MULTIPLE INTERVENORS

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July 22, 2016

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

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

Dear Secretary Burgess:

Pursuant to the Notice Soliciting Additional Comments issued by the New York State Public Service Commission on July 8, 2016, Multiple Intervenors hereby submits its attached Comments on the New Staff Proposal that also was issued on July 8th in the above-referenced proceeding. Copies of the attached Comments are being served herewith on the active parties in this proceeding.

Respectfully submitted,

COUCH WHITE, LLP

Michael B. Mager

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Counsel to Multiple Intervenors

MBM/dap
Attachment
cc: Active Parties (via E-Mail; w/Attachment)
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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
MULTIPLE INTERVENORS
ON NEW STAFF PROPOSAL

Dated: July 22, 2016

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PRELIMINARY STATEMENT

In response to the Notice Soliciting Additional Comments issued by the New York State Public Service Commission ("Commission") on July 8, 2016 in Case 15-E-0302, Multiple Intervenors hereby submits its Comments on "Staff's Responsive Proposal for Preserving Zero-Emissions Attributes" (hereinafter, the "New Staff Proposal") issued on the same date by New York State Department of Public Service Staff ("Staff").[1]

As Multiple Intervenors has advocated throughout this proceeding, it is extremely concerned about the cost impacts of the proposed Clean Energy Standard ("CES"), including, but not limited to, proposals to force captive customers to provide billions of dollars in out-of-market subsidies to merchant owners of selected upstate nuclear generation facilities. Additionally, as structured (*i.e.*, subsidies paid volumetrically, on a per kWh basis, resulting in higher supply prices), the CES would result in significant, disproportionate cost impacts on large, high-load-factor customers, many of which (i) are among the State's largest employers, (ii) compete in energy-intensive businesses and industries, (iii) already are struggling to conduct business in New York and retain or expand jobs and capital investments within the State, and/or (iv) also operate facilities in other states and countries with lower energy costs.

Initially, the focus of the CES phase of this proceeding was on the "Staff White Paper on Clean Energy Standard" ("White Paper"), which was issued on January 25, 2016, and the subject of comments that were due on April 22, 2016.[2]

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[1] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*.

[2] Case 15-E-0302, *supra*, Staff White Paper on Clean Energy Standard (dated January 25, 2016).

Shortly thereafter, the Commission issued an order soliciting comments on a proposal to provide expedited, customer-funded subsidies to selected merchant-owned nuclear generation facilities.[3] Specifically, parties were asked to comment on a "Proposed Expedited Program to Provide Financial Support for the Benefit of the Electric System to Maintain the Viability of Certain Nuclear Power Plants" (hereinafter, "Proposed Expedited Nuclear Subsidy Program").[4] Those comments were due on May 2, 2016.

The proposals set forth in the White Paper then were analyzed in a PowerPoint presentation on projected CES costs and benefits – the "Clean Energy Standard White Paper – Cost Study" ("Cost Study") – which was issued on April 8, 2016 and the subject of comments that were due on June 6, 2016.[5]

Multiple Intervenors has participated actively in all phases of this proceeding. For instance, Multiple Intervenors submitted comments in response to the White Paper, the Proposed Expedited Nuclear Subsidy Program, and the Cost Study.[6] Multiple Intervenors also has

[3] Case 15-E-0302, *supra*, Order Further Expanding Scope of Proceeding and Seeking Comments (issued February 24, 2016).

[4] *See id.*, Appendix A.

[5] Case 15-E-0302, *supra*, Notice and Comment Period for Staff White Paper and Cost Study (issued April 8, 2016) and Cost Study (dated April 8, 2016).

[6] *See* Case 15-E-0302, *supra*, Multiple Intervenors' Initial Comments on White Paper (dated April 22, 2016), Comments of Multiple Intervenors on Proposed Expedited Program to Require Customers to Subsidize Selected Nuclear Generation Facilities (dated May 2, 2016), and Comments of Multiple Intervenors on Clean Energy Standard Cost Study (dated June 6, 2016). Multiple Intervenors incorporates herein by reference the positions advanced in its prior submissions in this proceeding.

participated actively in a companion proceeding – Case 16-E-0270 – which has been addressing the facility costs of affiliated owners of certain New York nuclear generation facilities.[7]

The New Staff Proposal, issued on July 8, 2016, is very different from the nuclear-related proposals advanced in the White Paper and the Proposed Expedited Nuclear Subsidy Program. In many respects, it essentially is a brand new proposal. For instance, instead of basing the amount of the subsidies to be paid to selected merchant owners of nuclear generation facilities on the difference, if any, between projected market revenues and projected operating costs as proposed previously, the New Staff Proposal essentially would ignore facility operating costs and, instead, base subsidies on estimates by other entities of the social cost of carbon ("SCC").

Significantly, the projected costs of the New Staff Proposal have yet to be evaluated fully. Such evaluation is extremely important – after all, the costs of whatever nuclear-related subsidies ultimately may be approved by the Commission in this proceeding will be borne entirely by captive customers. Moreover, while Multiple Intervenors has been (and remains) very concerned about the potential costs of the CES proposals embodied in the White Paper and the Proposed Expedited Nuclear Subsidy Program, the New Staff Proposal is projected to be much more expensive for customers than what previously had been projected in the Cost Study:

[7] *See generally* Case 16-E-0270, *Proceeding on Petition of Constellation Energy Nuclear Group, LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants*. Multiple Intervenors is filing its Initial Comments in Case 16-E-0270 on the same day that these Comments are being submitted herein.

Proposal	Projected Cost	Period Projected	Projected Monthly Customer Cost
Staff White Paper	$59 million to $658 million[8]	April 2017 through December 2022 (68 months)[9]	$9.68 million using high end of cost range; $5.27 million using midpoint of cost range[10]
New Staff Proposal	Up to $965 million[11]	April 2017 through March 2019 (24 months)[12]	Up to $40.21 million[13]

Thus, according to Staff's own calculations, the nuclear-related subsidies for just the first two years under the New Staff Proposal potentially could cost customers between 147% and 1,636% more than the projected cost range of the subsidies proposed in the Staff White Paper for an initial period of five years and eight months. On a monthly basis, the potential cost of the New Staff Proposal is more than quadruple the upper limit (and more than seven times the midpoint) of the estimated cost of the proposals advanced in the Staff White Paper. This enormous increase in projected costs to customers has yet to be evaluated or justified, and represents just one example of Multiple Intervenors' many concerns with the New Staff Proposal.

In New York's apparent haste to appease the owners of selected nuclear generation facilities to ensure the continued operation of those facilities, customers are being exposed to

[8] Cost Study at 84.

