

**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

**COMMENTS OF THE CITY OF NEW YORK
IN RESPONSE TO THE PETITION FOR CLARIFICATION/REHEARING
OF
CONSTELLATION ENERGY NUCLEAR GROUP, LLC AND
EXELON GENERATION COMPANY, LLC.**

Dated: October 31, 2016

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PRELIMINARY STATEMENT

The City of New York (“City”) hereby submits these comments opposing the Petition for Clarification or, in the Alternative, Limited Rehearing (“Petition”) filed by Constellation Energy Nuclear Group, LLC and Exelon Generation Company, LLC (collectively “Exelon”) on August 22, 2016 in the above-captioned proceeding. Exelon seeks a modification of language in the New York Public Service Commission’s (“Commission”) Order Adopting a Clean Energy Standard (“CES”)¹ that essentially requires Exelon to continue operating its entire nuclear generation fleet in New York as a condition to receive zero emissions credit (“ZEC”) payments.

The continued operation of the State’s entire nuclear fleet, which the Commission intended to ensure via the ZEC aspects of the CES Order, is an important corollary to the carbon reduction goals of the CES; as the Commission noted, “losing the carbon-free attributes of [the nuclear] generation before the development of new renewable resources between now and 2030, would undoubtedly result in significantly increased air emissions due to heavier reliance on existing fossil-fueled plants or the construction of new gas plants.”²

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 August 1, 2016) (“CES Order”).

² *Id.* at p. 19

The CES Order was clear that the provision of long-term support for the upstate nuclear units is contingent on the sale of the James A. FitzPatrick Nuclear Generating Facility (“FitzPatrick”) and, concomitantly, that all four upstate nuclear facilities would remain in service. Exelon now seeks the ability to close one or more of those facilities while retaining long-term, above market financial support for the remaining facilities. This is a substantial change in the balance the Commission sought to achieve and could result in ratepayers not receiving value that is commensurate with the amounts they will be required to pay to Exelon. The Commission should reject the changes sought by Exelon and deny its petition for rehearing.

ARGUMENT

POINT I

THE DURATION OF THE ZEC-BASED FINANCIAL SUPPORT IS APPROPRIATELY LINKED TO THE CONTINUED OPERATIONS OF ALL OF THE UPSTATE NUCLEAR FACILITIES

There are four upstate nuclear facilities – the R.E. Ginna Nuclear Power Plant (“Ginna”) with a nameplate rating of 614 MW, Nine Mile Point 1 Nuclear Station (“NMP1”) with a nameplate rating of 641.8 MW, Nine Mile Point 2 Nuclear Station (“NMP2”) with a nameplate rating of 1,320 MW, and FitzPatrick with a nameplate rating of 882 MW. The CES Order clearly and unequivocally conditions the guarantee of 12-year ZEC contracts for these units on the sale of FitzPatrick and the continuation of operations at all four units through 2029, as follows:

“For the three facilities for which an initial determination of facility-specific public necessity has been made upon inception of the program, the 12-year duration will be conditional upon a buyer purchasing the FitzPatrick facility and taking title prior to September 1, 2018, the date six months before the commencement of the period of Tranche 2. If the sale and closing does not occur,

there will be no commitment for the program to continue beyond Tranche 1 and the Commission will have six months before the otherwise planned commencement of Tranche 2 to determine a future course of action, if any.”³

There can be no dispute that this condition was intentional. It is directly based on the Commission’s finding

“that there is a public necessity to provide ZEC payments to the FitzPatrick, Ginna and the Nine Mile Point facilities. The Commission finds that it is in the public interest to provide these ZEC payments for the purpose of maintaining the emission-free attributes because there are insufficient zero-emission alternatives available to replace *them* any time soon. Retention of the upstate nuclear *facilities* would also help maintain fuel diversity and fuel security. The *facilities* in question represent significant investment in infrastructure, are operational, and have excellent safety records.”⁴

The Commission clearly grouped all four units and the express language used demonstrates that their value is based on their collective contributions to reducing greenhouse gas emissions and preserving system reliability. Importantly, nowhere in the CES Order does the Commission assess the value of the nuclear plants individually with respect to these benefits or find that the value provided by each unit in isolation justifies a 12-year duration for an individual ZEC contract for it.

