



structure for the quadrennial review process. Constellation Energy Generation, LLC (“Constellation”) remains committed to assist New York in implementing its climate change initiatives. Constellation hereby provides these comments on the Draft Implementation Plan in response to the ZEC 2.0 SAPA Notice which are limited to identifying the need to revise NYSERDA’s deadline to post the ZEC rate for each compliance year in light of the Commission’s determination to revise the annual term for the ZEC program to a calendar basis beginning January 1, 2030.<sup>3</sup>

Expressly finding the State must preserve the emissions free energy generated by the New York Nuclear Fleet in its CES Biennial Review Order, the Commission directed the Staff of the New York Department of Public Service (“DPS Staff”) to evaluate the structure for an extended ZEC program.<sup>4</sup> In its ZEC 2.0 White Paper, DPS Staff confirmed license renewal applications must be submitted for two New York Nuclear Fleet facilities by Q2 2026 and, taking into account a confluence of factors, recommended the Commission issue an order extending the ZEC program by providing for contracts with a defined stream of maximum ZEC levels per tranche and a 20-year term spanning 2029 through 2049.<sup>5</sup>

In its ZEC 2.0 Order, the Commission reviewed the efficacy of the ZEC 1.0 program to date and expressly established the importance of its ongoing durability to ensure long term capital

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<sup>3</sup> See New York State Register, I.D. No. PSC-11-26-00007-P, “Implementation of Program Rules for the Zero-Emissions Credit Program and a Mater Contract for Other Programs” (hereinafter, “ZEC 2.0 SAPA Notice”). Constellation is the operator and, with the exception of an 18% interest in the Nine Mile Point 2 facility held by the Long Island Power Authority, the upstream owner of the New York Nuclear Facilities.

<sup>4</sup> See NYPSC Case 15-E-0302, *supra*, Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings (issued and effective May 15, 2025) (hereinafter, “CES Biennial Review Order”) at 68.

<sup>5</sup> See NYPSC Case 15-E-0302, *supra*, “Department of Public Service Staff Zero-Emissions Credit Program Extension Proposal” (issued July 31, 2025) (hereinafter, “ZEC 2.0 White Paper”) at 15-16 (recognizing “Upstate nuclear facilities need continued revenue certainty to operate beyond the ZEC 1.0 program period”) (citation omitted); *see also id.* at 25 (basing recommendation to extend program for full license renewal term of first two units on numerous salient reliability, climate change and economic factors).

investment decisions could be made.<sup>6</sup> Based on the full record developed, the Commission thus adopted the ZEC 2.0 Program and directed NYSERDA to execute a 20-year contract with each owner of the New York Nuclear Fleet facilities “in accordance with the price, contract period and other terms specified in this Order.”<sup>7</sup>

Consistent with the ZEC 2.0 Order, the Draft ZEC 2.0 Implementation Plan captures the defined payment structure over the full contract term calculated by formula in two-year tranches, delineates the mechanisms and associated provisions to be memorialized by contract, addresses the overall program parameters and establishes the structure for quadrennial review. Specific to the mechanisms for the ZEC formula which will be incorporated in the ZEC 2.0 contracts, the Draft ZEC 2.0 Implementation Plan, *inter alia*, delineates updates to the social cost of carbon component and details defining implementation of the conversion factor adjustment and the structure for the forecast energy and capacity factor inclusive of the basis differential adjustment.<sup>8</sup>

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<sup>6</sup> See ZEC 2.0 Order at 58 (confirming Staff’s proposal to replicate core ZEC program with limited adjustments to meet operational needs from 2029 through 2049 and administered by applying a defined payment stream calculated by formula over eleven two-year tranches and one shorter nine-month stub period in 2029 was designed to provide sufficient revenue for ongoing production of emissions-free energy in New York in line with MWh levels achieved throughout the ZEC 1.0 program).

<sup>7</sup> *Id.* at 79 (incorporating same framework as was utilized for initiation of ZEC 1.0 Program by further establishing ZEC 2.0 contract terms must “conform to the requirements specified in this Order”). Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC and Constellation FitzPatrick, LLC are the owners of the Nine Mile station, the Ginna facility and the FitzPatrick facility, respectively, they have each executed the ZEC 1.0 contract with NYSERDA for their respective facility and the ZEC 2.0 contracts will be executed by and between the same counterparties for each respective facility per the Commission’s ZEC 2.0 Order.

<sup>8</sup> See ZEC 2.0 Order at 48-58 (finding ZEC formula components proposed by DPS Staff, inclusive of updating method applied to the social cost of carbon component and limited revisions to downward-only adjustment mechanism incorporated within structure retained to determine energy and capacity price forecast component, were “a reasonable and appropriate approach for the ZEC 2.0 Program which is intended to be an extension of the ZEC 1.0 Program” to “recognize and appropriately value the environmental attribute associated with the generation of electricity while also ensuring that the facilities earn enough revenue to continue operating”); *see also* Draft ZEC 2.0 Implementation Plan at 4-8 (establishing plan provisions conform and clarify warranted changes from ZEC 1.0 Program to effectively implement ZEC 2.0 Program given facts and circumstances specific to the future period in compliance with Commission intent, findings and directives in ZEC 2.0 Order).

