

Hon. Kathleen Burgess  
Secretary to the Commission  
NYS Public Service Commission  
Empire State Plaza, Bldg 3  
Albany, NY 12223-1350

August 31, 2016

Re: CASE 15-E-0302: Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

Dear Secretary Burgess:

Pursuant to Section 3.7 of the New York State Public Service Commission's Rules of Practice and Procedure, Alliance for Green Energy ("AGREE") and Nuclear Information and Resource Service ("NIRS") petition the Public Service Commission for rehearing of certain parts of the Commission's Order issued on August 1, 2016 in the Clean Energy Standard proceeding (Case 16-E-0302).

Respectfully submitted,

/s/

Jessica Azulay  
Alliance for Green Energy

/s/

Timothy Judson  
Nuclear Information and Resource Service

cc: Active parties (via e-mail)

NEW YORK STATE PUBLIC SERVICE COMMISSION CASE 15-E-0302:

Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

Petition for Rehearing

Submitted by Alliance for Green Energy (“AGREE”) and Nuclear Information and Resource Service (“NIRS”)

August 31, 2016

## INTRODUCTION

On August 1, 2016, the Public Service Commission (“Commission”) issued an “Order Adopting a Clean Energy Standard (“CES”) (the “Order”) in the above referenced case.<sup>1</sup> Alliance for Green Energy (“AGREE”) and Nuclear Information and Resource Service (“NIRS”) hereby petition the Commission for rehearing on around certain elements of the Order, pursuant to Section 3.7 of the New York State Public Service Commission’s Rules and Regulations.

We applaud the Commission’s stated goal to establish a renewable energy standard that comports with the State Energy Plan goal of 50% renewable energy.

However, the nuclear subsidy program that was approved as a part of the CES Order is based on several errors of fact and law and contradicts the adopted State Energy Plan’s stated goals. For this reason, we respectfully request a rehearing of the decision to include a nuclear subsidy program in the CES Order. The sections of the Order related to the nuclear subsidies contain numerous assumptions and statements not supported by any technical, policy, or factual basis. Both these errors of fact and the approval of the nuclear program violate the State Administrative Procedures Act, are inconsistent with previous Commission Orders and the State Energy Plan, and represent an overreach of the Governor’s authority in the conduct of an independent regulatory agency.

## ARGUMENT

**1. The Order violates the State Administrative Procedures Act (SAPA) §202-a(1)** which requires agencies establish rules that are consistent with the objectives of applicable statutes, and consider using approaches which are designed to avoid undue deleterious economic impacts or overly burdensome impacts.

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<sup>1</sup> Found at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={44C5D5B8-14C3-4F32-8399-F5487D6D8FE8}>

Though the CES purports to support renewable and clean energy, a component of the newly adopted policy will direct billions of dollars of ratepayer money toward dirty and dangerous nuclear energy. This Order to subsidize nuclear power through the CES contravenes decades of Commission and State policy, including the previously enacted Renewable Portfolio Standard, the 2015 State Energy Plan, and the deregulation of New York's wholesale energy markets. No clear factual basis or policy rationale was provided in this case to support the nuclear subsidies as a way to meet the Reforming Energy Vision (REV) initiative in the State Energy Plan.

The State Energy Plan which sets forth a goal of 40% greenhouse gas emissions reductions by 2030. Two of the nuclear reactors approved for subsidies in the CES order -- Ginna and Nine Mile Point 1 -- will be closed by 2030. The U.S. Nuclear Regulatory Commission has already extended the nuclear operating licenses for both reactors for 20 years beyond their initial 40 years, and relicensing beyond 2029 is highly unlikely. Therefore, continued operation of Ginna and Nine Mile Point 1 for the next 12 years is irrelevant as to whether New York will meet the 40% goal by 2030. There is no rational policy basis for their inclusion in the Clean Energy Standard. The Commission failed to consider these facts in determining that subsidies to support the continued operation of all nuclear power stations are necessary to meeting the 2030 emissions goal. There is no rational basis or reasonable connection between the State Energy Plan's goal of 40% greenhouse gas emissions reductions by 2030, and subsidizing Ginna and Nine Mile Point 1.

