

July 22, 2016

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

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

Comments of The Entergy Entities On DPS Staff's CES Tier 3 Responsive Proposal

Dear Secretary Burgess:

In accordance with the July 8, 2016 and July 15, 2016 notices issued in the above-referenced proceeding, enclosed are the Comments of Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear FitzPatrick, LLC and Entergy Nuclear Operations, Inc., concerning DPS Staff's CES Tier 3 Responsive Proposal.

A copy of these Comments has been served via-email contemporaneously on the parties to this proceeding.

Respectfully submitted,

GREENBERG TRAUIG, LLP



Doreen Unis Saia

DUS/aa

Enclosure

cc: Active Parties in Case 15-E-0302 (via e-mail)

ALB 1947767v1

Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear FitzPatrick, LLC and Entergy Nuclear Operations, Inc. (collectively, “Entergy Entities”) appreciate this additional opportunity to submit comments in this proceeding and hereby submit these comments supporting the refinements made to, and the general direction of, the Tier 3 structure as set forth in the Responsive Proposal. The Tier 3 proposal reflects a balanced and thoughtful approach to a complex set of competing priorities. The Entergy Entities support the Responsive Proposal, which (1) establishes a ZEC structure that focuses on the benefits inherent in carbon-free generation, and (2) acknowledges the eligibility of the Indian Point facility to participate in the program in the future pursuant to a review of the considerations set forth in the public necessity determination.

I. COMMENTS

It has been well-documented throughout this proceeding that New York’s existing nuclear facilities provide an unparalleled contribution to the State’s clean energy initiatives. As established in the White Paper, the nuclear facilities are the largest source of zero-emission generation in the State, collectively accounting for approximately 30% of New York’s consumed electricity.⁴ Likewise, in the February CES Order, the NYPSC established that the State would require over 5,000 MW of wind resources to produce comparable carbon free energy if just two

substantial number of parties addressing the Supplemental Draft Generic Environmental Impact Statement, the interim maintenance support proposal and DPS Staff’s Cost Impact Analysis.

³ See NYPSC Case 15-E-0302, *supra*, “Notice Soliciting Additional Comments” (issued July 8, 2016); NYPSC Case 15-E-0302, *supra* “Notice Extending Comment Deadline” (issued July 15, 2016) (hereinafter, collectively “July CES Notices”).

⁴ See White Paper at 27. Per DPS Staff, Tier 3 was proposed to provide payments beginning April 1, 2017 to maintain nuclear operations because closing these facilities “...would have a large negative impact on the State’s ability to meet its carbon reduction goal.” (*Id.* at 30.)

of the State's six nuclear facilities ceased operations.⁵ New York's actions to analyze and, if accepted by the NYPSC, adopt mechanisms compensating zero-emission nuclear facilities for their clean energy contributions to the system are momentous. While the structure deployed may have taken other forms, adoption of a clean energy mechanism, inclusive of all of the State's existing nuclear facilities, is itself a groundbreaking and critically needed step forward.⁶

In the comments submitted in the five rounds to date, parties have proposed variations on the Tier 3 ZEC pricing formula set forth in the White Paper. These comments have included proposals, *inter alia*, to provide for longer term procurements to assuage concerns raised by consumers and utilities about the commitment of nuclear facilities to continue operations over the long run, to tie compensation to some measure of the social cost of carbon and to design a structure to ensure that valuing the zero emission generation of nuclear facilities did not impede renewable development.⁷ Guided by the information provided in these comments, DPS Staff has

⁵ See NYPSC Case 15-E-0302, *supra*, "Order Further Expanding Scope of Proceeding and Seeking Comments (issued and effective February 24, 2016) (hereinafter, "February CES Order") at 2-3 (referencing the FitzPatrick and Ginna facilities and noting nuclear facilities "...currently provide important contributions towards the baseline of clean energy facilities in the State's electric power portfolio" and their loss "... in the short term would undermine progress towards meeting the State's clean energy goals."); *see also*, NYPSC Case 15-E-0302, *supra*, Nuclear Energy Technical Conference Workshop – Transcript (March 9, 2016) at 10-11 (per DPS Staff, the clean energy produced by a single unit nuclear facility each year roughly equates to the clean energy produced by all renewable facilities added to the system under the RPS program over the past decade). Since the issuance of the February CES Order, Constellation Energy Nuclear Group ("CENG") has provided information concerning the circumstances surrounding operation of its Nine Mile facility. (See, e.g., NYPSC Case 16-E-0270, Petition of Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants, "Petition To Initiate A Proceeding To Establish the Facility Costs For The R.E. Ginna and Nine Mile Nuclear Power Plants" (dated May 9, 2016) at 5-6.)