The Draft ZEC 2.0 Implementation Plan also complies with the Commission's directive to move to a calendar approach for the ZEC 2.0 Program by adopting a one-time, nine-month tranche for 2029 only.<sup>9</sup> Lastly, building on the foregoing, the Draft ZEC 2.0 Implementation Plan accurately captures the ZEC 2.0 Order directive for DPS Staff, in consultation with NYSERDA, to quadrennially assess past and anticipated costs, revenues and capital expenditures for safe and reliable operations that reflect the value of the environmental attributes and -- separate from such assessment -- apply the defined ZEC levels set forth in the ZEC 2.0 Order subject to potential adjustment to capture the basis differential and conversation factor, if any.<sup>10</sup>

Constellation appreciates the extensive efforts dedicated by DPS Staff and NYSERDA to reflect the value of the environmental attributes produced by the New York Nuclear Fleet. Comprehensively establishing the details of program implementation in the Draft ZEC 2.0 Implementation Plan in compliance with the ZEC 2.0 Order to then be memorialized in the ZEC 2.0 contracts will allow the ZEC 2.0 Program to provide the durability that is essential to support continued safe and reliable operation of the New York Nuclear Fleet.

Constellation thus hereby supports Commission approval of the substantive components of the Draft ZEC 2.0 Implementation Plan. Constellation also highlights one procedural consideration in these Comments that requires a limited change to the deadline to set the ZEC rate for each compliance year once implemented on a calendar year basis beginning in 2030.

For administrative efficiency, the Commission adopted NYSERDA's proposal to shift administration of the ZEC program on a calendar basis in its ZEC 2.0 Order thereby aligning it

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<sup>9</sup> *Id.* at 8-9 (shifting from tranche period start of April 1<sup>st</sup> to January 1<sup>st</sup> beginning with Tranche 8 and designating period from April 1, 2029 through December 31, 2029 as Tranche 7).

<sup>10</sup> *Id.* at 9.

with the other environmental attribute programs in this proceeding.<sup>11</sup> Pertinent here, the federal Inflation Reduction Act (“IRA”) provides for facilities that generate emissions free energy to receive credits to their owners’ corporate tax returns due each year by October 31<sup>st</sup> under certain market pricing levels (e.g., in the context of nuclear operations by facilities owned by private entities, production tax credits (“PTCs”) can be awarded). The New York Nuclear Facilities have agreed to adjust the level of payments for environmental attribute credits due from consumers to account for such credits under the IRA’s provisions. Associated therewith, Constellation has contractually committed to confirm pertinent PTC-related information to NYSERDA promptly after the tax return deadline each year which differentiates the Tier 3 program and its associated timing requirements from the Commission’s other CES program tiers.

By Commission directive in the ZEC 1.0 Implementation Plan Order, NYSERDA must post the ZEC rate at least 60 days before it goes into effect for each respective compliance year (“ZEC 1.0 Implementation Plan”).<sup>12</sup> With federal corporate tax returns due by October 31<sup>st</sup> each year, NYSERDA required to issue the final ZEC rate each year 60 days before the compliance year begins, and the ZEC compliance years beginning April 1<sup>st</sup> under the ZEC 1.0 Program, the deadlines set in the ZEC 1.0 Implementation Plan currently align to establish a feasible schedule. However, with the adoption of the January 1<sup>st</sup> effective date to establish the ZEC rate for each compliance year beginning in 2030, it will not be possible for NYSERDA to continue to provide this requisite 60 days’ notice given the October 31<sup>st</sup> due date for federal tax returns.

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<sup>11</sup> See ZEC 2.0 Order at 59.

<sup>12</sup> See NYPSC Case 15-E-0302, *supra*, Order Approving Zero-Emissions Credit Implementation Plan with Modifications (issued and effective September 20, 2019) (hereinafter, “ZEC 1.0 Implementation Plan Order”) at 3-4, 15; *see also*, NYPSC Case 15-E-0302, *supra*, New York State Energy Research and Development Authority and Staff of the New York Department of Public Service “Final Zero Emissions Credit (ZEC) Implementation Plan” at 4 (dated October 21, 2019) (establishing NYSERDA will notify each LSE of the applicable ZEC rate for the following year and will post the rate on its website).

To illustrate, if Constellation were to receive PTCs associated with the generation of emissions free energy by the New York Nuclear Fleet in 2028, it will monetize the PTCs in the federal corporate tax return that must be filed by October 31, 2029. However, NYSERDA would be required to file the ZEC rate for 2030 *by the next day* if the 60-day notice requirement set by the Commission for the ZEC 1.0 Implementation Plan were to be continued in the final implementation plan for the ZEC 2.0 program. The time period for NYSERDA's notice to the LSEs should thus be reduced in the final implementation plan the Commission adopts for the ZEC 2.0 Program so that NYSERDA has the realistic ability to meet the notification deadline to set the ZEC rate for the 2030 compliance year with its January 1<sup>st</sup> start date. Without that minor adjustment, this timing disconnect would continue for each year that the IRA provisions remain effective.<sup>13</sup>

To provide NYSERDA with adequate time to accurately calculate the ZEC rate and provide consumers with transparency and certainty concerning the date it will become available each year, Constellation respectfully urges the Commission to direct NYSERDA and DPS Staff to specify in the final implementation plan filed for the ZEC 2.0 Program that the associated ZEC rate will be issued no later than 45 days from the beginning of each compliance year.

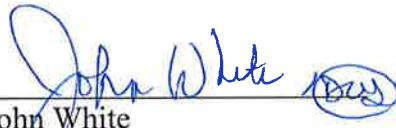
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<sup>13</sup> Currently, these provisions of the IRA remain in effect through 2032, and thus, could affect the established ZEC rate up to the 2034 compliance year.


Constellation commits to timely provide NYSERDA and DPS Staff the relevant PTC information and to assist them in completing this calculation each year. Subject to this limited ministerial revision, Constellation respectfully urges the Commission to expeditiously issue an order adopting the Draft ZEC 2.0 Implementation Plan to allow ZEC 2.0 contract negotiations to proceed effectively.

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Respectfully submitted,



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