Additionally, no evidence was provided in this case showing that the uncompetitive consumer subsidies for FitzPatrick and Nine Mile Point 2 were necessary to ensure New York meets its 2030 greenhouse gas emissions reduction goals. Various studies were provided by Alliance for a Green Economy, Nuclear Information and Resource Service, Hudson River Sloop Clearwater, CIECP and various individuals, which provide ample evidence that replacement of nuclear energy in New York State with renewable energy and energy efficiency is feasible, available and cost effective.

The Order is, in part, based on an unverified and speculative assertion that closure of nuclear plants would result in a default on the state's 2030 energy goals. Lacking a rationale based in the State Energy Plan goals to justify the nuclear subsidies, the Department of Public Service instead irrationally relied on the vague specter of "backsliding" on greenhouse gas emissions reduction if nuclear plants were to close. However, New York does not currently have any policy or clear definition regarding "backsliding" or policy proposal on "backsliding." The Department of Public Service made no serious attempt to examine alternative opportunities to prevent "backsliding," and only substantial subsidies to nuclear power plants were even considered.

Justification for subsidizing nuclear energy under the claim of "fuel diversity" is misleading and inaccurate. No criteria exists regarding the maximum percentage of the state's resource mix that can be provided by any one fuel source. The state lacks a clear policy on "fuel diversity" to prevent over-reliance on natural gas. The Order's dramatic change in policy and the significantly increased expenses to ratepayers that would result cannot be justified based on the claimed

“fuel diversity” benefit, since no objective standard to evaluate nuclear subsidies as compared to alternatives exists.

**2. The Order violates New York State Public Service Law §5.2 which provides that,** “The commission shall encourage all persons and corporations, subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values, and the conservation of natural resources.” In fact, this Order is uneconomical and highly inefficient; increases radioactive waste, environmental contamination, and risks to public safety; and it is a waste of public and natural resources.

The PSC has failed to demonstrate that imposing surcharges of nearly \$8 billion, and potentially up to \$10 billion (if the Indian Point nuclear power station qualifies for the program), on ratepayers throughout the state is in the public interest, consistent with existing statute and policy. Therefore, the Order is irrational, unreasonable, arbitrary, and capricious, while imposing an enormous burden on all New Yorkers.

This Order is inconsistent with the Reforming Energy Vision (REV) initiative, which is critical to the state’s effort to improve system efficiency, empower customer choice, and encourage greater penetration of clean generation and energy efficiency technologies and practices.

This Order completely contradicts the statement by Richard Kauffman, Chairman of Energy and Finance for New York, that, "New York is moving to a more market-based, decentralized approach with how it shapes energy policy. This new approach will help protect the environment, lower energy costs and create opportunities for economic growth. By developing innovative market solutions, Governor Cuomo is changing the energy industry into a clean, cost-effective and dynamic system that is more resilient to the impacts of climate change."

Committing New York energy consumers to provide subsidies totaling nearly \$8 billion dollars to an inflexible, highly centralized, baseload energy source, and potentially all to one corporation, is in diametric opposition to a “market-based” decentralized approach. The Order irrationally and without reasonable basis enables the largest transfer of wealth from the government to a single corporate entity in New York history.

It has been widely publicized that the PSC would actively manage and coordinate a wide range of distributed resources, or generate electricity from many small energy sources and link them together. Nuclear energy is not small distributed energy, but rather outdated, unsustainable large centralized energy and financially unsustainable.

