not disclose to Staff that it was serving customers on a renewable product until February 2024, despite numerous inquiries in 2023. The Company also improperly enrolled hundreds of mass market customers on commercial contracts rather than compliant mass market contracts. In many cases, these contracts also contained multiple errors and inconsistencies with names, signatures, and account numbers. Finally, the Company regularly made inconsistent and inaccurate statements to Staff, which indicated to the Commission that Polaris Power cannot report information accurately. This established pattern of poor business practices does not give the Commission faith that the Company is truly committed to compliance going forward. The Commission therefore finds that permitting Polaris Power to continue to offer ESCO service would not serve the best interests of consumers or promote the public interest and affirms the Revocation Order.

CONCLUSION

The Commission rejects each of Polaris Power's arguments that the Commission committed errors of law and/or fact in issuing the Revocation Order, or that new circumstances warrant rehearing of the Revocation Order. Therefore, consistent with the discussion in the body of this Order, the Commission confirms the revocation of Polaris Power's eligibility to participate in the New York retail energy market.

The Commission orders:

1. The Petition for Rehearing of Polaris Power Services LLC, dated August 21, 2025, is denied.

2. Polaris Power Services LLC's eligibility to participate in the retail energy market in New York is revoked.

3. Polaris Power Services shall complete, within 60 days from the effective date of this Order, the return each of its customers to full utility service in the utility service territories in which it operates, with transfers commencing within 10 days following on the customers' next regularly scheduled meter reading dates.

4. To further facilitate compliance, the distribution utilities in whose service territories Polaris Power Services LLC operates – Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation – shall, as of 60 days from the effective date of this Order, switch any customers who remain with Polaris Power Services LLC service to full utility service.

5. The Secretary is directed to provide notification of this Order to each distribution utility identified in Ordering Clause 4 above.

6. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

7. This proceeding is closed pending compliance with Ordering Clauses 3 and 4.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary