

February 3, 2025

Mr. Jerry Drenis
Energo Power & Gas LLC
100 Elwood Davis Road, Suite 2G
Syracuse, NY 13212
jdrenis@energo.com

NOTICE OF APPARENT VIOLATION (NOAV)

Dear Mr. Drenis:

The New York Department of Public Service (Department) hereby notifies Energo Power & Gas, LLC, (Energo) of its apparent non-compliance with regulatory requirements. As summarized below, Energo apparently: (1) failed to comply with a Commission Order Adopting a Clean Energy Standard (issued and effective August 1, 2016) by not purchasing Renewable Energy Credits (RECs) or Zero-Emission Credits (ZECs) to satisfy its obligation; and (2) failed to honor the terms of its Sales Agreement to purchase a specified percentage of Renewable Energy Credits (RECs), in violation of Uniform Business Practices (UBP) Section 2.D.5.b. Department Staff (Staff) requests that Energo acknowledges receipt of this NOAV letter within 5 business days and respond to this NOAV letter within 10 business days.

On August 1, 2016, the New York State Public Service Commission (PSC or Commission) issued an Order Adopting a Clean Energy Standard (CES Order) to help New York meet clean energy and climate goals.¹ The CES Order consists of the Renewable Energy Standard (RES) and a Zero-Emissions Credit Requirement program. The CES Order required every load serving entity (LSE), *inter alia*, to purchase RECs and ZECs through contracts with the New York State Energy and Research and Development Authority (NYSERDA).

¹ Case 15-E-0302, Proceeding on 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).

The RES imposes an obligation on Energy Services Companies (ESCOs) to purchase increasing amounts of renewable energy over time to supply their customers, and a requirement that NYSERDA in turn supports development of new large-scale renewable energy projects needed to meet retail electricity suppliers' obligations. As set forth in Ordering Clause 3 of the CES Order, "Every LSE in New York State shall pursuant to Tier 1 of the RES invest in new renewable generation resources to serve their retail customers evidenced by the procurement of qualifying [RECs], acquired in quantities that satisfy mandatory minimum percentage proportions of the total load served by the LSE for the applicable calendar year as set forth herein. The compliance period shall be January 1 to December 31 of each year, beginning in 2017, and will continue annually, determined by multiplying the LSE's actual load for the year by the percentage RES requirement for that year. LSEs may satisfy their obligation by either purchasing RECs acquired through central procurement by [NYSERDA]; by self-supply by direct purchase of tradable RECs; or by making Alternative Compliance Payments to NYSERDA."²

On June 30th of every year, the REC compliance period from the previous calendar year settles in the New York Generation Attributes Tracking System (NYGATS) and NYSERDA performs a preliminary review of each ESCO's REC settlements. If an ESCO fails to retire enough RECs to meet its obligation, NYSERDA will issue an invoice for Alternative Compliance Payments (ACPs).

On July 3, 2024, Energco was issued an invoice in the amount of \$2,540,835.75, with a payment required by August 2, 2024. On August 8, 2024, NYSERDA issued a past due email notice to Energco requesting immediate payment. On August 14, 2024, NYSERDA issued another reminder notice and again did not receive any response from Energco. On August 29, 2024, DPS Staff issued an email for the overdue ACP payment, requesting confirmation of receipt of the email and a status update for payment. On August 29, 2024, Michelle Piasecki, the Regulatory Contact for Energco, responded and indicated that she would follow up for further discussion the following week. As of today, February 3, 2025, Energco has not paid the invoice for the 2023-2024 ACP compliance obligation; therefore, Energco is apparently in violation of the CES Order.

In combination with the RES obligation requirements, the CES Order requires all LSEs in New York State to purchase a proportionate number of ZECs through NYSERDA, based on the total

² Case 15-E-0302, Proceeding on 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), pgs. 154-55.

electric load served by all LSEs in the New York Control Area.³ Through contracts with NYSERDA, on a monthly basis, LSEs purchase their annual proportional share of ZECs, based on initial forecasts of load, pursuant to the Zero-Emissions Credit Requirement in the CES Order. NYSERDA will then true-up the quantity of ZECs acquired by each LSE during a balancing reconciliation at the end of the program year and either invoice the LSE for its shortfall or reimburse them for any overcollection.⁴

NYSERDA notified the Department on August 14, 2024, that Energo is delinquent on its payments to NYSERDA for ESCO ZEC obligations. On October 10, 2024, Energo was issued an invoice in the amount of \$35,833.68, with a payment deadline of November 9, 2024. NYSERDA sent a reminder email to Energo on November 26, 2024, requesting immediate payment for its 2023-2024 ZEC obligation. As of today, Energo remains delinquent on its ZEC payments; therefore, Energo is apparently in violation of the Commission's CES Order.