In fact, a recent study of energy policy outcomes related to nuclear power, renewable energy, and greenhouse gas emissions suggests that the policy adopted in the order runs counter to New York’s policy goals. Researchers at the University of Sussex and the Vienna School of International Studies studied the progress European countries have made toward achieving the

European Union's (EU) 2020 Strategy, proposed in 2010, to reduce greenhouse gas emissions by least 20 percent compared to 1990 levels and increase renewable energy share in final energy consumption to 20 percent.

The researchers found that "progress in both carbon emissions reduction and in adoption of renewables appears to be inversely related to the strength of continuing nuclear commitments." The study found that countries which have maintained current nuclear units had their emissions on average go up three percent, and they had the smallest increase in renewable shares—16 percent. In contrast, countries planning to phase out nuclear power have performed better on both measures: achieving the greatest greenhouse gas reductions (11 percent, on average) and increasing renewable energy by 19 percent, on average.<sup>2</sup> The results of this study contradict the PSC's unsupported rationale for the nuclear tier, and suggest that the Commission's decision may be counterproductive to achieving the goals of the State Energy Plan.

## LACK OF PROCEDURE

### **3. The Commission considered no alternatives to nuclear subsidies, in violation of the State Environmental Quality Review Act (SEQRA), Title 16, Chapter I, CRR-NY §7.3.**

SEQRA requires an evaluation of "all reasonable alternatives" when an agency action is being considered. Contrary to this law, the Generic Environmental Impact Statement (GEIS) provided in this case considered only two scenarios<sup>3</sup>

- The "no action" scenario, which would involve allowing nuclear reactors to close as owners deemed them too unprofitable. Under this scenario, the market would determine what resources replaced the power generated by nuclear facilities.
- The subsidizing of nuclear plants as proposed by the Department of Public Service Staff, through which nuclear plants would receive significant subsidies designed to prevent nuclear closures.

For example, a policy to replace closing nuclear reactors with energy efficiency or increased renewable energy was not considered, yet analysis by the Department of Public Service indicates such alternatives would be cost effective and viable. The direct costs of the nuclear subsidies (\$7.6 billion through March 31, 2029) are estimated to be more than triple the total direct costs of new renewables supported through the Clean Energy Standard (\$2.44 billion

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<sup>2</sup> Lawrence, Andrew, Benjamin Sovacool, and Andrew Stirling. "Nuclear energy and path dependence in Europe's 'Energy union': coherence or continued divergence?" *Climate Policy*. Vol. 16, Iss. 5, 2016. <http://www.tandfonline.com/doi/full/10.1080/14693062.2016.1179616>

<sup>3</sup> New York State Department of Public Service, "Final Supplemental Environmental Impact Statement," May 23, 2016. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5C3A948E-F09C-4958-9201-1DBB17D06709}>

through 2030),<sup>4</sup> though the total annual generation to be provided by new renewables in 2030 (~34 TWh per year) is more than 25% greater than the amount of nuclear to be subsidized through March 2029 (~27 TWh per year).<sup>5</sup> This suggests that incentives spent on new renewable generation sources would be nearly four times more effective in providing zero-carbon generation than subsidies to nuclear generation.

However, when considering that two of the four reactors the Commission declared “publicly necessary” and eligible for tier 3 subsidies will have to cease operations in 2029 at the latest, regardless of the subsidies provided, the relative cost-effectiveness of renewable energy incentives is even greater. Nine Mile Point 1 and Ginna together generate 9-10 TWh per year, and their closure in 2029 (at the latest) would leave only ~17 TWh of nuclear generation potentially available in 2030. Thus, based on data available to the Commission on the record through Department of Public Service’s proposals and supporting analysis, the nuclear program will deliver approximately 50% less generation than new renewables in 2030, at more than three times the cost, suggesting that new renewables are up to six times more cost-effective than the nuclear tier in meeting the state’s emissions goal.

The Commission’s failure to consider alternatives to nuclear subsidies when sufficient information was available on the record is arbitrary and capricious, and would have substantial economic and environmental impacts.

