

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on February 23, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman, concurring

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

ORDER FURTHER EXPANDING SCOPE OF  
PROCEEDING AND SEEKING COMMENTS

(Issued and Effective February 24, 2016)

BY THE COMMISSION:

INTRODUCTION

The State's nuclear power plants provide clean, reliable power throughout the year that is free of carbon-emissions and contributes significantly to the energy, capacity and reliability needs of the electric system. By this order, the Commission expands the scope of this proceeding to include the consideration of an expedited program to provide financial support for the benefit of the electric system to maintain the viability of certain nuclear power plants that can demonstrate the lack of financial viability absent additional financial support. The Commission also describes and seeks comments on a proposed program to provide such financial support to maintain the viability of nuclear power plants.

BACKGROUND

Reductions in the price of natural gas have driven electric energy market prices down to the degree that several nuclear plants that rely on electricity spot market sales for the majority of their revenues are experiencing financial difficulties because their costs exceed their current market revenues. The owners of some nuclear facilities in the State have indicated the intent to retire facilities, stating, among other things, an inadequacy in the wholesale electric market for valuing zero-emission electric energy resources.<sup>1</sup> Those facilities currently provide important contributions towards the baseline of clean energy facilities in the State's electric power portfolio. Loss of these facilities in the short-term would undermine progress towards meeting the State's clean energy goals. Ideally, these facilities would be maintained as viable until they can be replaced with new, long-term clean energy generation facilities or supplanted by energy efficiency achievements.<sup>2</sup> Unfortunately, the important zero-emission and other beneficial attributes of these facilities are not adequately compensated in the current competitive electric wholesale market structure. If they were, these facilities would be more cost-competitive.

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<sup>1</sup> Case 14-E-0270, Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC., Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation (filed July 11, 2014). On November 2, 2015, Entergy announced plans to close the FitzPatrick Nuclear Power Plant. <http://www.prnewswire.com/news-releases/entergy-to-close-james-a-fitzpatrick-nuclear-power-plant-in-central-new-york-300170100.html>

<sup>2</sup> Retirement of Ginna and Fitzpatrick could require over 5,000 MW of wind resources to produce comparable carbon free energy. For reference, the State has about 1,900 MW of wind developed over the last decade through the RPS program.

In recent years, fossil fuel usage (combined oil, coal and natural gas) to generate New York State's electricity has been dropping despite the fact that overall electric load has increased. The important role of nuclear power in contributing to fossil fuel displacement is not fully appreciated. While the fossil fuel usage has been displaced by increased production from zero-emission hydro and wind generation facilities, the greatest displacement has occurred as a result of increased production from zero-emission nuclear generation facilities.

On January 21, 2016, the Commission issued an order expanding the scope of this proceeding to consider a Clean Energy Standard (CES) which would include maintenance support for existing zero-emission generating facilities. On January 25, 2016, the Staff White Paper on Clean Energy Standard (White Paper) was filed in accordance with the January 21, 2016 Order. The White Paper proposes that a Nuclear Tier be created within the CES mandate in the form of a separate obligation not associated with the renewable mandate otherwise to be reflected. The Nuclear Tier is intended to provide qualifying nuclear plants with support payments through a MWh production credit system where all Load-Serving Entities (LSEs) would be required to procure a share of the credits from qualifying resources.

On February 11, 2016, the New York Independent System Operator (NYISO) issued a Generator Deactivation Assessment of the FitzPatrick nuclear generating facility that concluded that loss of the FitzPatrick plant along with a number of other plant retirements creates a statewide resource deficiency that

constitutes a Reliability Need that would occur starting in 2019.<sup>3</sup>

#### DISCUSSION AND CONCLUSION

In light of the State's clean energy goals and the current inability of the market to provide adequate compensation to the affected nuclear facilities it is advisable that the State provide a mechanism for maintenance support for the affected nuclear facilities. The Commission is concerned that the need for maintenance support is reaching a critical turning point such that expedited action is necessary. Nuclear power plant operation is highly dependent on pre-scheduled fuel cycles, therefore certainty as to the availability and level of maintenance support may be critical to the decision of plant operators to order fuel and commence future cycles. These practical operational considerations create urgency that it is likely desirable to put an expedited maintenance support system in place that will not be dependent on the resolution of implementation issues. Such a system would not undermine the ultimate direction of the CES mandate. The Commission has already established a mechanism for maintenance support for small hydroelectric facilities and some other renewable resources that could expeditiously be replicated to provide maintenance support for nuclear resources. Such support provides some compensation to the facility for attributes not otherwise monetized in the electricity markets. The Renewable Portfolio Standard (RPS) program currently has a "Maintenance

