

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 12, 2025

COMMISSIONERS PRESENT:

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

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 and Effective June 23, 2025)

BY THE COMMISSION:

INTRODUCTION

In this Order, the Commission concludes, as a preliminary procedural matter, that Department of Public Service staff (Staff) has identified sufficiently credible evidence to support the issuance of an Order to Show Cause concerning Energo

Power and Gas, LLC's (Energo) apparent failure to comply with multiple Commission Orders.¹

Having reviewed various documents, Staff contends that Energo has apparently failed to comply with the Commission's Order Adopting a Clean Energy Standard,² the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process,³ and the Order Imposing Consequences against Marathon Energy Corporation for Violations of the Uniform Business Practices.⁴

We now provide Energo with the opportunity to respond to Staff's contentions. As part of our decision today, we direct Energo to show cause within 30 days why its eligibility to act as an Energy Services Company (ESCO) in New York State should not be revoked or, alternatively, why other consequences

¹ Energo was formerly known as Marathon Power LLC d/b/a Marathon Energy, which was formerly known as Marathon Energy Corporation. On June 11, 2020, the Commission imposed consequences against Marathon Power, LLC's eligibility to serve customers in New York State after finding multiple regulatory violations. Case 16-M-0434, Proceeding on Motion of the Commission to Seek Consequences Against Marathon Energy Corporation for Violations of the Uniform Business Practices, Order Imposing Consequences (issued June 12, 2020) (June 2020 Order Imposing Consequences); see also Marathon Power, LLC v. Public Service Commission, 209 A.D.3d 1245 (3d Dept. 2022) (affirming the Commission's revocation), motion for leave denied, 39 N.Y.3d 913 (2023).

² 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) (August 2016 CES Order).

³ 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).

⁴ June 2020 Order Imposing Consequences.

as set forth in the Commission's Uniform Business Practices (UBP) should not be imposed.

BACKGROUND

Energco is currently eligible to serve both residential and non-residential natural gas and electric customers in New York State.⁵ During the revised eligibility application process, which occurred as a result of the December 2019 Order, all ESCOs were required to submit a new application package to Staff for review that included copies of all customer contracts for each compliant product offering they intended to market.⁶ As part of the revised application process following the December 2019 Order, Energco received a revised eligibility acknowledgement on March 17, 2021, deeming it eligible to serve a renewable energy product, a home warranty product, and a fixed-rate within price cap product to both electric and gas mass market customers in New York State.

LEGAL AUTHORITY

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

⁵ Energco Power and Gas, LLC operates in the service territories of Central Hudson Gas & Electric Corporation, KeySpan Gas East Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY, Niagara Mohawk Power Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

⁶ December 2019 Order, p. 109.

just and reasonable.”⁷ Consistent with this authority, the Commission’s UBP sets forth various eligibility conditions for ESCOs to begin accessing, and to continue accessing, utility distributions systems for the purpose of selling energy services to customers. The Commission has authority to enforce these conditions by imposing consequences on ESCOs that fail to abide by the terms of UBP.⁸

THE DEPARTMENT’S INVESTIGATION

The following summary is based on Staff’s investigation to date; it does not constitute final findings or conclusions by the Commission, and Energo will have an opportunity to respond to the contentions.

During the investigation, Staff identified information that Energo:

- 1) Apparently violated the CES by failing to satisfy its annual obligation to purchase Zero-Emissions Credit (ZEC) and the Renewable Energy Standard (RES) obligation to procure and retire Tier 1 Renewable Energy Credits (REC) or alternatively submit an Alternative Compliance Payment (ACP);

- 2) Apparently violated UBP Section 2.D.5.b by failing to honor the terms of its sales agreement, which required Energo to purchase a specific percentage of voluntary RECs to satisfy contractual obligations;

⁷ Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Comm., 33 N.Y.3d, 351, request for rehearing denied, 33 N.Y.3d, (2019); see generally GBL §349-d (11).

⁸ UBP Section 2.D.6.a.1.b.

- 3) Apparently failed to comply with a Commission order to re-rate adversely affected customers impacted by Energo's (formerly known as Marathon) upward rate adjustment.⁹

Apparent Failure to Comply with the Clean Energy Standard

On August 1, 2016, the Commission adopted the Clean Energy Standard, which requires load serving entities (or LSEs), including ESCOs like Energo (or Marathon), to purchase ZECs from the New York State Energy Research and Development Authority (NYSERDA) in order to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future.¹⁰ The Commission's subsequent Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles¹¹ required all LSEs to enter into contracts with NYSERDA for the monthly purchase of RECs and ZECs, beginning January 1, 2017, and April 1, 2017, respectively.