#### **4. Approval of the nuclear tier violated the State Administrative Procedures Act**

The State Administrative Procedures Act (SAPA) §202(1)(a) requires agencies to publish proposed rules in the State Register and to provide the public with at least 45 days to comment.

On July 8, 2016, the Department of Public Service issued a new proposal for nuclear subsidies.<sup>6</sup> The proposal is a substantial revision as defined by SAPA §102(9) and represented a significant departure from the previous proposal that had been put forth for public comment. Not only did the new proposal include an entirely new formula for calculating the cost of the nuclear subsidies (which raised the projected price exponentially), but also included entirely new policy concepts, such as the designation of “public necessity” for certain nuclear units.

Additionally, in this new proposal Department of Public Service Staff proposed a totally new policy and process at the same time as they are proposing what the outcome of said process

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<sup>4</sup> New York State Department of Public Service, "Final Supplemental Environmental Impact Statement," May 23, 2016.

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5C3A948E-F09C-4958-9201-1DBB17D06709}>

<sup>5</sup> New York Department of Public Service. "Clean Energy Standard White Paper - Cost Study." April 8, 2016. Page 280.

<sup>6</sup> New York State Department of Public Service. "Staff's Responsive Proposal for Preserving Zero-Emissions Attributes." July 8, 2016 <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BBFA4008-FD27-4209-B8E1-AD037578101E}>

should be, as the new proposal includes a determination by the Commission to subsidize some reactors upon inception of the program for a 12-year period. Thus, the only opportunity afforded parties and the public to challenge the brand new “public necessity” policy proposal, as well as the “public necessity” determination for any particular generator, was during a truncated public comment period.

The public was initially provided a comment period of ten (10) calendar days on this new proposal.<sup>7</sup> After almost fifty (50) organizations complained,<sup>8</sup> the comment period was extended by another 4 days, for a total of fourteen (14) calendar days,<sup>9</sup> or ten (10) business days. During that time, hundreds of public and party comments were submitted, many of them from elected officials questioning the process and the nuclear subsidies.

Fourteen (14) days is a wholly inadequate period of time for parties and the public to analyze the implications of the proposal and to provide meaningful and detailed comment. The comment period violated the SAPA.

To make matters even more difficult and unfair, the Staff provided a vague list of criteria that the Commission could use to make a determination of “public necessity,” but offered no detailed information for why Staff was proposing that all of the four upstate nuclear reactors meet all of the criteria and would qualify for this designation.

The new proposal also included an unusually lengthy term of twelve (12) years for the nuclear subsidies with no possibility for interim review, in violation of SAPA §207(4). Finally, it contemplated new eligibility criteria, which would allow the Indian Point nuclear reactors to become potentially eligible for subsidies in the future. Subsidies for Indian Point had never before been proposed or considered previously, and, in fact, the State Energy Plan contemplates the facility’s closure as a public interest benefit.

The significant changes to the original proposal -- including the new cost benefit calculations, the new formula for determining the costs of the subsidies, and the new eligibility criteria -- should have been subject, at the very least, to the required notice of revised rulemaking and a minimum 30-day public comment period pursuant to SAPA §202(4-a)(a).

However, none of these changes were entered into the State Register as required under SAPA.

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<sup>7</sup> New York State Public Service Commission. "Notice Soliciting Additional Comments" July 8, 2016. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CD9465AB-D7D8-4115-AA87-0EB566374C2D}>

<sup>8</sup> See New York State Public Service Commission case number 15-E-0302, filing numbers 304-309, 312-315, and 317.

<sup>9</sup> New York Public Service Commission. "Notice Extending Comment Deadline." July 15, 2016 <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D84C6AED-8701-4C40-B154-4B142E2DD9DB}>

Thereafter, the PSC took only a mere five (5) business day after the public comment period closed to approve the Order which locks in billions of dollars of taxpayer subsidies for the nuclear generators over a 12-year period.