[9] The Cost Study refers to the period examined as "to 2023" (*id.*), which Multiple Intervenors interprets as meaning April 2017 through December 2022.

[10] Calculated as follows: (a) $658 million divided by 68 months; and (b) $358.5 million (*i.e.*, midpoint of $59 million and $658 million) divided by 68 months.

[11] New Staff Proposal at 2.

[12] *Id.*

[13] Calculated as follows: $965 million divided by 24 months.

potentially 12 years of artificially-inflated and excessive subsidy obligations. Consequently, the stakes in this proceeding are extraordinarily high and Multiple Intervenors urges the Commission to proceed with due diligence and focus primarily on minimizing the costs that customers are being asked to bear in this and many other ongoing proceedings.

ARGUMENT

MULTIPLE INTERVENORS' COMMENTS ON THE NEW STAFF PROPOSAL

As detailed below, Multiple Intervenors has numerous concerns regarding the New Staff Proposal. For ease of review, Multiple Intervenors is advancing its positions and concerns consistent with the order in which issues and proposals are referenced in the New Staff Proposal. Accordingly, the order in which Multiple Intervenors addresses various issues in these Comments should not be interpreted as reflective of the priority of those issues to its members.

Introduction

The Introduction to the New Staff Proposal begins by indicating that it "takes the approach of valuing and paying for the zero-emission attributes based on a formula that starts with published estimates of the social cost of carbon." (New Staff Proposal at 1.) This is an entirely new basis for subsidizing nuclear generation facilities than what was advanced previously in the White Paper. Multiple Intervenors has numerous concerns regarding this new reliance on the SCC.

Initially, neither the Commission nor Staff have conducted any independent analysis on the SCC. Instead, Staff is relying solely on estimates of the SCC prepared by the U.S. Interagency Working Group ("USIWG"). (*Id.* at 2.) Significantly, however, those SCC estimates (i) are highly controversial, (ii) have been extremely volatile in the recent past, and (iii) have never been shown to be accurate representations of savings that purportedly would be realized by society if the emission of one short ton of carbon is avoided. Moreover, in this context, the SCC represents estimates of benefits that would inure to society at large, only a very small portion of which would be realized by and within New York. Furthermore, as Multiple Intervenors pointed out previously in this proceeding, absent modifications to the Regional Greenhouse Gas Initiative ("RGGI") that have yet to be proposed, incremental carbon reductions in New York seemingly would lead to increased allowances becoming available in the remaining RGGI states, thereby resulting in absolutely no carbon reductions – or environmental benefits – within the Northeast.[14]

The Introduction then notes that: "Staff's analysis shows that due to low natural gas prices, forecasted wholesale market prices are significantly lower than the average operating costs of the upstate nuclear units." (New Staff Proposal at 1.) While Multiple Intervenors suspects this statement may be accurate in the near-term, Staff's analysis has not been made public for review by other parties. Inasmuch as the likely costs of nuclear-related subsidies to customers is well into the billions of dollars under the New Staff Proposal, the record as to whether and to what extent such subsidies actually are needed to maintain the State's existing nuclear generation facilities should be developed further, made transparent, and subjected to public scrutiny.

Indeed, Staff's statement raises a number of additional issues, including, but not limited to, whether (i) it is applicable to all or only some of the upstate nuclear generation facilities, (ii) how long this projected differential between prices and costs is expected to last, (iii) the likelihood of each such facility electing to retire in the near-term absent customer-funded subsidies, and (iv) the likelihood of such facilities electing to retire if, for instance, subsidies covered only a portion of the projected near-term losses instead of, perhaps, all projected losses

[14] *See* Case 15-E-0302, *supra*, Comments of Multiple Intervenors on Clean Energy Standard Cost Study at 24-25.

and a return of some magnitude in addition thereto. Multiple Intervenors submits that deactivating a nuclear generation facility is not a decision that is made lightly or solely in response to short-term pricing trends (which is why certain facility owners routinely enter into financial hedges). Multiple Intervenors suspects that many if not most owners of nuclear generation facilities would choose to operate those facilities at a loss in the near-term if they expect to realize material profits in the future. Accordingly, customer funds should not be utilized as a form of guarantor of profitability for nuclear generation facilities.[15]

Staff then claims that, based on the SCC, the costs of emissions that would occur absent the upstate nuclear generation facilities would be approximately $1.4 billion over the next two years. (New Staff Proposal at 1.) As detailed, *supra*, Multiple Intervenors has numerous concerns regarding the reliance on estimates of the SCC in this proceeding. Additionally, Staff's claim assumes that, absent customer-funded subsidies, all of the upstate nuclear generation facilities would elect to retire, resulting in increased emissions. Such assumption is inappropriate, however, because there is absolutely no evidence that the two-unit Nine Mile nuclear generation facility would retire absent subsidies. In fact, Multiple Intervenors is not aware of any evidence that its owner even is considering retiring such facility in the foreseeable future. Indeed, no written notice of retirement relating to Nine Mile has been filed, which would trigger a Reliability Study to be conducted by the New York Independent System Operator, Inc. ("NYISO") and the responsible transmission owner.

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[15] This is especially true in light of the fact that one of the primary motivations behind New York's policy to encourage the divestiture of electric generating facilities was the desire to transfer the operational and market price risk associated with such facilities from utilities and their customers to merchant owners that willingly assumed those risks (and which transfer of risks presumably was factored into the purchase price for the facilities).

Next, Staff notes that its proposal would result in certain economic benefits, including the preservation of jobs at the nuclear generation facilities and property tax revenues. (New Staff Proposal at 1.) Multiple Intervenors concurs that if, *arguendo*, a nuclear generation facility truly would retire absent subsidies, the payment of those subsidies could, and presumably would, result in job and tax revenue savings, as well as a myriad of other potential economic benefits. Multiple Intervenors has no objections to Staff considering economic development benefits if evaluated fairly. Unfortunately, however, no real evaluation has been made here. Staff points to certain economic benefits that purportedly would occur if the payment of customer-funded subsidies prevent a nuclear generation facility from retiring but, importantly, disregards completely the economic harms that would befall customers forced to pay such subsidies.