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<sup>3</sup> According to the assessment, the resource deficiency equates to approximately 325 MW statewide, but would likely require more than 325 MW of new or retained capacity resources to resolve, depending on forced outage rates and the location of the resources. The FitzPatrick plant has a capacity of 882 MW according to the assessment report.

Tier" component that provides financial support to maintain the viability of certain eligible existing renewable generation facilities that can demonstrate the lack of financial viability absent additional support. Support is provided on demand in the form of per MWh renewable energy credit (REC) payments for actual production pursuant to short-term contracts. The price of the REC payments is based on the minimum amount of support necessary above existing revenue streams to cover, among other things, the fuel and operational costs of the facility ("going forward costs") as determined by the Commission after an examination of the books and records of the facility owner. Therefore, by this order, the Commission is expanding the scope of this proceeding to include consideration of an expedited program to provide financial support for the benefit of the electric system to maintain the viability of certain nuclear power plants that can demonstrate the lack of financial viability absent additional financial support. The proposed expedited program is described in the Appendix attached hereto. The Commission is also seeking comments on the proposed program to provide such financial support to maintain the viability of nuclear power plants.

The Commission orders:

1. The scope of this proceeding is expanded to include the consideration of an expedited program to provide financial support for the benefit of the electric system to maintain the viability of certain nuclear power plants that can demonstrate the lack of financial viability absent additional financial support in the manner described in the Appendix.

2. Written comments are solicited on the proposed expedited program with the deadline of May 2, 2016 for the

submission of the comments. Comments are to be submitted to the Secretary by e-filing through the DPS Document and Matter Management System (DMM),<sup>4</sup> or by e-mail to the Secretary at [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov). If unable to file electronically, comments may be submitted by mail or hand delivery to the Hon. Kathleen H. Burgess, Secretary, Three Empire Plaza, Albany, New York 12223-1350.

3. 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 one day prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

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<sup>4</sup> See DMM Help: Electronic Filing Registration Instructions, at <http://www.dps.ny.gov/e-file/registration.html>.

PROPOSED EXPEDITED PROGRAM TO PROVIDE FINANCIAL  
SUPPORT FOR THE BENEFIT OF THE ELECTRIC SYSTEM TO  
MAINTAIN THE VIABILITY OF CERTAIN NUCLEAR POWER PLANTS

I. Definitions:

1. The term "zero carbon electric generating facility," includes electric generating facilities located within the State of New York that use energy released in the course of nuclear fission to generate electricity.
2. The term "zero-emissions credit" or "ZEC," shall mean credit for the generation by a zero carbon electric generating facility of one megawatt-hour of electricity that is consumed by a retail consumer in New York State in a manner that can be reasonably verified by the New York State Energy Research and Development Authority (NYSERDA), the Department of Public Service, or the Public Service Commission (Commission).
3. The term "going-forward costs," shall mean those costs a generating facility could avoid if it removed the facility from providing energy and capacity in the market.

II. General Description:

1. Financial support shall be provided for the benefit of the electric system to maintain the viability of zero carbon electric generating facilities that can demonstrate the lack of financial viability absent additional financial support.
2. Support shall be provided, when in the public interest as determined in the discretion of the Commission, in the form of zero-emissions credit (ZEC) payments for actual per megawatt-hour production pursuant to short-term contracts.
3. The Commission shall consider facility refueling cycles in determining the term of such contracts.
4. The price of the ZEC payments shall be based on an amount no more than the minimum amount of support necessary above existing revenue streams to cover the reasonable facility going-forward costs of fuel, labor and other operating and maintenance (O&M) costs; new capital costs; taxes (or payments in lieu of taxes); operating risks; and corporate overhead costs as determined by the Commission after an examination of the books and records of the facility owner.