## **5. The Cost Study that accompanied the Clean Energy Standard proposal was misleading and inadequate regarding implications of the nuclear tier.**

Prior to the new proposal being announced, on April 8, 2016, Department of Public Service Staff filed a Clean Energy Standard White Paper - Cost Study ("Cost Study"), providing estimates of the net costs and benefits of the Clean Energy Standard ("CES") proposal. In the 297-page document, only five pages contained any information with respect to the benefits or costs of the nuclear tier:

- Pages 84-85 provided some general notes on the cost analysis methodology, a total net cost range for the nuclear program through 2023, an explanation for the lack of any detail comparable to that provided for other parts of the CES, and two bullet points providing general notes on how the sensitivity analysis for Tier 3 costs was conducted.
- Page 103 uncritically accepted and incorporated by reference estimates of the net economic impact of some New York nuclear reactors contained in an industry-funded report produced by the Brattle Group. The Cost Study nowhere indicates DPS performed an independent review of the report.
- Page 275 discussed in very general terms the factors considered in the Tier 3 analysis, and reiterated the explanation for not providing comparable level of detail; and,
- Page 283 provided an estimated cost of the program through 2030.

Importantly the cost ranges for the nuclear tier were as follows:

- 2017-2023: \$59-\$658 million<sup>10</sup>
- 2017-2030: \$270 million<sup>11</sup>

Given the reported information about how much money certain nuclear reactors were losing the in the market, these cost estimates were extremely low. For instance, Ginna has been known to be losing approximately \$80 million and FitzPatrick has been reported to be losing approximately \$65 million per year.

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<sup>10</sup> <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7B564AD9-E6E9-4FA9-93B6-1AA85B1719E2}> (page 84)

<sup>11</sup> Idid (page 283)



At a technical conference regarding the Cost Study, when Jessica Azulay, representing Alliance for a Green Economy, requested more information about how the nuclear costs in the Cost Study were calculated and she was rebuffed. Jeff Hogan of the DPS staff said: “we didn’t feel that releasing the detail was -- would be productive.”<sup>12</sup>

Subsequently, Alliance for a Green Economy and Nuclear Information and Resource Service submitted a request for information, again asked for more detailed information about the methodology behind the cost estimates for the nuclear tier in order to adequately comment on this section of the study.<sup>13</sup> This request went unacknowledged and unanswered.

As a result, the public was led to believe for months that the costs of the nuclear tier would be minimal. The Staff relied upon these estimates during their informational sessions at public hearings on the Clean Energy Standard. The direct costs of the nuclear tier promulgated under the Commission’s Order are more than an order of magnitude greater than those contemplated in the Cost Study.

Additionally, the Staff and the Commission did not include or acknowledge the significant and well-documented costs of the environmental impacts of nuclear power in the cost-benefit analysis. Those costs were detailed in comments submitted to the Commission by AGREE, NIRS, and Hudson River Sloop Clearwater, prior to DPS’s filing of the responsive proposal.

## **6. LACK OF FACTUAL BASIS OR ANALYSIS**

**The Order is factually incorrect, scientifically inaccurate and misleading.**

**a. The Order results in a waste of public funds without rational reason and without factual basis, in violation of the Administrative Procedures Act.** In the PSC’s rush to approve the Order the PSC did not consider whether old, unsustainable nuclear energy or new sustainable renewable energy technologies and systems (solar, wind, off-shore wind, tidal, geothermal efficiencies, retrofits and storage) would be most beneficial for the public good and be most effective and efficient to meet the state’s greenhouse gas reduction goal contemplated by the REV.