The New Staff Proposal calls for the possible payment of customer-funded subsidies to owners of merchant nuclear generation facilities for 12 years. (*See id.* at 3-4.) It estimates that the incremental cost of such subsides could be as high as $965 million in just the first two years. (*Id.* at 2.) That cost would be reflected in higher electricity prices, which is detrimental to economic development efforts. Indeed, adoption of certain of Staff's proposals – such as allocating the costs on a purely volumetric basis and failing to maintain existing exemptions for New York Power Authority ("NYPA") allocations – would ensure that a very-large portion of these subsidies would be borne by large, high-load-factor customers, who also happen to be among the State's most energy-intensive and price-sensitive businesses, many of which operate facilities in other states and countries. Because New York would be acting on its own, as opposed to on a national or regional basis, the proposed subsidization of selected nuclear generation facilities would increase the price of electricity in New York vis-à-vis other states. Thus, Multiple Intervenors contends, it is inappropriate to rely upon or even consider jobs and tax revenues potentially saved by subsidizing selected nuclear generation facilities without also evaluating fully the job and tax revenues that potentially would be lost due to implementing policies that indisputably would raise the cost of electricity for all New Yorkers and, in particular, to large, high-load-factor customers.

Staff then asserts that: "The benefits of paying for the zero-emission attributes far exceed the costs." (*Id.*) This assertion is followed by a calculation of potential benefits that is not supported by any facts or analysis, nor was it advanced in the Cost Study published previously herein. Staff appears to be relying on portions of the Cost Study, and some unreleased additional information, but, importantly, the Cost Study contains numerous flaws which have yet to be addressed in this proceeding.

Numerous parties raised concerns about the methodologies employed, assumptions relied upon, and conclusions reached in the Cost Study. For its part, Multiple Intervenors asserted that the Cost Study is fatally flawed for the following reasons:

- The Cost Study focuses on costs only up until 2023, thereby disregarding substantial costs expected to be incurred after that time.

- The Cost Study focuses on costs commencing in 2020, thereby disregarding most costs expected to be incurred prior to that time.

- The Cost Study excludes substantial transmission-related costs that would be incurred, in whole or material part, due to the proposed CES.

- The Cost Study relies on an overly-aggressive forecast of wholesale energy and capacity price increases.

- The Cost Study fails to account for the highly-detrimental impact that the proposed CES would have on the State's Installed Reserve Margin ("IRM").

- The Cost Study relies on an aggressively-low forecast of New York electric load, thereby understating the costs of the proposed CES.

- The Cost Study over-relies on land-based wind generation facilities, thereby understating the subsidies required to achieve CES goals.

- The Cost Study overstates the likely output of land-based wind generation facilities.

- The Cost Study excludes all administrative and transactional costs, thereby understating the costs of the CES.

- The Cost Study assumes 1% voluntary market penetration by renewable resources that has not been justified.

- Only a very small fraction of the purported benefits of the CES would be realized by the customers bearing all of the costs.

- It is not clear that the proposed CES would result in any net reductions in greenhouse gas emissions.

- The Cost Study relies on an extremely-high value for the SCC that may be overstated.[16]

These and other concerns regarding the Cost Study should be addressed, substantively, so that the Commission has the benefit of understanding the true costs and benefits of the various options available to it. While Multiple Intervenors has no desire to delay unduly the Commission's resolution of the issues in this proceeding, decisions that may force customers to pay many billions of dollars in financial subsidies to owners of new renewable, existing renewable and existing nuclear generation facilities over roughly a 12-year period should not be rushed or based on an incomplete record. Even if, *arguendo*, the Commission is committed to approving a

[16] *See* Case 15-E-0302, *supra*, Comments of Multiple Intervenors on Clean Energy Standard Cost Study at 3-27. In Supplemental Comments, the NYISO similarly raised concerns regarding, *inter alia*, the impact of the CES on (i) the amount of additional transmission investment that may be needed in New York, and (ii) the State's IRM. *See* Case 15-E-0302, *supra*, Supplemental Comments of the New York Independent System Operator, Inc. (dated July 8, 2016). It is commendable that the NYISO raised substantive concerns to the Commission for its consideration on the CES. Multiple Intervenors encourages the Commission to consider carefully all of the concerns expressed by parties in this proceeding concerning the structure, the design, the projected costs, and the implementation of a CES. If, *arguendo*, the Commission adopts a CES of some type, it is exceedingly important that it be implemented in a manner that (i) is not detrimental to electric reliability and (ii) minimizes the incremental costs and impacts to customers.

CES that includes billions of dollars in subsidies to upstate nuclear generation facilities, the manner in which such a program is structured and implemented still could have enormous impacts – either positive or negative – on customers.

Definitions

Multiple Intervenors is concerned with the proposed definition of "load serving entity" ("LSE"). (*See* New Staff Proposal at 2.) While "any entity that secures energy to serve the electrical energy requirements of end-use customers in New York State" (*see id.*) is a reasonable definition of an LSE in common energy parlance, Multiple Intervenors disagrees with the implicit assumption that NYPA should be included in the definition of LSE for purposes of the CES. Rather, it is imperative that NYPA allocations be exempted from any obligation to pay subsidies that may be approved in this proceeding.

The proposed imposition of CES-related subsidies on NYPA and its customers, if adopted, would be extremely counterproductive to the State's economic development efforts and inconsistent with longstanding Commission precedent. Indeed, it is indisputable that the proposed inclusion of CES mandates on NYPA would increase costs, materially, to existing NYPA customers. As the Commission is well aware, NYPA's customers tend to be large, energy-intensive entities (and employers) for which electricity is a major (or *the* major) cost of conducting business. NYPA's customers are amongst the most price-sensitive customers in New York and, consequently, electricity cost increases to these customers could result in the significant loss of jobs, capital investments and tax base from the State. Similar to the White Paper, however, the New Staff Proposal ignores completely any analysis of these likely consequences of its recommendation to impose CES mandates on NYPA.

Application of the proposed CES mandates to NYPA also would be contrary to longstanding Commission precedent. For instance, when the Commission adopted the System Benefits Charge ("SBC") in 1998, it exempted NYPA allocations[17] and, since that time, repeatedly has approved the continuation of that exemption.[18] In 2005, NYPA filed comments advocating that the Commission should affirm and extend the exemption, explaining that "a primary statutory mission of NYPA is to provide low cost power to business and industry … in order to assist economic development in New York State…."[19] NYPA explained further that the "[i]mposition of SBC charges on NYPA's customers would be counterproductive to achievement of these objectives and would interfere with accomplishment of NYPA's statutory mission."[20] The Commission again extended the exemption, holding that it considered the application of such exemption to be a "settled issue."[21]

Importantly, the Commission preserved this exemption when it established the Renewable Portfolio Standard ("RPS") and the Energy Efficiency Portfolio Standard ("EEPS"). In so ruling, the Commission acknowledged explicitly with respect to the RPS that the exemption

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[17] Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 98-3, Opinion and Order Concerning System Benefits Charge Issues (issued January 30, 1998) at 6-7.

