



THE ASSEMBLY
STATE OF NEW YORK

September 7, 2016

Hon. Audrey Zibelman, Chair
Public Service Commission of the State of New York
Department of Public Service
The Empire State Plaza
Albany, NY 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.

Case 16-E-0270 – Proceeding 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.

Dear Chair Zibelman-

We are writing you regarding the Public Service Commission's ("Commission") August 1st, 2016 Order requiring an electric rate increase for the four upstate nuclear units as well as related matters in Case 15-E-0302 and Case 16-E-0270.¹ At the outset you should know that we do support the State's goal of achieving 50% electricity from renewable sources of energy by 2030 and the Commission's formulation of a purchasing plan to reach that goal. The Commission is to be commended for that plan. We also understand the necessity of preventing the closure of the nuclear plants to avoid expanded fossil fuel generation and save jobs.

We do, however, object to a statewide electric rate increase that requires downstate electric customers to pay for nearly 60% of the nuclear subsidies. The Exelon Corporation, which will become the owner of all four nuclear units when it acquires the Fitzpatrick plant from the Entergy Corporation, is receiving a sizeable \$965 million over two years, but the Commission has blocked public access to a cost review of the nuclear fleet in the case proceedings. (*See*, May 16th Protective Order, Case 16-E-0270).² We are also concerned that the Commission contemplates escalating payments to Exelon based on the projected increase of the Social Cost of Carbon, which could amount to as much as a 10% increase every two years through 2027 and the extension of the payment to 2029.³ Why should Exelon's costs be blocked from public review when it is being given a government-directed and government-administered price subsidy?

¹ Note: The three plants are: James A. Fitzpatrick Nuclear Power Plant, R.E. Ginna, and Nine Mile Point Nuclear Generating Station which is comprised of two separate units- Nine Mile One and Nine Mile Two. The Indian Point Energy Center is not currently included in the program.

² Note: reminder that Indian Point, which is owned by Entergy, was not included in the Commission's order.

³ It should be noted that the Zero Emissions Carbon ("ZEC") market is a "command economy," with centralized decisions from the Commission, which has created the annual increase tracks for the projected increases in the Social Cost of Carbon ("SCC") as a manner to assign value to the ZECs. The SCC goes up approximately 10%

The Commission ordered the State's utilities and load-serving entities to each pay their proportionate share of the State's total electric load. Effectively this means that the four downstate utility service territories will be required to absorb nearly 60% of this two-year \$965 million rate increase. But there is no way that the downstate system uses 60% of the output of those nuclear plants- such a mandate is unfair and unreasonable.⁴ The basis for the determination of electric rates in this State, even under the new system of deregulation, primarily assigns local responsibility for local costs. Electric generation in the NYC-Westchester service territory, and purchases of electricity from other sources, account for the overwhelming percentage of the use of electricity there. Long Island's situation is similar- the overwhelming percentage of its power does not come from upstate New York. The Commission should revisit the matter of what share downstate New York must pay, and more closely correlate that share with downstate's actual use of electricity generated from the four units as well as publish the facts and assumptions upon which it is making this decision.

The Commission also included Nine Mile Two, the largest unit among the four nuclear units, in the subsidy program, even though the Exelon Corporation refueled the plant in April 2016, which could be seen as a sign it had no near-term intention of closing this unit. The Exelon Corporation press release announcing the refueling in April 2016 did not mention closure of the unit.⁵ The company did, however, mention revenue increases for the R.E. Ginna unit, retroactive to April 2015, in recent public statements. How has the Commission accounted for Exelon's receipt of new revenues for the R.E. Ginna plant, including back payments? In the Commission record, we take note that Entergy announced intentions to close Fitzpatrick, and Exelon announced intentions to close R.E. Ginna and Nine Mile One, but no formal announcement was made regarding intention to close Nine Mile Two, which produces 40% of the electricity of the four units.⁶ Without a publicly transparent cost review, and in light of the recent refueling of the unit, the payment should be removed from the Commission's order.

To summarize the points in our letter, we request that the Commission:

1. Re-determine the share of the burden of the rate increase on the downstate customers, and publish the basis for its cost allocations;

annually, with years 1 and 2 remaining the same. *See*, Staff's Responsive Proposal For Preserving Zero-Emissions Attributes, page 6.

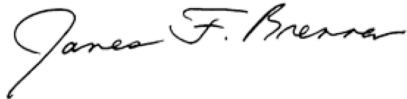
⁴ Note: Downstate customers will pay 60% of the nuclear subsidy. This percentage was calculated by adding the total kilowatt-hours generated in the NYC, Long Island, Orange/Rockland Counties, and Central Hudson ("downstate"), which comes to 84.5 billion kilowatt-hours, then dividing this amount by the statewide total, which is 147 billion kilowatt-hours. This makes the downstate region's generation 58.5% of the total state. *See*, U.S. Energy Information Administration, for New York State's total statewide generation in 2014. For NYC generation of 56.3 billion kilowatt-hours, *see*, Con Edison 2014 Annual Report, page 47. For Long Island's total generation of 19.7 billion kilowatt-hours, *see* 2014 Adopted LIPA Budget, Schedule A,p.A-2. For Orange and Rockland Counties' total generation of 5.67 billion kilowatt-hours, *see* Con Edison 2014 Annual Report, page 24. For Central Hudson's total generation of 2.8 billion kilowatt-hours, *see* EIA 2014 NY Electricity Profile Retail Sales.

⁵ Exelon press release, Aug.9, 2016, "Exelon Announces 2nd quarter results."

⁶ Note: Nine Mile Two's output is 40% of the total output by the four units. *See*, 2015 NYISO Gold Book, page 54 (Nine Mile II generated 11 billion kilowatt-hours, out of the 27.6 billion kilowatt-hour total, when adding the four units together. When dividing 27.6 billion kilowatt-hours by 11 billion kilowatt hours, one determines that Nine Mile II accounts for 40% of the total output of the four units.

2. Unseal the record of the cost review of the nuclear fleet, Case 16-E-0270, so that the basis for the amount in subsidies Exelon is receiving be made public; and
3. Eliminate the subsidy for Nine Mile Two, at least until the next refueling of the unit, but not until the cost review of the nuclear fleet is made public.

Thank you for your consideration of our views,



Assemblymember Jim Brennan



Assemblymember Amy Paulin



Assemblymember Jeffrey Dinowitz



Assemblymember Charles Lavine



Assemblymember Steve Englebright