The Commission further reaffirmed this requirement on LSEs in the Order Adopting Modifications to the Clean Energy Standard by stating "load serving entities (LSEs) in New York State shall comply with the LSE obligations under Tier 1 and the Competitive Tier 2 program of the Renewable Energy Standard in order to serve their retail customers."¹² Energo falls within the category of LSEs.¹³ The REC and ZEC programs seek to

⁹ June 2020 Order Imposing Consequences, p. 2.

¹⁰ August 2016 CES Order, p. 156.

¹¹ Case 15-E-0302, supra, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 17, 2016), pp. 5, 22, and Order Approving Zero-Emissions Credit Implementation Plan with Modifications (issued September 20, 2019).

¹² Case 15-E-0302, supra, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020), p. 132.

¹³ August 2016 CES Order, p. 94.

facilitate the reduction of carbon emissions and support the transition to renewable energy in New York.

In addition, pursuant to the Order Adopting Modifications to the Clean Energy Standard, LSE's are also required to purchase Tier 1 RECs equivalent to the compliance year's LSE obligation percentage.¹⁴ LSE's have the option to purchase Tier 1 RECs from NYSERDA or a third party and/or pay Alternative Compliance Payment (ACP) payments for any shortfall in their Environmental Disclosure Program (EDP) subaccount.¹⁵ After an LSE's compliance obligations are met, the LSE must accept their LSE Renewable Energy Standard (RES) compliance report via NYGATS by the end of August.

On July 3, 2024, NYSERDA issued an invoice to Energo for \$2,540,835.75 due to a shortfall in Energo's EDP subaccount. Energo failed to submit payment to NYSERDA as requested. Documents obtained by Staff indicate that on August 8, 2024, August 14, 2024, and again on August 27, 2024, NYSERDA sent email reminders for the overdue payment and received no response from Energo. Additionally, Staff sent emails to the regulatory and executive contacts for Energo on several occasions regarding the overdue payments to NYSERDA and did not receive a response. To date, Energo has not paid the outstanding ACP invoice to satisfy its RES compliance obligation, and therefore Staff contends Energo has apparently violated the Commission's August 2016 CES Order.¹⁶

Similarly, on October 10, 2024, NYSERDA issued an invoice to Energo for its yearly ZEC reconciliation for 2023 in

¹⁴ Case 15-E-0302, supra, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020), p. 3.

¹⁵ August 2016 CES Order, pp. 154-155.

¹⁶ Id., p. 154.

the amount of \$35,833.68, with a payment due date of November 9, 2024.¹⁷ Energo apparently failed to make payment to NYSERDA by the required deadline. On November 26, 2024, NYSERDA then issued a past due notice to Energo to an executive contact for Energo. As of today, there have been no ZEC payments submitted to NYSERDA on behalf of Energo, and therefore Staff has alleged that Energo apparently violated the August 2016 CES Order.¹⁸

Apparent Failure to Honor Terms of Sales Agreements

The December 2019 Order established the process for ESCO's to fulfill their obligation to match customer usage with renewable energy for those customers who elect to purchase renewable energy products. The Order specifies that ESCOs are permitted to satisfy their minimum renewable requirement by: (1) purchasing RECs from eligible renewable generators through NYGATS; (2) by purchasing Tier 1 RECs from NYSERDA; (3) by procuring RECs from eligible renewable generators through bilateral contracts; (4) by making Alternative Compliance Payments (ACP) to NYSERDA; and (5) by entering into bundled energy and REC purchase agreements with eligible renewable generators.¹⁹

Energo has eligibility to offer customers a renewable electric product. During an annual compliance filing which was

¹⁷ The ZEC compliance year is April through the month of March. A uniform wholesale, per MWh charge, is applied to each LSE'S actual wholesale load to calculate its monthly ZEC obligations. The reconciliation period occurs in mid-late September, allowing for a true-up resulting in each LSE being issued a refund for overpayment or issued an invoice for underpayment, to complete its annual ZEC obligation. Case 15-E-0302, Clean Energy Standard, Final Zero Emissions Credit Implementation Plan (issued October 21, 2019).