Sunk costs (e.g., debt costs, equity costs, and past investments in environmental controls) shall not be included.

5. In no event shall such support be any more than the level otherwise required to encourage new renewable facilities.
6. The Commission may establish such other review and contract requirements as it shall deem, in its discretion, to be in the public interest, including, potentially, reasonable clawback provisions triggered if earnings levels during periods of support or for a reasonable period after periods of support are excessive, or for other purposes.
7. NYSERDA shall administer the contracts on behalf of the Commission.
8. The source of funds for the support, and the costs of administration of the contracts, may come from any of the following sources, if available:
  - (i) existing funds previously collected for other system benefits programs and made available by the Commission for that purpose;
  - (ii) charges imposed by the Commission on retail electric customers for that purpose; and
  - (iii) funds from other sources that become available to the Commission or to NYSERDA for that purpose.

### III. Procedures:

The following procedures would be implemented to determine the certification, selection, and funding for zero carbon electric generating facilities:

1. Financial eligibility would be based on:
  - a. An examination of relevant portions of the books and records of the facility (including a documented after-tax cash flow forecast) and, to the extent appropriate, of the facility owner/operator and any affiliates;
  - b. The basis for and reasonableness of expected operating and capital costs. This evaluation may include, among other things, a comparison to prior years' costs and a comparison to costs of like generation;
  - c. The existence of any other cash sources available to the facility, such as:



- 1) tax benefits
  - 2) subsidies
  - 3) contracts
  - 4) other sources, including restructuring financing;
- d. Whether market rules are increasing the costs of the facility and, if so, whether any steps can be taken to reduce such costs;
- e. Whether the facility's real property tax assessment is consistent with the assessments imposed in similarly situated facilities elsewhere, and if not, what action has been taken to address this matter;
- f. Whether the facility is required to operate as part of a package of assets that is financially viable as a whole;
- g. Whether the facility generates enough revenue, based on expected output, to cover its operating costs;
- h. Whether the facility generates enough revenue to make necessary capital improvements;
- i. Whether the facility generates enough revenue to cover its fixed costs, including:
- 1) debt service
  - 2) property taxes
  - 3) security costs
  - 4) other costs; and
- j. Whether the facility has attempted to make use of other resource programs available to it.
2. Any entity seeking Zero-Emissions Maintenance resource eligibility for a facility must submit a request to the Department of Public Service, Office of Electric, Gas & Water (OEGW) Director for certification.
3. The request must include the entity's most recent three years' income statements, balance sheets, cash flow statements, and income tax returns related to the facility.
4. The request must also identify the type of facility; date of commercial operation; list of affiliates; list of contracts; and description of financing arrangements.

5. The OEGW Director will review the information submitted and may request further information or clarification.
6. The OEGW Director will then make a determination on the facility's eligibility for Zero-Emissions Maintenance resource status, taking into consideration each facility's circumstances and the amount of the assistance required. If a facility is determined to be eligible, the OEGW Director will certify such facility to NYSERDA as an eligible maintenance resource.
7. For each such determination of eligibility, the OEGW Director will recommend to the Commission, for its consideration and approval, either a set payment award amount at the minimum level necessary to ensure solvency of the resource and/or other measures that might be taken.
8. The Commission will apply the SAPA notice and comment provisions before making a final determination.
9. If the Commission approves an award, it shall make its approval subject to the execution of an appropriate contract between NYSERDA and the owner of the facility.
10. The contract would provide for the purchase of zero-emissions credit (ZEC) from the facility with the price of the credit payments determined administratively by the Commission.

Commissioner Diane X. Burman, concurring:

I concur only to the extent of agreeing to initiate this new aspect of the proceeding to open the dialogue on this issue and does not indicate I have made a determination one way or the other with respect to the substantive outcome on the future actions on this matter or any other related matters.