⁶ The Entergy Entities must, however, continue to take exception to the Responsive Proposal's characterization of the payment for clean energy attributes as a "subsidy," particularly given the direct link to the value of carbon-free generation discussed *infra*.

⁷ See, e.g., NYPSC Case 15-E-0302, *supra*, "Comments of Constellation Energy Nuclear Group, LLC Concerning Staff White Paper on Clean Energy Standard" (dated April 22, 2016) (hereinafter, "CENG Initial White Paper Comments") at 31-32; NYPSC Case 15-E-0302, *supra*, "Reply Comments of Constellation Energy Nuclear Group, LLC Concerning Staff White Paper on Clean Energy Standard" (dated May 13, 2016) at 2, 13-14; NYPSC Case 15-E-0302, *supra* "Institute for Policy Integrity, New York University School of Law Party Comments on New York State Department of Public Service, Staff White Paper on Clean Energy Standard" (dated April 22, 2016) at 2-3; NYPSC Case 15-E-0302, *supra*, "Comments of Acadia Center, Citizens Campaign For The Environment,

refined the formula to be used to calculate ZECs to be anchored by estimates of the social cost of carbon and has modeled the eligibility determination to take into account the costs and benefits of other clean energy alternatives. The Entergy Entities support designing a ZEC structure that focuses on the benefits inherent in carbon-free generation.

Likewise, a number of parties challenged the proposed Tier 3 eligibility requirements in their White Paper comments. Parties noted the first eligibility requirement that operations must be undertaken pursuant to a fully renewed license was specifically designed to exclude the Indian Point facility from the CES program,⁸ the resource that constitutes 40% of the nuclear energy contribution to the State's clean energy goals by DPS Staff's own calculations.⁹ As established by these parties, DPS Staff's proposed eligibility requirements violated federal and State law, and thus, could not be included within the parameters of the CES program.¹⁰

Citizens For Local Power, Environmental Advocates Of New York, National Wildlife Federation, Natural Resources Defense Council, The Nature Conservancy, New York Public Interest Research Group, PACE Energy and Climate Center, Sierra Club" (dated April 22, 2016) at 32.

⁸ See, e.g., NYPSC Case 15-E-0302, supra, "Comments of the City of New York on Staff's Clean Energy Standard White Paper" (dated April 22, 2016) (hereinafter, "NYC Initial White Paper Comments") at 18 (stating the White Paper proposes measures to maintain the State's nuclear fleet "with one notable exception"); NYPSC Case 15-E-0302, supra, "Comments by Alliance for Green Economy and Nuclear Information and Resource Service" (dated April 22, 2016) at 23; NYPSC Case 15-E-0302, supra, "Initial Comments of Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear FitzPatrick, LLC and Entergy Nuclear Operations, Inc. Concerning DPS Staff's White Paper on Clean Energy Standard" (dated April 22, 2016) (hereinafter "Entergy Entities Initial White Paper Comments") at 29-31.)

⁹ See White Paper at 29, n.19; see also NYC Initial White Paper Comments at 19 (establishing that the Indian Point facility provides over 17,000 GWh of carbon-free energy, jobs, economic opportunities and tax base).

¹⁰ The City of New York, the Entergy Entities and the Independent Power Producers of New York, Inc., ("IPPNY") demonstrated the first eligibility requirement violated the federal timely renewal doctrine and the New York Public Service Law, and thus, it could not have been adopted by the NYPSC as a matter of law. (See NYC Initial White Paper Comments at 19; Entergy Entities Initial White Paper Comments at 25-31; NYPSC Case 15-E-0302, supra, "Comments of Independent Power Producers of New York, Inc." (dated April 22, 2016) (hereinafter, "IPPNY Initial White Paper Comments") at 4, 14-15.) Likewise, the Entergy Entities, IPPNY and CENG established the second requirement mandating a financial distress showing impermissibly discriminated against nuclear facilities vis-à-vis other non-emitting resources and thereby suffered from legal infirmities that prevented its adoption. (See, e.g., CENG Initial White Paper Comments at 2-3, 12-13; IPPNY Initial White Paper Comments at 4, 14-15; Entergy Entities Initial White Paper Comments at 23-24.)