[18] *See*, *e.g.*, Case 94-E-0952, *supra*, Order Continuing and Expanding the System Benefits Charge for Public Health Programs (issued January 26, 2001) at 22.

[19] Case 05-M-0090, *supra*, Comments of New York Power Authority (dated October 17, 2005) at 1.

[20] *Id.*

[21] Case 05-M-0090, *In the Matter of the System Benefits Charge III*, Order Continuing the System Benefits Charge (SBC) and the SBC-funded Public Benefit Programs (issued December 21, 2005) at 30.

is necessary to promote the public interest in pursuing the State's economic development objectives.[22] In fact, in a very recent order, the Commission ruled that the NYPA exemptions from the SBC, the RPS surcharge and the EEPS surcharge should be extended to the Clean Energy Fund:

> As noted by MI, NYPA exemptions have been in place since each of the existing surcharges were implemented and were instituted for economic development purposes. We shall maintain all current NYPA exemptions for incremental collections approved in this Order.[23]

The numerous justifications for exempting NYPA allocations from RPS requirements and surcharges apply with full force and effect to CES mandates. Moreover, a decision to possibly terminate the exemption would have serious, detrimental impacts on NYPA's large, energy-intensive customers. Such decision also would be inconsistent with the Energy Plan, which explains that the "State needs to maintain its focus on affordability, so … more competitive industrial rates contribute to the growing mix of attributes that will attract new business to, and retain existing businesses in New York."[24] The Energy Plan further states that "[m]ore needs to be done to lower rates given utility costs are frequently cited as barriers to business relocation or expansion across the State."[25] Regulatory or other actions that impair the ability of NYPA to fulfill its statutory mission are inconsistent with the Energy Plan, and must be avoided.

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[22] Case 03-E-0188, *supra*, Order Regarding Retail Renewable Portfolio Standard (issued September 2, 2004) at 11.

[23] Cases 14-M-0094, *et al.*, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) at 94. The CES mandate, at least with respect to renewable resources, merely is an extension, or redesign, of the RPS.

[24] Energy Plan at 9.

[25] *Id.* at 9-10.

The New Staff Proposal fails to even address concerns raised previously by Multiple Intervenors and other parties regarding the proposed applicability of CES-related mandates to NYPA. If such mandates are imposed on NYPA, it would be detrimental to New York's efforts to promote economic development within the State. Accordingly, the Commission should exempt NYPA allocations from CES-related mandates, which would be consistent with its prior rulings with respect to the SBC, the RPS, and the EEPS. To implement such exemption, NYPA should be excluded explicitly from the definition of LSE for purposes of the CES.[26]

<u>Methodology</u>

The "Methodology" section of the New Staff Proposal contains 20 paragraphs. Multiple Intervenors hereby responds to the proposals contained in this section, and such response is presented in the same order in which the various proposals are advanced.

<u>Paragraph 1</u>

Multiple Intervenors agrees with Staff that customer-funded financial benefits made available to selected nuclear generation facilities under the CES constitute subsidies. (*See* New Staff Proposal at 3.) Such subsidies reflect out-of-market payments to facilities that have not demonstrated that they are needed to maintain electric reliability.[27] Moreover, when the current owners of the State's nuclear generation facilities decided to purchase those facilities, they assumed, willingly, all operational and market price risks associated therewith (and the assumption

[26] Multiple Intervenors also questions whether the Commission possesses the statutory authority to impose CES-related obligations on NYPA, which is a public authority.

[27] The R.E. Ginna nuclear generation facility ("Ginna") demonstrated previously that it was needed for reliability purposes. Such demonstration prompted a Reliability Support Services Agreement ("RSSA") with Ginna and the decision to require customers of Rochester Gas and Electric Corporation to also fund (in addition to the RSSA) a very-expensive transmission project – named the Ginna Retirement Transmission Alternative – that, when completed in early-2017, will allow Ginna to retire without jeopardizing reliability.

of such risks presumably was reflected in the prices paid to the State's electric utilities – for the benefit of their customers – when those facilities were divested). Multiple Intervenors commends Staff for "calling a spade a spade" and referring to CES-related payments from captive customers to merchant owners of nuclear generation facilities as subsidies.

Paragraph 2

In this paragraph, Staff proposes initially that "public necessity," for purposes of becoming eligible for nuclear-related CES subsidies, would be determined by the Commission, as a matter of discretion, based on the following five considerations:

> (a) the verifiable historic contribution the facility has made to the clean energy resource mix consumed by retail consumers in New York State regardless of the location of the facility; (b) the degree to which energy, capacity and ancillary services revenues projected to be received by the facility are at a level that is insufficient to provide adequate compensation to preserve the zero-emission environmental values or attributes historically provided by the facility; (c) the costs and benefits of such a subsidy for zero-emissions attributes historically provided in relation to other clean energy alternatives for the benefit of the electric system, its customers and the environment; (d) the impacts of such costs on ratepayers; and (e) the public interest.

(New Staff Proposal at 3.) Multiple Intervenors has several comments and concerns regarding this five-part test.

First, the meaning and the intent of subpart (a) is unclear. Nuclear facilities are deemed to be zero-emitting resources with respect to carbon; it is not clear that they should be considered "clean energy" given other environmental considerations. Putting that concern aside, it also is not clear how such "historic contribution" is to be evaluated, and whether it would render any nuclear generation facility ineligible for subsidies (or essentially is meaningless).

Second, Multiple Intervenors has no objections *per se* to the Commission evaluating projected wholesale market revenues for nuclear generation facilities. Significantly, however, Multiple Intervenors disagrees that any projected shortfall between projected costs and projected revenues – or projected revenues and what the Commission may deem "adequate compensation" (another unclear standard) – must be "covered" by customer-funded subsidies. For instance, the owner of a nuclear generation facility is unlikely to retire that facility in response to projected short-term losses if longer-term gains also are projected. Moreover, to the extent any subsidies are needed, merely reducing a facility's projected short-term losses (as opposed to covering all projected losses and guaranteeing a profit) may be sufficient to ensure that the facility remains operational. If, *arguendo*, the Commission adopts a CES with a nuclear tier, it should focus on minimizing customer-funded subsidies to the lowest possible levels. Importantly, absent a demonstration that a nuclear generation facility really would retire, any subsidies paid to that facility would produce zero benefits because the facility essentially would be a "free rider." In that case, subsidies produce substantial costs to customers with no offsetting benefits whatsoever.

Third, given the substantial increase in nuclear-related subsidies now envisioned by the New Staff Proposal, there is no record evidence as to "the costs and benefits of such a subsidy in relation to other clean energy alternatives."