The CES Order further explains that:

Given the continuing significant long-lived investments required for all of the units, a long-term contract providing certain terms is warranted. The long duration also has the considerable benefit of ensuring that the zero-emissions attributes will be preserved for a considerable period of time to give the RES program an opportunity to provide new renewable resources on a scale necessary to prevent backsliding on carbon emissions. The 12-year duration however will be conditional upon a buyer purchasing the FitzPatrick facility and taking title prior to September 1, 2018, the

³ CES Order at Appendix E, ¶ 6.

⁴ CES Order at pp. 128–29 [emphasis added].

date six months before the commencement of the period of Tranche 2. If the sale and closing does not occur, there will be no commitment for the program to continue beyond Tranche 1 and the Commission will have six months before the otherwise-planned commencement of Tranche 2 to determine a future course of action, if any.⁵

Likewise, this language makes clear that the 12-year duration obligation applies to *all four* facilities, not just FitzPatrick. This intuitively makes sense. Entergy Corporation had announced plans to close FitzPatrick. Had it done so, the State would have lost 882 MW of carbon-free generation. Keeping Fitzpatrick open under a long-term, above market contract but then allowing Ginna and/or NMP1 to close would either significantly reduce the net contribution, or result in a net loss, of carbon-free generation.⁶ Put another way, this result would not justify the amount paid to Exelon, and it is not consistent with the Commission's public interest finding that underlies the ZEC construct.

By its Petition, Exelon disregards the Commission's clear intent and seeks to undermine the Commission's public interest finding. The relief it seeks is not a clarification of the CES Order; rather, Exelon wants a material modification to the CES Order. That is, Exelon wants the ability to preserve its long-term, highly lucrative ZEC payments while bearing no obligation to keep either Ginna or NMP1 open.⁷ The Commission should reject this request as it could seriously hinder achievement of the State's 80x50 greenhouse gas emissions reduction goal.⁸

⁵ *Id.* at pp. 143–144.

⁶ It is the City's understanding that NMP2 is economically viable and not at risk of closure. *Cf.* CES Order at p. 126.

⁷ Petition for Rehearing at p. 3.

⁸ The request also is inconsistent with the rationale provided by the Commission to justify the ZEC construct, including "complicat[ing] the State's compliance with likely federal carbon standards," "radically reducing the State's fuel diversity [, which] could [adversely] affect system reliability and price stability," and "have other significant adverse economic impacts on State energy consumers and the State as a whole." CES Order at p. 19.

Exelon attempts to support its request by suggesting that “the Commission could not have intended to put at risk the ZEC contracts for the R.E. Ginna and Nine Mile Point Facilities.”⁹ It further contends that the CES Order’s language “jeopardizes” the preservation of Ginna’s and NMP1’s clean energy attributes.¹⁰ These assertions lack merit and should be rejected. It is not the CES Order as adopted that jeopardizes the carbon-free attributes of these facilities, it is the change sought by Exelon that does so.

The Commission should not decouple Exelon’s obligation to keep FitzPatrick open from its obligation to ensure that Ginna and NMP1 remain open. The Commission should not allow Exelon to obtain windfall profits for an extended period from preserving 882 MW of carbon-free generation while allowing it to shutter between 614 MW and 1,256 MW of similar generation.¹¹ The Commission appropriately linked the 12-year term for the ZEC payments to keeping all four units open, and it should not deviate from that position.

The factual setting that has developed since the CES Order was issued and before the Petition was filed further undercuts Exelon’s position and demonstrates why the Petition should be denied. Exelon and Entergy have entered into an agreement to sell FitzPatrick from the latter to the former, and the companies have sought regulatory approval of the sale.¹² The development means that the sale of FitzPatrick is no longer a hypothetical possibility. If Exelon

⁹ Petition for Rehearing at p. 3.

¹⁰ *Id.* at p. 6.

¹¹ The windfall profits arise from ZEC payments that are well in excess of the going forward costs of the Upstate nuclear plants.

