

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Case 15-E-0302

**CONSTELLATION ENERGY NUCLEAR GROUP, LLC'S
AND EXELON GENERATION COMPANY, LLC'S RESPONSE
TO THE CITY OF NEW YORK'S COMMENTS**

Steven D. Wilson
John T. McManus
HARRIS BEACH PLLC
677 Broadway, Suite 1101
Albany, NY 12207
Tel: (518) 427-9700
Fax: (518) 427-0235
E-mail: swilson@harrisbeach.com
jmcmanus@harrisbeach.com

*Attorneys for Constellation Energy
Nuclear Group, LLC and Exelon
Generation Company, LLC*

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I. INTRODUCTION

On August 22, 2016, Constellation Energy Nuclear Group, LLC (“CENG”) and Exelon Generation Company, LLC (“ExGen”) (together, the “Petitioners”) filed a Petition for Clarification or, in the Alternative, Limited Rehearing (the “Petition”) of the Public Service Commission’s (the “Commission”) *Order Approving a Clean Energy Standard* (“CES”) issued on August 1, 2016.¹ The Petitioners requested that the Commission issue an order declaring that the condition relating to the purchase of the James A. FitzPatrick Nuclear Power Plant (“FitzPatrick”) set forth in the body of the CES Order and in Paragraph 6 of Appendix E of the CES Order (the “FitzPatrick Purchase Condition”) applies only to a zero-emissions credit (“ZEC”) contract for FitzPatrick and not to any ZEC contracts for the R.E. Ginna Nuclear Power Plant (“Ginna”) or Nine Mile Point Nuclear Station Units 1 and 2 (together, “NMP”).

On October 31, 2016, the City of New York (the “City”) filed comments opposing the Petitioners’ request.² In order to promote the fair, orderly, and efficient conduct of this

¹ Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Issued Aug. 1, 2016) (the “CES Order”).

² Pursuant to a notice issued by the Secretary on August 31, 2016, the time for responses to the Petition under 16 NYCRR § 3.7 (c) was extended to October 31, 2016, to coincide with the expiration of the 45-day comment period

proceeding and to allow the Commission to base its decision on a full and accurate record, the Petitioners respectfully request that the Commission consider this brief response to the City's comments. No party will be prejudiced by the Commission's consideration of these responsive comments.

The City's comments completely misapprehend the purpose of the Petition. The Petitioners remain committed to keeping the Ginna and NMP facilities operating if it is economically viable to do so and are working diligently to complete the purchase of FitzPatrick. The Petition seeks the requested relief to preclude a situation where the economically-challenged Ginna and NMP facilities would be forced to close solely because the FitzPatrick purchase could not be completed for some reason beyond Petitioners' control, such as if one of the outstanding required, regulatory approvals was denied. In such a situation, it certainly would not benefit the State to lose the zero-emissions benefits of Ginna and NMP *in addition* to Fitzpatrick. Indeed, it would make the State's ambitious emissions reductions goals even more difficult to achieve.

II. THE PETITIONERS' RESPONSE

THE DURATION OF THE ZEC CONTRACTS FOR ALL UPSTATE NUCLEAR FACILITIES SHOULD NOT BE TIED TO THE SALE OF FITZPATRICK

In its comments, the City argues that the CES Order conditions the 12-year duration for Ginna's and NMP's ZEC contracts on the sale of FitzPatrick. The City's position is based on a misinterpretation of the CES Order, the policies underlying the ZEC program and the Petition.

In the CES Order, the Commission determined that retaining the zero-emissions attributes of the Ginna, NMP and Fitzpatrick nuclear facilities is in the overall public interest.³ According to the Commission, the loss of these emissions-free attributes would result in significantly

under the State Administrative Procedure Act. Notice of the Petition was published in the *State Register* on September 14, 2016.