**b. Increased production of Nuclear Waste.** No analysis was provided evaluating the increased cost to New York State of continuing production and storage of nuclear waste in the state. Given the recent August 8, 2016 decision of the United States Court of Appeal for District of Columbia, Circuit D.C. Cir. No. 14-1210 STATE OF NEW YORK, et al., v. UNITED STATES NUCLEAR REGULATORY COMMISSION, et al., the state must assume that every new pound of high level radioactive toxic waste produced at any reactor will increase costs and risks to environment since there are no current plans to remove waste from reactor sites. The Nuclear

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<sup>12</sup> <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={4EABBCF1-ADE2-4BEB-A3B1-680F264F51DD}> (Pages 78-80)

<sup>13</sup> Found here: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1001340F-1355-4CE4-9E19-4B1CDDA85A8F}>

Regulatory Commission's ("NRC") "Continued Storage Rule" now establishes, as part of the licensing basis for facilities under NRC's jurisdiction, that nuclear waste may be stored indefinitely at the reactor sites at which it is generated. Thus, New York State may bear the burden of nuclear waste storage long into the future, a burden that will increase with growing inventories of nuclear waste that would result from the tier 3 subsidy program.

**c. Increased Health Costs.** No analysis was provided regarding increased health costs caused by radiation exposures resulting from continued reactor operation and deferral of the radiological decommissioning and environmental remediation of reactor sites.

**d. Increased Risk of Operating Aging Reactor without Adequate Insurance.** The Commission did not consider whether continuing operations of uninsured nuclear power reactors was in the best interest of the public. Nor did the Commission compare the increased risk and costs of continued operations of aging nuclear reactor without insurance vs. the property and business values of each reactor community.

## 7. OVERREACH OF GOVERNOR'S AUTHORITY

In the absence of a real policy justification for the nuclear subsidies, the Commission and the DPS continue to fall back on an instructive from Governor Cuomo as the reason for the nuclear subsidies. On December 2, 2015, Governor Cuomo sent a letter to Commission Chair Audrey Zibelman instructing her, among other things, to "ensure sources of emissions free electricity remain operational" specifically referring to the upstate nuclear plants.<sup>14</sup> The record in this case is rife with references to this letter as the justification for the nuclear subsidies.

The Governor's office's reported offer of billions of dollars to Exelon in order to entice it to buy the FitzPatrick reactor, through the DPS's nuclear tier proposal, and the Commission's approval of said subsidies in response to a directive from the Governor, despite the lack of any demonstrated policy rationale or technical basis, points to an overreach of the Governor's authority in the workings of what are, by statute, independent agencies.

Upon information and belief, the Governor and staff have been in constant ongoing closed door negotiations with Entergy and Exelon nuclear reactor owners, discussing ways to protect and subsidize New York State's nuclear industry.<sup>15</sup> Upon information and belief these meetings were not reported in the Project Sunlight database.

Eventually, a deal for Exelon to purchase the FitzPatrick reactor from Entergy was worked out. Upon information and belief the deal was predicated on the Commission approving the

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<sup>14</sup> Found here: [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable\\_Energy\\_Letter.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable_Energy_Letter.pdf)

<sup>15</sup> Syracuse.com, "Inside the hardball tactics to save FitzPatrick: NY threatened to seize the nuke plant" August 11, 2016  
[http://www.syracuse.com/politics/index.ssf/2016/08/nys\\_threat\\_to\\_seize\\_fitzpatrick\\_nuclear\\_plant\\_sparked\\_deal\\_to\\_save\\_615\\_jobs.html](http://www.syracuse.com/politics/index.ssf/2016/08/nys_threat_to_seize_fitzpatrick_nuclear_plant_sparked_deal_to_save_615_jobs.html)

ratepayer subsidies to bolster FitzPatrick and the other financially failing nuclear plants in upstate New York.

Upon information and belief, since the approval of the Order, negotiations between NYPA, Entergy, and Exelon regarding transference of decommissioning funds is also taking place or has taken place behind closed doors.