Fourth, it is not clear how Staff envisions the Commission evaluating "the impacts of such costs [*i.e.*, the nuclear subsidies] on ratepayers." As demonstrated, *supra*, the magnitude of subsidies envisioned by the New Staff Proposal dwarf those proposed in the White Paper and evaluated in the Cost Study. Moreover, by proposing to structure the CES in such a manner that the costs would be borne by customers on a purely volumetric (per kWh) basis, the impacts would be markedly more substantial for large, high-load-factor customers (many of which operate energy-intensive businesses and are extremely price-sensitive). At this point, the only information related to cost impacts contained in the New Staff Proposal is a single reference to "up to $965 million" for just the first two years of implementation. (*See* New Staff Proposal at 2.)

Next, Staff proposes in Paragraph 2 – without any explanation or justification – that: "Units in single ownership located in the same NYISO Zone and that share costs at the same site will be treated as a single facility for the determination." (*Id.* at 3.) As Multiple Intervenors interprets the proposal, it seemingly could require captive customers to subsidize both multiple units in operation at the same facility even if only one unit allegedly is in financial distress. Again, Multiple Intervenors urges that nuclear-related subsidies, if approved, be implemented in such a manner that minimizes costs to customers. It is not at all clear that such cost minimization is happening here.

<u>Paragraph 3</u>

If a CES with a nuclear tier is approved, Multiple Intervenors has no objections to Staff's proposal to examine facility-specific "public necessity" on two-year intervals. (*See id.*)

<u>Paragraph 4</u>

In this paragraph, Staff states that it "is projecting that at the time of inception of the program there is a public necessity for subsidies for zero-emissions attributes for the Fitzpatrick, Ginna and Nine Mile facilities." (*Id.*) Unfortunately, the New Staff Proposal is entirely devoid of any explanations, rationale, supporting information or documentation, analyses, *etc.*, that support such a projection. Unsubstantiated statements do not provide a rational basis for approving billions of dollars in customer-funded subsidies. Moreover, while Multiple Intervenors concedes that absent financial subsidies, there is a chance that the Fitzpatrick and Ginna nuclear generation facilities may elect to retire, there has been no demonstration of an intent to retire either or both units at the Nine Mile Point nuclear generation facility.[28]

Paragraph 5

In Paragraph 5, Staff proposes that the nuclear tier be comprised of six tranches, each of which would be two years in duration. (*Id.* at 4.) If a CES with a nuclear tier is approved, Multiple Intervenors recommends that financial commitments to subsidize nuclear generation facility owners be no longer than one year or, at most, the duration between refueling cycles (*i.e.*, 18 to 24 months). That preference being noted, two-year tranches are not unreasonable, although, as detailed, *infra*, Multiple Intervenors opposes Staff's proposal that (i) eligibility for new customer-funded subsidies be examined every two years, but (ii) once eligibility is determined, commitments then are made to subsidize that nuclear generation facility through March 31, 2029 irrespective of any future change in circumstances.

Paragraph 6

Multiple Intervenors has numerous concerns regarding Paragraph 6 of the New Staff Proposal.

First, Staff fails to explain or justify why the New York State Energy Research and Development Authority ("NYSERDA") should be utilized to purchase ZECs from eligible nuclear generation facility owners. (*See id.*)

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[28] In a footnote, the New Staff Proposal provides that: "Staff notes that the owner has not claimed that the zero-emission attributes of the Indian Point facility are currently at risk." (*Id.*, n.1.) The decision to force customers to fund millions or billions of dollars in subsidies to individual merchant generation owners should not be made based on mere "claims" by such owners (all of whom now have a clear financial interest to advance claims in furtherance of subsidies). Rather, the Commission should require (i) a demonstrable plan to deactivate a nuclear generation facility (*i.e.*, a written retirement notice), and (ii) a demonstration that such facility is expected to be uneconomic over the foreseeable future. Such a requirement would allow the Commission to conclude, accurately, when zero-emission attributes truly are at risk.

Second, Multiple Intervenors disagrees that, if an owner of a nuclear generation facility is able to demonstrate "public necessity," it automatically should receive a contract to sell zero-emission credits ("ZECs") through March 31, 2029. If "determinations of facility-specific public necessity may be made at every two-year interval after inception" (*id.* at 3), then the Commission should allow for determinations that no public necessity exists on the same two-year intervals. March 31, 2029 is a long time away, especially when it comes to constantly-evolving energy markets. Indeed, many of the issues under consideration before the Commission today (*e.g.*, subsidizing nuclear generation facilities) were not even "on the horizon" a few short years ago. The Commission should be very reluctant to bind customers, and future Commissioners, to unnecessarily-long (and potentially-exorbitant) financial commitments.

Third, Staff proposes that: "The obligation to produce will be enforced by appropriate financial consequences for failure to produce." (*Id.* at 4.) If a CES with a nuclear tier is approved, then Multiple Intervenors supports this proposal. Importantly, however, Multiple Intervenors notes that the New Staff Proposal fails to identify, discuss or advance any examples of what would constitute "appropriate financial consequences." Multiple Intervenors recommends that such proposed consequences, once formulated by Staff, be issued for public comment prior to approval by the Commission. Parties – and, in particular, customers that may be forced to subsidize selected merchant owners of nuclear generation facilities – should be accorded a meaningful opportunity to comment upon provisions intended to ensure that the purpose and the intent of any subsidy agreements are honored.

<u>Paragraph 7</u>

In Paragraph 7, Staff proposes that the subsidies to be paid for ZECs "would be determined administratively by the Commission as there are too few owners of the affected generation facilities for there to be a valid competitive process to determine the prices as the owners would have too much market power for effective competition." (*Id.*) If a CES with a nuclear tier is approved, Multiple Intervenors agrees that the value of the subsidies would need to be determined administratively due to market power concerns. As detailed, *supra* and *infra*, Multiple Intervenors has significant concerns regarding Staff's proposed methodology for calculating subsidies.

Paragraph 8

In Paragraph 8, Staff recommends that nuclear subsidies be based on the projected SCC, as published by the USIWG, "less a fixed baseline portion of that cost already captured in the market revenues of that cost already captured in the market revenues received by the eligible facilities due to the Regional Greenhouse Gas Initiative." (*Id.*) According to Staff, that formula results in a subsidy price for the first two-year tranche (running from April 1, 2017 through March 31, 2019) of $17.48 per MWh (*id.*), which is enormously-expensive, particularly if applied to the output of every single upstate nuclear generation facility.