Based upon the Tier 3 eligibility requirement comments, DPS Staff has proposed to refine the Tier 3 design with a public necessity determination structured to weigh a number of considerations identified by interested parties, including the costs and benefits of nuclear operations in comparison to other clean energy alternatives and ratepayer impacts.¹¹ Eliminating both requirements improves the program design and ensures that all existing New York nuclear facilities are eligible to participate in the CES program pursuant to public necessity determinations to be conducted on a bi-annual basis. DPS Staff also has projected in the Responsive Proposal that a public necessity would be found for the FitzPatrick, Ginna and Nine Mile Point facilities for Tranche 1 of the program. Due to its location in the constrained southeastern portion of the New York system and important NYISO market design rules, including, e.g., the LHV capacity zone, Indian Point operations are not currently at risk, which is one of the considerations to be taken into account in conducting DPS Staff's proposed public necessity determination. Weighing the public necessity considerations to establish the Tranche 1 resources, the Entergy Entities support the public necessity determinations for the FitzPatrick, Ginna and Nine Mile facilities.

Lastly, the Entergy Entities wish to raise an important change in circumstances since the initiation of this proceeding. As reflected in the January CES Order, Entergy Nuclear FitzPatrick, LLC filed a notice of its intention to retire the FitzPatrick facility at the end of the facility's current refueling cycle in January, 2017.¹² Throughout this proceeding, the Entergy Entities have reaffirmed that mechanisms developed through the CES program would come too late to align with the Company's overall business needs. Those facts remain unchanged.

¹¹ See Responsive Proposal at 3.

¹² See January CES Order at 5.

However, Exelon has indicated interest in acquiring the FitzPatrick facility.¹³ While CENG has advocated for alternative ZEC structures, it has urged that some form of clean energy attribute compensation is necessary for its Upstate nuclear fleet. Consistent with that position, CENG has established in this proceeding, “[t]he [FitzPatrick] transaction is contingent on both the final terms and timing of the CES/ZEC program,” and thus, for there to be “any hope of saving FitzPatrick, then the [NYPSC] must act quickly to issue a final order in the proceeding.”¹⁴

The potential FitzPatrick transaction is a new fact that can change the outcome for the FitzPatrick facility but CES Tier 3 implementation in the short term is an essential component to the transaction. Thus, in contrast to the facts and circumstances at hand when the Entergy Entities submitted their February CES Order comments, time is now of the essence concerning whether FitzPatrick operations can be continued beyond January, 2017.

¹³ See News Release, “Entergy in Discussions for the Potential Sale of the James A. FitzPatrick Nuclear Power Plant to Exelon” (dated July 13, 2016), annexed hereto as Attachment A.

¹⁴ See NYPSC Case 15-E-0302, *supra*, “Constellation Energy Nuclear Group LLC Response to Request for Extension” (dated July 12, 2016) at 3.

II. CONCLUSION

New York's nuclear facilities, the largest zero-emission resource in the State, avoid approximately 26 million tons of carbon emissions each year.¹⁵ In light of their substantial contribution to New York's clean energy portfolio, the Entergy Entities urge the NYPSC to move forward at its August 1, 2016 session and approve the first program in the country to value the zero-emission attributes of New York's nuclear facilities.

Dated: July 22, 2016
Albany, New York

Respectfully submitted,

GREENBERG TRAURIG, LLP



Doreen U. Saia
Counsel to Entergy Nuclear Indian Point 2, LLC,
Entergy Nuclear Indian Point 3, LLC, Entergy
Nuclear FitzPatrick, LLC and Entergy Nuclear
Operations, Inc.
54 State Street, 6th Floor
Albany, New York 12207
(518) 689-1400

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¹⁵ See White Paper at 29, n.19.