## **8. Inappropriate use of the Social Cost of Carbon**

The Order determines the price of ZECs through a formula based on the U.S. Environmental Protection Agency's ("EPA") Social Cost of Carbon ("SC-CO2"). This is a gross misapplication of the SC-CO2, one which will impose an unnecessarily high cost on New York consumers for emissions reduction. The SC-CO2 is a metric developed by the EPA, in conjunction with other federal agencies, to estimate the impact of regulatory decisions as they affect incremental carbon dioxide ("CO2") emissions.<sup>16</sup> The SC-CO2 represents the present-value of the consequences of CO2 emissions, not the cost of emissions abatement.<sup>17</sup>

As the Department of Public Service Cost Study and other evidence submitted in the course of the proceeding have demonstrated, lower cost means of reducing emissions are available. What is more, the SC-CO2 increases dramatically over time, resulting in rising costs for the nuclear tier as the program nears its expiration and reactors get closer to their retirement dates. However, renewable energy resources are projected to decrease in cost and to require lower levels of public support over time, based on cost trends and the planned phase-out of federal tax incentives for both wind and solar by 2023.

The Commission's order adopts Department of Public Service Staff's entirely inconsistent applications of the SC-CO2. Throughout the Cost Study, Staff relied upon the SC-CO2 to quantify the "carbon benefits" of the CES, applying it equally to both renewables and nuclear to determine the net costs of the White Paper. In the responsive proposal, however, the Staff shifted the SC-CO2 to the other side of the ledger to determine the subsidies to be paid to one energy source--nuclear--and incorporated an unexplained but far larger estimate of the benefits of nuclear. Staff neither adjusted the pricing of subsidies for renewables using the SC-CO2, nor changed its estimate of the carbon benefits of renewables to be consistent with the new methodology for the nuclear tier.

By setting the cost of greenhouse gas emissions reductions (abatement) at the same price as the cost of emissions releases, the Commission has, in effect, promulgated a policy in which the direct cost of reducing emissions must be equivalent to the environmental harms from increasing emissions. The Commission's action is arbitrary and capricious in its misapplication

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<sup>16</sup> U.S. Environmental Protection Agency. "EPA Fact Sheet: Social Cost of Carbon." December, 2015. <https://www3.epa.gov/climatechange/Downloads/EPAactivities/social-cost-carbon.pdf>

<sup>17</sup> Shouse, Kate, U.S. Environmental Protection Agency, Office of Air and Radiation. "Social Cost of Carbon: Valuing CO2 Impacts in U.S. Regulatory Impact Analysis." Presentation to the United Nations Framework Convention on Climate Change May 20, 2016. [http://unfccc.int/files/focus/mitigation/technical\\_expert\\_meetings/application/pdf/01\\_us\\_epa\\_shouse.pdf](http://unfccc.int/files/focus/mitigation/technical_expert_meetings/application/pdf/01_us_epa_shouse.pdf)

of the SC-CO2 metric; its inconsistent application of the metric with respect to nuclear but not renewable energy or efficiency resources; and its failure to evaluate the availability of lower cost means of emissions abatement.

## **CONCLUSION**

For the reasons stated above, we respectfully request rehearing of the nuclear subsidies program approved on August 1, 2016 by the Commission. Given the ratepayer impact implications of the approved policy, the lengthy 12-year term of the contract authorized, and the little time afforded for public comment and deliberation, we strongly urge the Commission to reconsider the Order which is the single largest transfer of wealth from the government to a single corporate entity in New York history.

There is no viable and reasonable policy rationale provided for the Order's nuclear provisions, nor is the record complete. Further, the public trust has been violated due to the paltry public comment period and the closed-door negotiations which have raise the specter of executive overreach and lack of independence on the part of the Commission.

If the Commission will not reconsider the policy as a whole, we urge the Commission to, at the least, reconsider the 12-year term of the contract the Commission has instructed the New York State Research and Development Authority to execute with nuclear owners. Provisions should be made to allow for reconsideration of this policy, every 5 years as required by SAPA.

Respectfully submitted,

/s/

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Timothy Judson  
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August 31, 2016