

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.

NOTICE WITH RESPECT TO REQUEST FOR CLARIFICATION OR,
IN THE ALTERNATIVE, FOR REHEARING

(Issued August 31, 2016)

On August 22, 2016, Constellation Energy Nuclear Group, LLC (Constellation) and Exelon Generation Company, LLC (Exelon) submitted a Petition for Clarification or, in the Alternative, Limited Rehearing (Petition) of the Order Adopting a Clean Energy Standard, issued by the New York State Public Service Commission (Commission) on August 1, 2016. In addition to seeking clarification, the Petition describes alleged errors of fact in Commission drafting of the condition with respect to the entitlement for Zero-Emissions Credits relating to the transfer of the FitzPatrick Nuclear Power Plant.

To the extent it seeks rehearing, the Petition will be treated as a timely application for rehearing filed within the 30-day period prescribed in Public Service Law (PSL) §22 and 16 NYCRR §3.7(a). The statute of limitations to seek review by filing an Article 78 proceeding should ordinarily be tolled by a timely petition for rehearing under PSL §22. CPLR §7801(1). The four-month period in which Constellation and Exelon can seek review under CPLR §217 would not therefore commence until the Commission issues a decision on the Petition.¹

¹ It appears that a timely petition for rehearing under PSL §22 only tolls the statute of limitations as to the petitioners, Constellation and Exelon, under CPLR §7801(1) ("[An Article 78 proceeding] shall not be used to challenge a determination . . . where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless . . . the time within which the petitioner can procure a rehearing has elapsed") (emphasis added).

In contemplation of a possible grant of a limited rehearing on the Petition, which could entail the amendment of a "rule" for purposes of State Administrative Procedure Act (SAPA) §202, a Notice of Proposed Rulemaking (Notice) in compliance with SAPA with respect to the Petition was transmitted to the Department of State on August 30, 2016, for publication in the State Register on September 14, 2016. Comments pursuant to the SAPA Notice will be due on October 31, 2016.

Please take notice that, pursuant to 16 NYCRR §3.3(a)(1), the time for responses to the Petition under 16 NYCRR §3.7(c) is hereby extended to October 31, 2016.

(SIGNED)

KATHLEEN H. BURGESS
Secretary