Multiple Intervenors has a number of concerns regarding Staff's proposed formula. First, for the reasons advanced in response to the Introduction to the New Staff Proposal, *supra*, Multiple Intervenors is opposed to the proposed reliance on estimates of the SCC to calculate customer-funded subsidy payments.

Second, Multiple Intervenors opposes Staff's proposal to inflate the SCC every year while, at the same time, holding the impacts of the Regional Greenhouse Gas Initiative ("RGGI") – which is used as an offset to the SCC in the proposed formula – to the same level from April 1, 2017 through March 31, 2029. (*See id.* at 11.) There is no reason to fix this offset to the SCC. Inasmuch as the unit amount for the subsidies presumably would be recalculated every two years, there seemingly is no valid reason why this component of the subsidy formula should not be updated similarly. For instance, if, *arguendo*, the total amount of RGGI allowances is reduced, the impact of RGGI on wholesale energy prices might be much higher in the future than the level being assumed now. Under such circumstance, Staff's proposed formula could result in excessive subsidy payments by customers. It strikes Multiple Intervenors as inherently inequitable to increase the value attributed to the SCC during each of the proposed six two-year tranches while, at the same time, fixing the RGGI price impacts – which act as an offset to the SCC value – for the entire 12-year period. If, *arguendo*, the Commission elects to fix the RGGI price impact amount at the level utilized during the first tranche for the full 12-year period, then it similarly should fix the SCC value at the first tranche level for the same duration.[29]

Finally, as also addressed, *supra*, Multiple Intervenors is extremely concerned that the New Staff Proposal results in subsidy costs to customers that are too high and too impactful. Staff has failed to explain or justify why it is appropriate to so drastically increase the cost of the proposed nuclear tier (*i.e.*, from a projected range of between $59 million and $658 million over the 68-month period running from April 2017 through December 2022 to up to $965 million over the 24-month period running from April 2017 through March 2019). Based on the figures utilized in the New Staff Proposal – which is lacking in detail and supporting documentation – it appears that the newly-designed nuclear tier could cost as much as, if not more than, $7 billion, and that does not even include the proposed renewable tiers of the CES. This may be the most expensive initiative ever undertaken by the Commission, and the New Staff Proposal, issued only two weeks

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[29] In Paragraph 11, Staff seems to imply that fixing the RGGI offset value is appropriate because the use of certain energy price forecasts in the proposed subsidy formula would capture RGGI-related price changes. (*Id.* at 6.) Multiple Intervenors does not agree and addresses this issue, *infra*, in response to Paragraph 11.

ago, contains absolutely no analysis as to the magnitude of the resulting rate impacts on customers.[30]

Paragraph 9

Initially, Paragraph 9 provides:

> Staff notes that this proposed approach to administratively establishing the ZEC price makes sense for the upstate Fitzpatrick, Ginna and Nine Mile facilities in the aggregate because it yields a result that Staff would expect to be similar to the average pay-as-bid price for these facilities that would result from a competitively bid solicitation conducted in the manner that is currently done for Renewable Energy Credits (RECs) assuming these facilities did not have market power.

(*Id.* at 5.) There is no evidence in this proceeding to support Staff's assertion. While the Commission instituted recently a separate proceeding that has been examining, *inter alia*, historic and projected operating costs for the Ginna and Nine Mile facilities,[31] (i) Staff has not issued any analyses in that proceeding, and (ii) Multiple Intervenors is not aware of any proceeding that is

[30] For the reasons detailed, *supra* and in Multiple Intervenors' Comments on the Cost Study, the Commission should not rely on previously-issued customer impact analyses because the Cost Study understates significantly the costs, and overstates significantly the benefits, of the proposed CES. Additionally, such impact analyses now are stale due to the new and significantly more expensive Staff proposal for the nuclear tier. Indeed, the fact that the estimated cost of the nuclear tier has grown so substantially in magnitude over a period of a few short months bears out the concerns advanced by Multiple Intervenors and other parties with respect to the Cost Study. The Commission should not rule on a CES absent, *inter alia*, strong confidence concerning the likely cost impacts to customers and, if such strong confidence is lacking, the Commission should consider imposing hard caps on total amount of subsidies that could be extracted from captive customers.

[31] *See generally* Case 16-E-0270, *Proceeding on Petition of Constellation Energy Nuclear Group, LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants*.

examining historic and/or projected operating costs for Fitzpatrick, nor has any of that information been made public to Multiple Intervenors' knowledge.[32]

Staff then indicates that the "approach" advanced in the New Staff Proposal may not be appropriate, and would require modification, if subsidies ultimately are awarded to the Indian Point nuclear generation facility. (New Staff Proposal at 5.) Putting aside Multiple Intervenors' concerns that (i) there is no evidence that Indian Point requires any subsidy or that its carbon-free emissions are at risk, and (ii) the enormous (and excessive) impacts that would result if customers somehow were forced to subsidize every single nuclear generation facility in the State, the need to modify the subsidy formula if Indian Point is deemed eligible also would apply if any of the upstate nuclear generation facilities elects to close. For instance, if, *arguendo*, the Commission elects to adopt a single subsidy price for the upstate nuclear generation facilities,[33] it should retain the flexibility to modify that price if one of those facilities is deactivated for any reason. For instance, a subsidy price that might be deemed appropriate (notwithstanding Multiple Intervenors' numerous concerns) to ensure the continued operation of the Fitzpatrick, Ginna and Nine Mile nuclear generation facilities might also be deemed excessive if, for instance, one of those facilities (*e.g.*, Fitzpatrick) were to retire and said subsidy price were to apply only to two facilities (*e.g.*, Ginna and Nine Mile).

[32] It is exceedingly difficult for interested parties to comment meaningfully on the New Staff Proposal when major elements thereof are based on factual assertions for which no supporting information, data, documents, analyses, justifications, *etc.*, have been advanced.

[33] *See* Case 16-E-0270, *supra*, Comments of Multiple Intervenors on Constellation Petition (dated July 22, 2016) at Point IV (advocating that any nuclear-related subsidies implemented as part of a CES should be calculated on a facility-specific basis).

Paragraph 10

Paragraph 10 sets forth Staff's proposed formula for calculating unitized (per MWh) subsidy payments for upstate nuclear generation facilities. (New Staff Proposal at 5.) Multiple Intervenors' numerous concerns regarding Staff's proposed formula are addressed, *supra*, and need not be repeated here.