¹² Case 16-E-0472, Transfer of the James A. FitzPatrick Nuclear Power Plant From Entergy Nuclear FitzPatrick, LLC to Exelon Generation Company, Joint Petition of Entergy Nuclear FitzPatrick, LLC and Exelon Generation Company, LLC Pursuant to Section 70 of the New York Public Service Law For Approval of the Transfer of the James A. FitzPatrick Nuclear Power Plant and Related Assets and For a Declaratory Ruling Continuing Lightened Regulation, filed August 22, 2016 (“Nine Mile Section 70 Petition”).Nine Mile Section 70 Petition.

truly intends to keep all four Upstate nuclear plants open, the “clarification” and/or modification it seeks would be entirely unnecessary. The fact that Exelon is seeking a modification indicates, at a minimum, that it is considering closing one or more of those facilities. While there remains some dispute over the reasonableness of the balance struck by the Commission between ratepayers and Exelon regarding the ZEC construct, as well as the allocation of the ZEC costs, there is no doubt that the closure of one or more nuclear units nullifies any semblance of a balance and renders the 12-year above market ZEC contracts and payments indisputably unjust and unreasonable.

POINT II

ALLOWING EXELON TO CLOSE GINNA AND NMP1 WILL DIMINISH PROGRESS TOWARDS ACHIEVEMENT OF THE STATE’S 80x50 GOAL

The Petition incredulously couches Exelon’s request as a public service to ensure the State can meet federal carbon standards, and to avoid “dangerously higher reliance on natural gas.”¹³ However, as discussed above, Exelon’s Petition would thwart the Commission’s goal, with the likely result being, for perhaps an extended period of time, natural gas-fueled generation replacing the capacity lost from the closure of the nuclear units. As clearly set forth in the CES Order:

If the upstate power plants follow-through with their intent to close in the near term, New York would need to procure more of its electricity from fossil fuel generating plants, likely natural gas plants, which would result in increases in carbon dioxide, nitrogen oxide, and other pollutants. Overall, the loss of upstate nuclear facilities would threaten emissions reductions achieved through the State’s renewable energy programs, diminish fuel diversity,

¹³ Petition for Rehearing at p. 3.

increase price volatility, and harm host communities. Support for these facilities through a CES mechanism reduces these threats.¹⁴

Thus, granting Exelon's proposed changes is wholly contrary to the very policy considerations it cites in the Petition, particularly the purpose of the ZEC program, itself. Instead, the closure of either or both of Ginna and NMP1 would stifle progress towards "achieving a largely decarbonized energy system by the middle of the century."¹⁵

The City respectfully urges the Commission to preserve the language of the CES Order as it is more likely than the language sought by Exelon to allow for other carbon-free generation sources, rather than fossil-fuel generation, to eventually to replace the nuclear generation and maintain fuel diversity, bolster electric system reliability, and enhance the State's economy.¹⁶ If the Commission determines that any clarification of the CES Order is needed, it should clarify that it expressly intended to link the duration of the ZEC contracts to the continued operations of Ginna, NMP1, NMP2, and Fitzpatrick through 2030, and that the balance it attempted to strike between the interests of ratepayers and Exelon's shareholders is based and dependent on the continued operation of all four facilities.

CONCLUSION

Exelon's request for a material modification to the CES Order should be denied, and the language in the CES Order is clear and requires no clarification. Decoupling the obligation to maintain all four Upstate nuclear plants from the 12-year duration of the ZEC payments is not in the public interest and negates the balance the Commission attempted to achieve between the

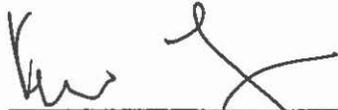
¹⁴ CES Order at Appendix G, ¶ 5.

¹⁵ CES Order at p. 20.

¹⁶ *Cf.* CES Order at p. 19.

interests of ratepayers and Exelon's shareholders. For all of these reasons, the Commission should reject Exelon's Petition for Clarification or, in the Alternative, Limited Rehearing in its entirety.

Respectfully submitted,



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