Additionally, it appears that Energo failed to honor the terms of its customer Sales Agreement(s), in apparent violation of UBP Section 2.D.5.b, by not purchasing RECs to satisfy its self-reported load obligation it sold to customers who were enrolled in a voluntary renewable electric product. In advance of the close of the 2023 voluntary REC retirement process, ESCOs were required to submit load data to Department Staff, who would then verify that the appropriate number of RECs were retired in the NYGATS to match the self-reported load obligations that the ESCO sold to its customers. On June 17, 2024, Energo submitted a response in DMM Matter 22-00900, reporting its 2023 voluntary renewable load to be 12,561 MWh. Of that load, Energo reported that 11,983 MWh were associated with customers served on a purportedly 50% renewable product and 578 MWh were associated with customers served on a purportedly 100% renewable product, resulting in a 6,570 MWh load obligation.⁵ Energo was responsible for purchasing 6,570 RECs and retiring them into NYGATS to satisfy its contractual obligations with customers who voluntarily chose to purchase renewable electric energy.

³ Case 15-E-0302, Proceeding on 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), pg. 156.

⁴ NYSERDA will use the NYGATS to verify CES compliance for each LSE. The primary source of generation and load data for NYGATS is a monthly data transmittal from the New York Independent System Operator (NYISO) databases related to wholesale energy transactions, subject to the NYISO's tariffs. This data is transmitted from the NYISO to NYGATS on a five-month lag.

⁵ Document Matter Management (DMM) Matter 22-00900, Item 245 (filed June 18, 2024).

In its response submitted to Staff June 17, 2024, Energ acknowledged its intent to pay Voluntary Compliance Payments (VCPs) in lieu of retiring RECs⁶ allocated to its purported renewable offerings.

To clarify, the December 2019 Order permitted ESCOs to cover their voluntary REC obligation in the same manner it satisfies the CES compliance obligation by making an ACP as a qualifying mechanism to fulfill their obligation.⁷ To avoid confusion, and in order to distinguish these payments from the typical Tier 1 ACP, Staff and NYSERDA have adopted use of the term VCP for payments made to NYSERDA in relation to ESCO voluntary renewable product offerings.

On September 3, 2024, Staff emailed Michelle Piasecki to acknowledge Energ’s shortfall and confirmed that Staff would be reporting its findings to NYSERDA for VCP billing. On September 5, 2024, Michelle Piasecki acknowledged receipt of Staff’s email. On October 7, 2024, NYSERDA issued an invoice via email to Michelle Piasecki and Jerry Drenis, Executive Contact for Energ. The invoice required payment no later than October 22, 2024. Energ failed to make the payment on or before that date. On November 14, 2024, DPS Staff send a second email, extending the payment deadline to November 22, 2024. To date, no payment has been received by NYSERDA.

Energ expressed its intent to purchase VCPs to cover the renewable load it reported, and it failed to pay the VCP invoices issued to them by NYSERDA.⁸ The UBP stipulates that an ESCO may be subject to consequences for reasons including failure to adhere to the policies and procedures described in its Sales Agreement.⁹ By failing to purchase VCPs in lieu of retiring RECs to offset the renewable load sold to customers, it appears that Energ has failed to honor the terms of its Sales Agreement with customers who chose to voluntarily purchase renewable electric energy, which apparently violates Section 2.D.5.b of the UBP.

In sum:

By February 18, 2025, Energ Power and Gas LLC, shall submit to NYSERDA all past-due payments (with invoices attached) and shall provide proof of that payment to the Department by submitting the requested proof into DMM Matter 25-00237.

⁶ DMM Matter 22-00900, Item 245 (filed June 18, 2024).

⁷ 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) (December 2019 Order), Pg. 78

⁸ DMM Matter 22-00900, Item 245 (filed June 18, 2024).

⁹ UBP Section 2.D.5.b.

Energ Power & Gas LLC NOAV
Matter Number – 25-00237
February 3, 2025

If Staff finds that Energ Power & Gas, LLC’s reply to this NOAV is insufficient or in any way evidences its failure to comply with the UBP and the CES Order, Staff may seek an Order to Show Cause (OTSC) from the Commission. Such OTSC may seek penalties and remedies, up to and including the possible revocation of Energ’s eligibility to operate as an ESCO in the State of New York. Additionally, the Commission may always act on its own motion to begin a proceeding in response to the apparent violations of the UBP.

If Energ has specific questions about the above noted findings, it should contact Kathleen O’Riley at Kathleen.oriley@dps.ny.gov. Staff requests that Energ acknowledge receipt of this NOAV letter within 5 business days by contacting the Staff listed above. All responses to this NOAV letter should be submitted through the PSC’s Document and Matter Management system, or DMM, under Matter Number 25-00237 within 10 business days.

Regards,



Richard Berkley
Director
Office of Consumer Services

cc: Alison Wrynn, Investigations, OIE
attachments