Paragraph 11

Staff advances a number of proposals in Paragraph 11. First, Staff proposes that the SCC component of its subsidy formula be increased, materially, every two-year tranche. (*Id.* at 6.) The magnitude of such increases – which would be reflected in subsidies extracted from captive customers – is a significant concern to Multiple Intervenors. Starting with an initial estimate for the SCC of $42.87 per short ton (*id.* at 10), Staff proposes that the SCC value then be increased in each subsequent two-year tranche to $46.79, $50.11, $54.66, $59.54, and $64.54 per short ton, respectively. (*Id.* at 6.) Thus, during the proposed 12-year term of the nuclear tier to the CES, Staff recommends using values for the SCC that would increase by over 50%. Incredibly, there is no discussion, analysis or justification proffered for such large increases in what essentially would be binding financial commitments imposed on customers.

The source of Staff's data is not clear from the New Staff Proposal. For instance, Staff does not explain why future estimates for the SCC, which increase from year to year, then should be adjusted again for inflation. (*See id.* at 10.) Staff also does not explain why its SCC figures utilize a 3 percent discount rate when a larger discount rate – such as 5 percent – seemingly would be more appropriate and certainly less-expensive for customers.[34] In fact, when calculating

[34] *See* Interagency Working Group on Social Cost of Carbon, United States Government, *Technical Support Document: - Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866* (Revised July 2015) at 17 (Appendix A)

certain projected costs of the CES, Staff utilized a 5.5 percent discount rate. (*See* Cost Study at 18.) This apparent, unexplained bias – *i.e.*, using a high discount rate to calculate certain CES-related costs and a much-lower discount rate to calculate CES-related benefits – casts the usefulness of the Cost Study in a questionable light.[35] Importantly, even if, *arguendo*, the Commission determines that the SCC should be used as the basis for subsidies to nuclear generation facility owners, the manner in which those subsidies are calculated still could have an enormous impact on the total cost of this initiative to customers.

Second, Staff proposes that the impact of RGGI on wholesale energy prices – which serves as an offset to the SCC estimates – should be fixed at $10.41 per short term for the entire 12-year period. (*See* New Staff Proposal at 6, 11.)[36] Multiple Intervenors disagrees with this proposal and recommends that the RGGI offset be increased in the same or a similar manner as the SCC estimates.

Staff posits that changes to the RGGI offset would be captured by its proposed reliance on energy price forecasts. (*Id.* at 6.) It is not at all clear that this is true. While energy prices may fluctuate, there is little doubt that the RGGI offset would change from time to time. Indeed, it appears that the impact of RGGI has increased over the years as the number of

(advancing SCC estimates using multiple discount rates; the 3 percent discount rate estimates are reflected in the New Staff Proposal at 10), available at: https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf.

[35] With this very limited exception, the Cost Study generally does not specify explicitly what discount rates are used for various calculations. Although parties requested that the data and the calculations underlying the Cost Study be made public and transparent, that never happened. Based on Multiple Intervenors' review of the Cost Study, it appears that multiple discount rates may have been used, although no explanation or justification for such decisions has ever been proffered.

[36] It is not at all clear how this figure was calculated.

allowances auctioned has declined. Thus, the RGGI offset and wholesale energy prices may rise (or fall) at different paces and by differing amounts. Accordingly, the RGGI offset should be calculated independently from wholesale energy price forecasts. If, *arguendo*, the Commission is determined to fix the RGGI offset, instead of updating it biennially similar to wholesale energy price forecasts, then, at a minimum, it should apply the same inflationary index to the RGGI offset that it does to SCC estimates.

Third, Staff then proposes that the Commission utilize changes in independently-published NYISO Zone A energy prices and capacity prices in the subsidy formula. (*See id.* at 9-11.) Such changes would be measured off of a $39 per MWh baseline figure for energy and capacity prices, which Staff describes as "a recent period average of the forecasts of Intercontinental Exchange (ICE) average of the NYISO Zone A energy prices projected by ICE for the period April 2017 through March 2019 combined with the per MWh equivalent of a recent period average of the forecasts of New York Mercantile Exchange (NYMEX) NYISO Rest of State Capacity Calendar Month Futures projected by NYMEX for the period April 2017 through March 2018." (*Id.*) Although Multiple Intervenors has enormous concerns regarding the cost of the CES, including any nuclear tier thereof, as well as numerous proposals advanced by Staff in the New Staff Proposal, it advances no position with respect to the proposed adjustments to energy and capacity prices in the subsidy formula. As a practical matter, Staff's proposed formula, including this element, is very complicated and it is difficult to predict whether the formula even would produce outcomes that would make sense over the full 12-year period under consideration (which is yet another reason why the Commission should refrain from making binding long-term commitments with customer funds at this time).

Paragraph 12

In Paragraph 12, Staff proposes to cap the nuclear-related subsidies based on the historical output of a nuclear generation facility. (*Id.* at 8.) The purpose of such a cap is to ensure that the CES does not encourage incremental generation from the State's nuclear sector. (*Id.*) If the Commission adopts a CES with a nuclear tier, Multiple Intervenors has no objections to this proposed cap.

Paragraph 13

In Paragraph 13, Staff proposes that a Commission determination to start subsidizing a merchant-owned nuclear generation facility would be dependent upon the owner of that facility entering into an appropriate contract with the New York State Research and Development Authority ("NYSERDA"). (*Id.*) It is not clear to Multiple Intervenors why NYSERDA is being advanced for such a role. The New Staff Proposal contains no explanation or justification for this proposal.

Paragraph 14

In Paragraph 14, Staff proposes that: "The Commission may establish such other review and contract requirements as it shall deem, in its discretion, to be in the public interest." (*Id.*) Given the enormity of the proposed nuclear-related subsidies, which would total many billions of dollars between 2017 and 2029, Multiple Intervenors recommends strongly that if the Commission adopts a CES with a nuclear tier, all review criteria and contract requirements should be issued for public review and comment before being finalized.

Absent a review notice and comment process, the Commission may be limited to considering potential criteria and contract provisions advanced by Staff and the subject nuclear generation facility owner(s). If, however, potential criteria and contract provisions are subjected to public review, other interested parties (*e.g.*, customers that are bearing the cost of the proposed subsidies) appropriately would be accorded an opportunity to comment thereon, thereby providing additional, meaningful input for the Commission's consideration.

It is critically important that any CES adopted in this proceeding should be implemented in as transparent a manner as possible. The proposed price tag of billions of dollars alone dictates the use of an open and transparent process. Accordingly, Multiple Intervenors submits that it would be inappropriate and counterproductive to preclude the public (or preclude interested parties other than the affected nuclear generation facility owners) from commenting upon potential review criteria and/or contract provisions.