³ CES Order at 128.

increased air emissions due to heavier utilization of existing and new fossil-fueled plants.⁴ Such an increase in air emissions would complicate the State's compliance with likely federal carbon standards and would result in dangerously higher reliance on natural gas, thereby radically reducing the State's fuel diversity and making consumers more vulnerable to natural gas and concomitant electric price spikes.⁵ Although the City is correct in stating that "nowhere in the CES Order does the Commission assess the value of the nuclear plants individually with respect to these benefits[.]" this observation misses the point.⁶ In the event that FitzPatrick is not sold and its 882 MW of emissions-free generation is retired, the retention of the remaining 2,575 MW (Ginna - 641 MW, NMP 1 – 641 MW, and NMP2 – 1320 MW) will become even more critical to achieving the Commission's environmental goals and the policy objectives underlying the CES Order. With respect to New York's carbon reduction goals, Governor Andrew M. Cuomo has stated that New York "cannot lose ground in the fight to reduce carbon pollution through the unnecessary retirement of safely operating nuclear power plants in Upstate New York."⁷ Average annual CO₂ emissions would be approximately 10 million tons higher absent the generation from these facilities alone. Under the City's interpretation of the CES Order, however, the majority of New York's emission-free generation could be retired after the expiration of Tranche 1 if FitzPatrick is not sold.

Moreover, as Petitioners state in the Petition and the City apparently fails to understand, Ginna and NMP are experiencing distressed financial situations and face imminent operational decisions and time constraints. Conditioning the duration of ZEC contracts for Ginna and NMP

⁴ *Id.*

⁵ *Id.*

⁶ City Comments at 3.

⁷ <https://www.governor.ny.gov/news/governor-cuomo-directs-department-public-service-begin-process-enactclean-energy-standard>.

beyond Tranche 1 on the sale of FitzPatrick would not provide CENG with the certainty it needs to justify making costly, long-term investment decisions for these facilities. As stated in the Petition, “[a]ny decisions on whether to continue to invest in the long-term operation of the R.E. Ginna and Nine Mile Point Facilities will be based in large part on the durability of the ZEC contracts, and the Commission should not weaken the incentive to preserve these nuclear facilities’ zero-emission attributes.”⁸

The City fails to understand the importance of this need for certainty. According to the City,⁹ “[t]he Commission should not decouple Exelon’s obligation to keep FitzPatrick open from its obligation to ensure that Ginna and NMP1 remain open.” As noted above, however, Petitioners seek clarification of the CES Order that the 12-year ZEC contracts for Ginna and NMP are not contingent on the sale of FitzPatrick to, among other things, secure the necessary level of certainty as to the long-term viability of the facilities and not, as the City contends, to set the stage for their closure.

Finally, the fact that ExGen and Entergy Nuclear FitzPatrick, Inc. have entered into an agreement for the sale of FitzPatrick does not, as the City contends,¹⁰ require denial of the clarification sought in the Petition. According to the City, if Petitioners intend to keep all upstate nuclear plants in operation, clarification is unnecessary. The City fails to recognize that the proposed transfer is subject to a number of pre-conditions that include securing timely approvals from various regulatory bodies such as the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. The Commission should not subject the long-term viability of Ginna and NMP or the State’s environmental health to regulatory decisions that lie completely outside of its and Petitioners’ control.

⁸ Petition at 6.

⁹ City Comments at 5.

¹⁰ *Id.*

III. CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the Commission grant the relief sought in the Petition and issue an order no later than November 18, 2016, finding that that the FitzPatrick Purchase Condition in the CES Order applies only to FitzPatrick's ZEC contract and not to Ginna's and NMP's respective ZEC contracts.

HARRIS BEACH PLLC

*Attorneys for Constellation Energy
Nuclear Group, LLC and Exelon
Generation Company, LLC*

/s/ Steven D. Wilson

John T. McManus
Steven D. Wilson
677 Broadway, Suite 1101
Albany, NY 12207
Tel: (518) 427-9700
Fax: (518) 427-0235
Email: jmcmanus@harrisbeach.com
swilson@harrisbeach.com

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Albany, New York