ATTACHMENT A



James A. FitzPatrick NPP
PO Box 110
Lycoming, New York 13069

Date: July 13, 2016
For Release: Immediately
Contact: Tammy Holden
(315) 349-6681 office
(315) 297-6775 mobile
tholden@entergy.com

News Release

Entergy in Discussions for the Potential Sale of the James A. FitzPatrick Nuclear Power Plant to Exelon

Scriba, NY – Entergy Corporation (NYSE: ETR) announced today that it is in discussions with Exelon Corporation (NYSE: EXC) for the potential sale of the James A. FitzPatrick Nuclear Power Plant in Scriba, NY.

The discussions with Exelon are consistent with Entergy's commitment to consider any viable option that would allow FitzPatrick to remain in operation. Entergy announced in November 2015 that it planned to shut down and decommission the FitzPatrick plant, later setting the timing to cease operations as late January 2017.

“In keeping with our corporate strategy to move away from merchant power markets and toward a company operating exclusively as a utility in regulated markets, we are working with Exelon to come to commercial terms on a sale transaction that depends largely on the final terms and timeliness of the New York State Clean Energy Standard,” said Entergy Wholesale Commodities President Bill Mohl. “We thank New York Gov. Andrew Cuomo for his leadership in promoting the Clean Energy Standard, which provides incentives for financially strapped nuclear power plants.”

In addition to the Clean Energy Standard, any transaction between Entergy and Exelon would be subject to completion of definitive commercial agreements, as well as regulatory approvals.

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If discussions between Entergy and Exelon do not result in an agreement for the sale and transfer of ownership of FitzPatrick, Entergy will move forward with its current plan to cease operations, followed by decommissioning.

“Our focus remains on providing employees and the community the best opportunity we can to prepare for either a transition to a new owner or a shutdown and decommissioning,” said Brian Sullivan, site vice president and Entergy’s top official at FitzPatrick.

Entergy’s discussions with Exelon provide the opportunity for a potentially different outcome for FitzPatrick, and therefore require the plant to proceed along two parallel paths: preparing for the plant’s permanent shutdown and decommissioning under the current plan, while also preparing for a possible refueling and continued operation in the event of a sale.

Negotiations with Exelon are ongoing, with a target for completion in mid-August, therefore Entergy said it cannot yet describe the material terms of any definitive agreement that it may enter into with Exelon.

About FitzPatrick and Entergy

The FitzPatrick Nuclear Power Plant generates 838 megawatts of nearly carbon-free electricity, enough to power more than 800,000 homes. Additional information regarding today’s announcement is available at www.energy.com and www.FitzPatrickPower.com/Operational-Update.

Entergy Corporation is an integrated energy company engaged primarily in electric power production and retail distribution operations. Entergy owns and operates power plants with approximately 30,000 megawatts of electric generating capacity, including nearly 10,000 megawatts of nuclear power. Entergy delivers electricity to 2.8 million utility customers in Arkansas, Louisiana, Mississippi and Texas. Entergy has annual revenues of approximately \$11.5 billion and more than 13,000 employees.

Cautionary Note Regarding Forward-Looking Statements

In this news release, and from time to time, Entergy Corporation makes certain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements include, among other things, Entergy’s plans and expectations with respect to a potential sale of FitzPatrick or the future operations of the plant, and other statements of Entergy’s plans, beliefs or expectations included in this news release. Except to the extent required by the federal securities laws, Entergy undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Forward-looking statements are subject to a number of risks, uncertainties and other factors that could cause actual results to differ materially from those expressed or implied in such forward-looking statements, including (a) those factors discussed elsewhere in this news release and in Entergy’s most recent Annual Report on Form 10-K, any subsequent Quarterly Reports on Form 10-Q and Entergy’s other reports and filings made under the Securities Exchange Act of 1934; (b) nuclear plant operating and regulatory risks; (c) legislative and regulatory actions and risks and uncertainties associated with claims or litigation by or against Entergy and its subsidiaries; (d) risks and uncertainties associated with strategic transactions that Entergy or its subsidiaries may undertake, including the risk that any such transaction may not be completed as and when expected and the risk that the anticipated benefits of the transaction may not be realized and (e) economic conditions and conditions in commodity and capital markets during the periods covered by the forward-looking statements.