Paragraph 15

In Paragraph 15, Staff proposes essentially that all LSEs conducting business in New York be required to purchase ZECs in proportion to the electric load they serve in the New York Control Area. (*Id.* at 8.) Multiple Intervenors has two concerns with this proposal. First, for the reasons detailed, *supra*, in response to the Definitions section of the New Staff Proposal, NYPA should be excluded from CES-related requirements. Second, the New Staff Proposal is devoid of any justification or analysis of the Commission's purported jurisdiction over LSEs in this context. For instance, while the Commission can regulate a marketer's retail sales of electricity, it is not at all clear that it possesses the jurisdiction to force a marketer to purchase many millions of dollars of ZECs from NYSERDA. Absent such jurisdiction, the entire nuclear tier as proposed by Staff fails.

Paragraph 16

In Paragraph 16, Staff proposes that:

> Each Load Serving Entity would enter into a contractual relationship with NYSERDA to periodically purchase ZECs during a program

> year based on initial forecasts of load and a balancing reconciliation at the end of each program year so that after the reconciliation process, each Load Serving Entity will have purchased the correct proportion of ZECs on an annual basis.

(*Id.*) Multiple Intervenors' primary concerns regarding this proposal are set forth, *supra*, in response to Paragraph 15. Multiple Intervenors also notes that Staff's reconciliation process may present additional issues for marketers that sell commodity in accordance with negotiated contracts, typically (but not always) on an annual basis.

Paragraph 17

In Paragraph 17, Staff proposes that the subsidies extracted from customers under the nuclear tier of the CES be based on ZEC prices determined administratively by the Commission "plus an adder to cover NYSERDA's incremental administrative costs and fees associated with the ZEC program and ZEC revenues." (*Id.* at 9.) The New Staff Proposal is silent as to the magnitude of these administrative costs and fees. To the extent material, it highlights another possible concern with the proposal to force all LSEs to contract with NYSERDA for the purchase of ZECs.

Paragraph 18

In Paragraph 18, Staff proposes that: "Cost recovery from ratepayers shall be incorporated into the commodity charges on customer bills. Utilities will charge their commodity customers on a volumetric basis." (*Id.*) Multiple Intervenors is very concerned with this proposal, and opposes the volumetric recovery of CES-related costs. Staff apparently desires to implement a CES in such a manner as to ensure that the resulting costs are experienced by customers via increased commodity (as opposed to delivery) costs. Toward that end, they propose to utilize credits – either renewable or zero-emission – tied to each MWh of generation, presumably for administrative convenience, at least in part. Significantly, however, there are compelling arguments as to why CES costs – and, in particular, nuclear-related costs – should not be allocated on a purely volumetric basis.

First, the goal of the proposed nuclear tier of the CES is to keep the upstate nuclear generation facilities operational for environmental reasons. The primary objective and identified benefit of this initiative is reduced greenhouse gas emissions. Importantly, such benefit is not realized by customers on a volumetric basis and, thus, it is questionable whether the costs of this initiative should be recovered in such a manner.

Second, by subsidizing selected nuclear generation facilities, the Commission essentially is asserting increased jurisdiction over those facilities. When customers were last responsible for the viability of the State's nuclear facilities (*i.e.*, prior to divestiture, when they were owned by regulated utilities), the costs of the facilities never were allocated to customers on a purely volumetric basis. In fact, because nuclear facilities are baseload facilities in that they are designed to operate at all times, a large portion of nuclear-related costs typically were allocated based on demand. In fact, according to NARUC Cost Allocation Manual, nuclear production plant typically is allocated on a demand-only basis, while nuclear operating costs typically are allocated based on a combination of demand and energy factors.[37]

Third, the Commission should not evaluate CES issues in a vacuum. If, as proposed, CES-related subsidies are allocated to customers on a purely volumetric basis, that would result in huge and disproportionate impacts on large, high-load-factor customers, who already are bearing the brunt of volumetric recovery associated with other Commission initiatives, including, but not limited to, Clean Energy Fund surcharges. At some point soon, the Commission

[37] *See, e.g.*, National Association of Regulatory Utility Commissions, *Electric Utility Cost Allocation Manual* (dated January, 1992) at 35-36.

needs to address the impacts of volumetric cost recoveries on the most price-sensitive, and price-elastic, customers. It should be obvious that the current approach is counterproductive to the State's economic development efforts. Volumetric cost allocation often results in substantial impacts to large, high-load-factor customers, who often are major employers that operate facilities in other states and countries. Continuing to apply discretionary costs on customers using a volumetric allocation methodology discourages continued and future employment and investment in New York by these types of customers.[38]

Paragraph 19

In Paragraph 19, Staff proposes that: "ZECs will not be tradable except between NYSERDA and the Load Serving Entities in the balancing process." (New Staff Proposal at 9.) Staff does not explain the rationale for this proposal. While the limited number of nuclear generation facility owners precludes the development of a real market for ZECs, it is not clear to Multiple Intervenors why LSEs should be precluded from trading ZECs in advance of the annual reconciliation process. Other than questioning the rationale for Staff's proposal, Multiple Intervenors advocates no position in response thereto.

Paragraph 20

In Paragraph 20, Staff proposes that:

> The Commission will entertain proposals by Load Serving Entities and perhaps self-supply customers to alternatively meet their ZECs obligations by entering into combined energy and/or capacity and ZEC contracts with the nuclear facilities if such contracts are structured in a way as to not unfairly shift ZECs costs onto other ratepayers.

[38] Ironically, based on the REV objective of improving the State's load factor and efficient use of the electric system, one would expect high-load-factor customers to be incentivized favorably instead of disincentivized.

(*Id.*)

This proposal also is not explained in the New Staff Proposal and its intent is not clear to Multiple Intervenors. Moreover, if, for some reason, an LSE and the owner of a nuclear generation facility desire to enter into a contract for energy and capacity, Multiple Intervenors assumes that the ZECs associated with such production would follow the contract. Importantly, if that occurs, the facility should not be permitted to sell ZECs associated with the same energy and capacity to NYSERDA in exchange for customer-funded subsidies associated therewith. While Multiple Intervenors does not anticipate many – if any – contracts along the lines envisioned by this proposal, it recommends that the Commission establish certain criteria and, if those criteria are met, then interested parties be allowed to contract without first having to seek Commission approval of their contract. In fact, by the time parties advance proposals for the Commission to entertain and receive a ruling thereon, the prices negotiated likely would be stale.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to reject and/or modify the New Staff Proposal in accordance with these Comments and the positions advanced previously by Multiple Intervenors in this proceeding, as well as in Case 16-E-0270.

Dated: July 22, 2016
Albany, New York

Respectfully submitted,

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