¹⁸ August 2016 CES Order, p. 156.

¹⁹ December 2019 Order, p. 78.

submitted by Energo into DMM on February 3, 2023, Staff reviewed Energo's renewable electric sales agreement.²⁰ In the Customer Disclosure Statement, the Renewable Energy section reads: "50% above RES or up to 100% of the energy sourced under this agreement shall be matched with renewable energy credits that are associated with renewable resources as specified in this Agreement. See section 23 - Renewable Sourced Energy." In the sales agreement, Energo states, "electricity usage, based on your selection above, is matched by the generation of energy from renewable resources by retiring renewable energy certificate (RECs)."²¹

During the 2023 renewable review, Energo provided renewable load data indicating that it was obligated to match a portion of its customers' load with 50% and 100% renewable electric energy.²² Its total voluntary renewable load obligation after calculating its percentage of load based on contractual obligations was 6,570 MWh. In its response to the 2023 renewable review, Energo indicated its intent to make Voluntary Compliance Payments (VCPs) in lieu of purchasing and retiring RECs.²³

Staff contends that, following the close of the 2023 compliance period, Energo did not retire any RECs in its NYGATS

²⁰ Matter 14-02554, Energo Annual Compliance Filing, filed February 3, 2023 (DMM Item #5107).

²¹ Id. Energo's contract continues with "RECs must be purchased from eligible renewable generators through NYGATS; by purchasing Tier 1 RECs from NYSERDA; by procuring RECs from eligible renewable generators through bilateral contracts; by entering into bundled energy and REC purchase agreements with eligible renewable generators; or making Alternative Compliance Payments to NYSERDA."

²² Matter 22-00900, Energo Renewable Response, filed June 18, 2024 (DMM Item #245).

²³ Id.

account to match its voluntary renewable load obligation. On September 3, 2024, Staff notified Energo by email of its apparent shortfall and its intent to notify NYSERDA. On September 5, 2024, a regulatory contact for Energo acknowledged receipt of the notification of the shortfall.

On October 7, 2024, NYSERDA issued an invoice to Energo for 6,570 VCP's totaling \$209,517.30, which was due by October 22, 2024. No payment was submitted to NYSERDA. On November 14, 2024, NYSERDA emailed Energo a reminder to remit payment by November 22, 2024, to avoid commencement of an enforcement proceeding. As of today, Energo has apparently not submitted payment to NYSERDA.

Staff alleges that Energo failed to meet the contractual obligation to its customers, executed through its own sales agreements, by failing to make VCP payments to match its customer's electric consumption. Therefore, it appears that Energo violated the UBP Section 2.D.5.b by failing to "adhere to the policies and procedures described in its Sales Agreement."²⁴

As a result of these findings, Staff issued a Notice of Apparent Violation (NOAV) to Energo on February 3, 2025.²⁵ Energo was required to respond to the NOAV within five business days and acknowledge receipt of the notice. Staff received no acknowledgement of the email. Additionally, the NOAV was sent registered mail with return receipt. The NOAV required Energo to submit to NYSERDA all past-due payments to NYSERDA and

²⁴ UBP Section 2.D.5.b ("An ESCO may be subject to the consequences listed in UBP Section 2.D.6.b for reasons, including, but not limited to: failure to adhere to the policies and procedures described in its Sales Agreement.").

²⁵ Matter 25-00237, In the Matter to Seek Consequences Against Energo Power & Gas LLC for Violations of the Uniform Business Practices and Apparent Failure to Comply with a Commission Order, Notice of Apparent Violation (filed Feb. 3, 2025).

provide proof of payment to Staff no later than February 18, 2025. Staff contends that, to date, Energo has not made any payments to NYSERDA and has not had any communication with Staff regarding the alleged violations.

