

STATE OF NEW YORK
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.
- 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.

NOTICE EXTENDING COMMENT DEADLINE

(Issued July 15, 2016)

In a July 8, 2016 Notice¹ issued in Case 15-E-0302, the Commission solicited comments on "Staff's Responsive Proposal for Preserving Zero-Emissions Attributes" (Staff's Responsive Proposal). A deadline of July 18, 2016, was established for receipt of the comments.

Alliance for a Green Economy (AGREE) requests an extension of the deadline for filing comments. Nucor Steel Auburn, Inc. (Nucor), Citizens for Local Power (CLP), Multiple Intervenors (MI), City of New York (NYC), Environmental Advocates of New York (EA), Nuclear Information and Resource Service (NIRS), and Council on Intelligent Energy & Conservation Policy - Promoting Health and Sustainable Energy (PHASE) all support granting an extension. Constellation Energy Nuclear Group, LLC (Constellation) opposes any extension that would preclude action by the Commission at its August 1, 2016 Session. Nucor and MI, supported by Consumer Power Advocates (CPA), also seek a concurrent extension of the July 18, 2016 deadline for

¹ Case 15-E-0302, Large-Scale Renewable Program and a Clean Energy Standard, Notice Soliciting Additional Comments (issued July 8, 2016).

submitting comments in response to the Petition filed in Case 16-E-0270.

AGREE asserts that Staff's Responsive Proposal contains what it characterizes as "dramatic" changes warranting substantial time for review and analysis before parties will be prepared to comment. The changes of concern to AGREE include (a) the proposed out-of-market nuclear subsidies proposed represent a significant change to New York State policy; (b) the price to be paid for zero-emissions credits (ZECs) is a result of a completely new approach; (c) the costs may be substantially higher than previously estimated; (d) there would be a determination of public necessity for which generators may be eligible; (e) the determination of public necessity for some facilities would be made upon inception of the program; and (f) the proposal appears to be calibrated to address certain legal questions surrounding the proposed nuclear tier. AGREE notes that previous comment periods in this case have provided much longer opportunity for comment. Finally, AGREE concludes that a new SAPA notice should be issued and that parties and the public should be provided at least 45 days to comment on Staff's Responsive Proposal. The other parties supporting AGREE's request expressed similar concerns. MI additionally asserts that Staff's Responsive Proposal is devoid of underlying calculations and justifications.

Regarding the deadline in Case 16-E-0270, Nucor requests that the comment period be revised similarly to any revision to the comment period in Case 15-E-0302 because the issues raised by Staff's Responsive Proposal directly overlap the issues posed in Case 16-E-0270 concerning the valuation of zero emission credits. MI and CRA support Nucor's request for essentially the same reasons.

As the owner of R.E. Ginna and Nine Mile Station nuclear electric generating facilities, Constellation objects to AGREE's request for an extension because it believes that time is of the essence for Commission adoption of the Clean Energy Standard ("CES") program. Constellation asserts that it must make critical, multi-million dollar business investment decisions by September 2016 regarding the future of its nuclear facilities that have been losing money, and that those decisions cannot be made in reliance on a mere proposal. According to Constellation, its decision regarding the investment of approximately \$55 million to refuel Nine Mile Unit 1 is already overdue if the facility is to be kept in service at the end of the current fuel cycle, and it must make a final decision whether to order fuel no later than the end of September 2016. Additionally, Constellation must file a notice of its intent to continue commercial operations with the Commission by September 30, 2016, and will incur substantial capital recovery balance costs if it does not intend to retire the Ginna facility at the expiration of the current Reliability Support Services Agreement supporting the facility. Constellation states that it will need a contract in hand by September 2016; therefore an order is needed from the Commission by August 1, 2016, to allow sufficient time to finalize a contract for the zero-emission attributes. Constellation also suggests that if there is any hope of saving the James A. Fitzpatrick Nuclear Power Plant, the owner must also soon make near-term investment decisions, including a refueling determination. Constellation's subsidiary Exelon Corporation is in discussions with Entergy Corporation to purchase the Fitzpatrick facility. Constellation requests that the extension be denied so as to preserve a schedule that allows for a decision no later than August 1, 2016.

Constellation further counsels that the State Administrative Procedure Act ("SAPA") does not require a notice of revised rulemaking for modifications with respect to any rule defined in SAPA § 102 (2) (a) (ii), such as is under consideration here according to the Commission's SAPA notices. Constellation also notes that it already proposed in its earlier comments in the proceeding that a ZEC price could be set based on the social cost of carbon, and that the Commission could have acted on that comment in the record; therefore the fact that the Commission is allowing parties an additional opportunity to comment on Staff's Responsive Proposal does not trigger any additional requirements under SAPA.

The issuance of Staff's Responsive Proposal and the notice soliciting additional comments is in fact an add-on process as part of the continuing consideration of issues in these proceedings and does not trigger a legal requirement for a notice of revised rulemaking under SAPA. The spirit of Staff's Responsive Proposal is clearly to suggest conclusions from the many comments that were already received from the other parties and to give the parties an extra opportunity to comment with knowledge of Staff's more current inclinations, Staff having considered all the substantial input that was received. These developments foster public input rather than inhibit it, and will maximize the options and advice available to the Commission.

In that regard, the concerns that characterize Staff's Responsive Proposal as a dramatic departure from what has already been under consideration in these proceedings are significantly overstated. A significant policy change that would create out-of-market nuclear subsidies has been proposed since the beginning of the CES Tier 3 concept early in the CES

proceeding; it is not a newly-proposed idea. The option of using the social cost of carbon to set the ZEC price was proposed by both Entergy and Constellation in comments filed prior to the filing of Staff's Responsive Proposal. The parties seeking extensions have already demonstrated in their requests that they generally understand the cost implications of Staff's Responsive Proposal. According to Staff's Responsive Proposal, the scale of costs is driven largely by even lower market revenues than previously experienced, which would also have significantly increased the costs of the originally-proposed price-setting methodology. The determinations of public necessity and plant eligibility are not radically dissimilar to the need for eligibility determinations that was originally proposed. If, as AGREE asserts, the proposal appears to be calibrated to address legal questions surrounding the originally-proposed nuclear tier, such calibration would appear to confirm the responsive nature of the proposal. The parties that raised the original legal questions should be in a good position to address Staff's Responsive Proposal without the need for new research. Finally, Staff's Responsive Proposal clearly lays out in an attachment the calculations relied upon by Staff in setting the proposed ZEC price.

On the other hand, Constellation raises serious and substantial concerns about timing that go to the heart of the issues before the Commission in these proceedings. In considering the extension requests, care must be taken to not implement procedures that would defeat potential important Commission objectives or options in addressing the significant policy questions that must be decided. Accordingly, the parties should understand the need for the Commission to proceed with

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deliberate speed. Extensions will be granted to increase the comment period to a full two business weeks.

PLEASE BE ADVISED that the periods for submitting comments on Staff's Responsive Proposal in Case 15-E-0302, and in response to the Petition filed in Case 16-E-0270, are extended to July 22, 2016. These extensions are granted for the fair, orderly and efficient conduct of these proceedings.

(SIGNED)

KATHLEEN H. BURGESS
Secretary