

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to)
Implement a Large-Scale Renewable Program and a) Case 15-E-0302
Clean Energy Standard)
)

Comments of Constellation Energy Generation, LLC

On May 18, 2023, the New York Public Service Commission (“Commission”) initiated a proceeding¹ to identify the actions necessary to achieve the state’s ambitious clean energy goals, namely the Zero-Emissions by 2040 target (the “2040 Target”) established by the Climate Leadership and Community Protection Act.² Many stakeholders, including Constellation Energy Generation, LLC (“Constellation”), responded to the Commission’s initial solicitation of comments on August 16, 2023. The Commission convened a technical conference on December 11-12, 2023, and now seeks feedback on a handful of additional questions identified in a *Notice Seeking Further Comment* issued October 20, 2023.

Constellation owns the top-producing carbon-free nuclear generation fleet in the nation, with nuclear facilities located in New York, Pennsylvania, Maryland, New Jersey, and Illinois. Our nuclear fleet in New York State includes facilities in Oswego (Nine Mile Point Nuclear Power Station Units 1 & 2 and James A. Fitzpatrick Nuclear Power Plant) and Ontario (Ginna Nuclear Power Plant). These four upstate nuclear units produce nearly half of the state’s total emissions-free electric output³ and avoid over 19 million tons of

¹ See *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Initiating Process Regarding Zero Emissions Target, N.Y.P.S.C. Case 15-E-0302 (May 18, 2023) (“Zero Emissions Order”).

² Chapter 106 of the Laws of 2019 (codified, in part, in Public Service Law § 66-p).

³ See NYISO, *Gold Book: 2023 Load & Capacity Data Report*, at 75 (Apr. 2023), <https://www.nyiso.com/documents/20142/2226333/2023-Gold-Book-Public.pdf> (the “NYISO 2023 Gold Book”).

carbon dioxide emissions annually.⁴ Constellation is therefore an active and vital participant in the state’s clean energy transformation and appreciates the Commission’s efforts on this important topic. We continue to believe that a reliable zero-emission electric grid will require a mix of technology types, including emissions-free resources that can adequately replace the conventional fossil-powered generation that will be deactivating in the near- and medium-term. And we continue to believe that any new program created for purposes of the 2040 Target should be predicated, first and foremost, on retaining the existing zero-emissions nuclear fleet.⁵ Below we respond to certain of the additional questions identified by the Commission in the October 20 Notice in this proceeding.

I. RESPONSES TO SELECT QUESTIONS IDENTIFIED BY THE COMMISSION

- A. *PSL §66-p(2) designates “fuel cells which do not utilize a fossil fuel resource in the process of generating electricity” as a “renewable energy system.” What significance, if any, does this designation have for characterizing fuel cells that consume hydrogen, biogas, renewable natural gas, or other non-fossil fuels as “zero emissions”?*

The clear intent of the statute is that all “renewable energy systems” count toward the “zero-emissions” resource target. Thus, the designation of fuel cells that do not utilize fossil fuels as “renewable energy systems” suggests a clear intent that such resources be classified as “zero-emissions” resources as well.

In furtherance of the statute’s ultimate goal of achieving 100% zero emissions by 2040, Section 66-p(2) of the Public Service Law establishes two power sector targets: (1) a 70% “renewable energy system” target by 2030 and (2) a 100% zero-emissions target by 2040. The only logical read of the two targets is that the 2030 “renewable energy systems” target is intended to be a step toward the ultimate goal of a zero-emissions grid.⁶ That is, all renewable energy systems are zero-emissions resources (though the reverse is not

⁴ For a more complete description of Constellation’s business and its impact on New York State, please refer to Constellation’s comments in this proceeding filed August 16, 2023.

⁵ See Comments of Constellation, Case 15-E-0302 at 7-8 (filed Aug. 16, 2023).

⁶ The Commission has itself expressed this understanding. See Zero Emissions Order at 12 (noting that the CES Modification Order established that renewable energy systems are “de facto” zero emissions resources).

always true—not all zero-emission resources are necessarily “renewable”).⁷ Otherwise, the state would be mandating procurement of resources by 2030 that would no longer be acceptable in 2040. Such a result would be illogical on its face. Accordingly, fuel cells that do not utilize fossil fuels should be considered both renewable energy systems and zero emissions resources.

As noted in our initial comments, Constellation believes that hydrogen—including hydrogen fuel cells—can be a valuable contributor to the significant “dispatchable emissions-free resource” need that New York ISO and others have identified.⁸ Hydrogen is not a fossil fuel and can even be produced through a process called electrolysis using non-fossil power sources (e.g., nuclear energy).⁹ Clean hydrogen fuel can then be used to produce electricity in dispatchable fuel cell resources with the capability to ramp up or down on short notice when needed. Investment in flexible, non-emitting resources like fuel cells will be critical moving forward to complement an increasingly intermittent system, and their inclusion for the 2040 Target is therefore imperative.

II. CONCLUSION

As the nation’s leading producer of carbon-free electricity, Constellation looks forward to playing an active role in the state’s decarbonization efforts in the years ahead. We appreciate the Commission’s consideration of the comments contained here.

Respectfully submitted,

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⁷ Nuclear resources are an example of a power source that is emissions-free but not “renewable.”

⁸ NYISO estimates that the system may require as much as 45 GW of DEFRs by 2040. NYISO, *2021-2040 System & Resource Outlook*, at 11 (Sept. 22, 2022), <https://www.nyiso.com/documents/20142/33384099/2021-2040-Outlook-Report.pdf/a6ed272a-bc16-110b-c3f8-0e0910129ade?t=1663848567361> (the “NYISO Outlook Report”).

⁹ See Comments of Constellation, Case 15-E-0302 at 6-7 (filed Aug. 16, 2023).