Apparent Failure to Comply with a Prior Commission Directive

On March 20, 2020, the Commission issued an Order to Show Cause against Energo (formerly known as Marathon²⁶ Energy Corporation) for apparent failure to comply with the Commission's UBP and conditions for continuing eligibility pursuant to a previous Contingency Order.²⁷ The Commission found Energo violated the Contingency Order and the UBP by modifying fixed rate contracts, and on June 12, 2020, issued an Order Imposing Consequences.²⁸ In response to the June 2020 Order Imposing Consequences, Energo filed a petition for Rehearing and Reconsideration of the Order Imposing Consequences on July 10, 2020.²⁹

²⁶ Marathon Power LLC changed its name to Energo Power & Gas LLC, in December 2022. Energo's own website announced the change: "Marathon Energy, a full-service independent retail energy provider based in Woodside, New York, announced it is changing its company name to Energo and unveiled a new logo. This change is in response to its accelerated growth, and only impacts the company name and logo. There is no change in ownership and in no way impacts or changes customer accounts." See <https://energo.com/marathonisnowenergo/> (dated January 3, 2023).

²⁷ Case 16-M-0434, Proceeding on Motion of the Commission to Seek Consequences Against Marathon Energy Corporation for Violations of the Uniform Business Practices, Order to Show Cause (issued March 20, 2020).

²⁸ June 2020 Order Imposing Consequences.

²⁹ Case 16-M-0434, Petition of Marathon Power LLC D/B/A Marathon Energy for Rehearing and Reconsideration of the Order Imposing Consequences, (filed July 10, 2020) (July 2020 Petition).

The Commission denied the July 2020 Petition and Energo challenged the Commission's June 2020 Order Imposing Consequences by bringing an Article 78 in Albany County Supreme Court. The Court ruled in favor of the Commission, and Energo appealed to the Appellate Division, Third Department. Following the denial of the company's appeal at the Appellate Division, Energo sought leave to appeal to the Court of Appeals, which was denied on May 18, 2023.

In an Order issued on November 22, 2022, the Commission set its final deadlines established at the conclusion of the appellate process, re-establishing the obligations set forth in Ordering Clauses 1 and 2 of the June 2020 Order Imposing Consequences. The Order required Energo to reimburse adversely affected customers by July 17, 2023, and it additionally required Energo to provide proof to the Commission of reimbursement efforts by August 1, 2023.

Ordering Clause 1 of the June 2020 Order Imposing Consequences explicitly required Energo to "re-rate all customers adversely impacted by Energo's upward adjustment of the rate for commodity services in those customers' fixed rate contracts."³⁰ Ordering Clause 2 of the June 2020 Order Imposing Consequences requested proof of compliance including supporting calculations.³¹

To date, Energo has apparently not refunded all impacted customers. Staff contends that Energo's reported data does not include any customer specific metrics, nor does it include any proof that customers received a reimbursement. Accordingly, Staff used alternative data sources to attempt to track compliance, but NYGATS load data appears to show that

³⁰ June 2020 Order Imposing Consequences, p. 13.

³¹ Id.

Energco stopped serving electric customers in May of 2024. Staff has also observed utility migration data that shows drops in the number of Energco's customers, potentially indicating that some customers appeared to have been transferred to other ESCOs at various times during the 2024 calendar year. Following a review of the most recent Energco filings, Staff requested clarification from Energco in an attempt to clarify the reimbursement data. Staff alleges that Energco did not adequately re-rate its customers, and therefore violated the Commission's June 2020 Order Imposing Consequences.

DISCUSSION AND CONCLUSION

Every ESCO in New York must comply with the UBP and all applicable Commission orders to maintain eligibility to operate in New York. As set forth above, Staff alleges that Energco has apparently violated the CES by failing to satisfy its annual obligation to purchase ZECs and its RES obligation to purchase and retire Tier 1 RECs or make an ACP. Additionally, Staff has alleged that Energco apparently failed to honor the terms of its sales agreement to purchase a specified percentage of REC in violation of the UBP Section 2.D.5.b. and further failed to comply with a Commission order to re-rate adversely affected customers.

The Commission notes that the presentation of Staff's allegations herein does not reflect a final determination of fact or legal conclusion. Based on the pattern of behavior identified by Staff, and for the reasons discussed in this Order, the Commission therefore orders Energco to show cause why, based upon the allegations and contentions described herein, its eligibility to provide services as an ESCO in New York should not be revoked, or why other consequences should not be imposed.

The Commission orders:

1. A proceeding is instituted and Energo Power and Gas, LLC, is ordered to show cause within 30 days of the date of this Order why the Commission should not revoke its eligibility to operate as an Energy Services Company in the State of New York, or impose other consequences, as described in Uniform Business Practices Section 2.D.6.

2. 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.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary