



STATE OF NEW YORK
EXECUTIVE CHAMBER
633 THIRD AVENUE
NEW YORK, NY 10017

March 22, 2017

The Honorable Jeffrey Dinowitz
Chair, NYS Assembly Committee on
Corporations, Authorities & Commissions
941 Legislative Office Building
Albany, NY 12248

The Honorable Brian Kavanagh
Chair, NYS Assembly Committee on
Consumer Affairs & Protection
419 Legislative Office Building
Albany, NY 12248

The Honorable Steven Englebright
Chair, NYS Assembly Committee on
Environmental Conservation
621 Legislative Office Building
Albany, NY 12248

The Honorable Amy Paulin
Chair, NYS Assembly Committee
on Energy
713 Legislative Office Building
Albany, NY 12248

Re: Zero Emission Credits Program

Dear Assembly Members Dinowitz, Englebright, Kavanagh and Paulin:

At a time when New York is being looked to as a national leader on clean energy and climate change, it is more important than ever to set the record straight on the Clean Energy Standard (CES) and why it remains the most cost-effective way to meet our clean energy and carbon emissions reduction goals. In addition, I write to respond further to the previous invitation to testify before your committees concerning the program.

Anti-nuclear zealots and fossil fuel interests have misled the public and the Assembly. They claim to believe the science of climate change, but reject the International Panel on Climate Change's conclusion that nuclear power has comparable emissions to renewable energy. They claim that the CES's Zero Emission Credit (ZEC) program will cost \$7.6 billion, but an estimate by the Department of Public Service shows it will cost \$2.8 billion (or less than \$2 per month for the average consumer in the first years of the program, declining to a small fraction of this amount in future years). Further, an independent study calculated that *absent* the ZEC program, utility bills will increase by \$7 per month. They also claim that the process that led to the ZEC program was not transparent, even though it included 24 public hearings, 141 active parties, and attracted more than 13,000 public comments, including a letter signed by 222 elected state and local officials and community leaders.

The CES's ZEC program is based on the federal government's calculation of the Social Cost of Carbon – a recognition that greenhouse gases lead to global warming and will result in substantial costs to society. Maintaining carbon dioxide emissions-free power is critical to keeping New York on track in the reduction of greenhouse gas emissions. At the same time, the CES creates New York's first mandate for renewable energy to serve at least half of New York's electricity needs by 2030.

With respect to your invitation to testify, the Commission submitted written testimony to your committees concerning the CES Order and the ZEC program, which is attached as an appendix to this letter. Many of the questions raised at your hearing were, in fact, answered in the written testimony.

The Commission communicated that, due to the short notice of the original invitation, it was unable to resolve scheduling conflicts to attend the March 6, 2017 hearing. Separate and apart from the scheduling constraints, the Commission was advised by counsel that given potential legal and litigation issues, it is unable to provide additional public testimony on the subject.¹

The litigation proceedings remain open today. The Commission looks forward to defending the CES Order – within the judicial proceedings selected by the various litigants. I also note that during the March 6, 2017 hearing, the representative for Hudson River Sloop Clearwater, Inc. (Ms. Greene) submitted written testimony, but expressly declined to testify – and publicly stated that her position was based upon the advice of Clearwater’s attorney. For similar reasons, and upon the advice of counsel, the Commission had to respectfully decline your invitation to expand upon its previously submitted written testimony.

Federal litigation filed by the fossil fuel industry confirms our contention that the CES will bring about a clean-energy future. A plaintiff that calls itself the Coalition for Competitive Electricity – a group of fossil fuel generators – makes no secret about its chief concern: “Plaintiffs will lose millions of dollars of revenue because they will lose competitive auctions they otherwise would have won, and they will receive less money in auctions they do win.” (Plaintiffs’ brief filed 1/6/17).

NYPIRG and others question the legal basis for introducing the Social Cost of Carbon into New York’s energy system and why this is important to the fight against climate change. This question was also asked during your hearing. The ZEC price formula, described in detail in the CES Order, is based on the well-established Social Cost of Carbon metric. Using the Social Cost of Carbon to set the ZEC price was proposed during the CES proceeding on April 22, 2016 by the NYU Institute for Policy Integrity.² The NYU comments urged the Commission to fully account for the environmental externalities linked to carbon pollution, cautioning that the failure to fully account for carbon pollution would tip the scales in favor of dirtier energy sources and allow polluters to pass the costs of their carbon emissions onto the public. Incorporating the Social Cost of Carbon into policy analysis removes that bias by accounting for the costs of such pollution. The fact that DPS Staff supported and the Commission ultimately adopted the Social Cost of Carbon approach proposed by NYU in the CES proceeding reflects the vitality of the Commission’s administrative process and the consideration given to public comments. Finally, integrating the Social Cost of Carbon into the state’s energy regulatory framework constitutes a remarkable policy milestone in the fight against climate change.

¹As you are likely aware, various groups and individuals have initiated judicial proceedings against the Commission that seek to challenge and overturn the Clean Energy Standard Order. See *Coalition for Competitive Electricity, Electric Power Supply Assn., et al. v. Zibelman et al.*, 16-cv-8164 (S.D.N.Y.); see also *Hudson River Sloop Clearwater, Inc., et al. v. New York Public Service Commission, et al.*, Index No. 07242-16 (Albany County Supreme Court).

² See NYU Institute for Policy Integrity *Party Comments on New York State Department of Public Service, Staff White Paper on Clean Energy Standard*, Docket No. 81 filed in PSC Case No. 15- E- 0302, Proceeding on Motion of the Commission to Implement a Large- Scale Renewable Program and a Clean Energy Standard (Item 141, available on DPS Document and Matter Management (“DMM”) system) (hereinafter “April 22, 2016 NYU Institute for Policy Integrity, *Public Comments*”).

It is important to reiterate the purpose of the ZEC component of the CES – namely, to recognize the environmental benefit of carbon-free power generation – and to detail the emissions benefits it will provide all New Yorkers, particularly considering the misinformation campaigns spread by fossil fuel interests and marginal anti-nuclear, environmental groups. Put simply, implementation of the ZEC program will avoid the emission of 180 million tons of carbon over the life of the program, by supporting the ongoing operation of the upstate nuclear fleet.

In its August 2016 Order, the Commission determined that it is in the public interest to maintain the carbon-free emission attributes of the upstate fleet because there are insufficient zero-emission alternatives available to replace that generation in the timeframe required. If the plants were to close prematurely, the result would be an increase in emissions from fossil-fuel plants of up to 15 million tons of carbon emissions per year – roughly a 36 percent increase in the electric generation sector – due to heavier utilization of existing fossil-fueled plants or the construction of new gas plants.

Those added emissions would make it highly improbable to achieve the State Energy Plan’s target to reduce greenhouse gas emissions 40 percent by 2030 or to achieve reductions necessary to meet a lower greenhouse gas emissions cap under the Regional Greenhouse Gas Initiative. This would also result in dangerously higher reliance on natural gas, radically reducing the State’s fuel diversity and making consumers more vulnerable to natural gas and concomitant electric price spikes. Too many New Yorkers have experienced the price shocks from the “Polar Vortex”; the loss of nuclear plants would make these shocks only worse.

While the CES supports the upstate nuclear fleet, nuclear power will not count toward the state’s 50 percent by 2030 renewable energy target. Despite the unprecedented amount of renewable energy that will be brought online by the CES, a few fringe environmental groups have opposed it due to misplaced concerns about the role of nuclear power. In doing so, they have aligned themselves with fossil fuel interests. As markets and technologies develop and more renewable generation becomes available, nuclear power will undoubtedly be replaced by renewables. However, it ought to be obvious that it would not have been possible to build enough renewable generation or transmission infrastructure in time to replace the nuclear fleets’ generation; wishing it were otherwise is not a credible plan for New York.

It is also important to debunk disingenuous assertions on the overall cost of the ZEC program. Specifically, the claim that the ZEC program will cost ratepayers \$7.6 billion is deeply misleading, and a recent analysis by the Public Utility Law Project (PULP) that has made this claim employs a flawed methodology. In arriving at the \$7.6 billion figure, the PULP analysis assumes that energy prices remain flat – indeed at historic lows – over the 12-year period of the ZEC program. In fact, as numerous independent forecasts show, energy prices are projected to rise in the coming decade, and as they do, the costs of the ZEC program are reduced accordingly. The Department of Public Service estimates that in a conservative scenario, the total cost of the ZEC program is more likely to be \$2.8 billion over the 12-year program.

Nor does the PULP analysis account for the simple laws of supply and demand. Absent the ZEC program, the reduction in energy supply of up to 3,200 MW of baseload capacity provided by the upstate nuclear plants would cause an immediate and significant spike in energy prices as more natural gas units with higher operating costs would come online to replace the power. In fact, according to an independent analysis, without the ZEC program, the alternative costs – specifically, what New Yorkers would pay for

the new and existing dirty fossil fuel plants to replace the upstate nuclear generation – would be \$7 a month to the average residential customer.³ Compare this to the under \$2 per month bill impact estimate of the CES by the Commission, and the choice of recognizing the environmental benefits the upstate fleet provides becomes even more clear.

I appreciate your patience and understanding regarding this matter and reiterate our openness to meeting with you to address any outstanding concerns.

Sincerely,



Richard L. Kauffman
Chairman of Energy and Finance for New York
Office of Governor Andrew M. Cuomo

Enclosure: March 6, 2017 Written Testimony before Assembly Standing Committees on Corporations, Authorities and Commissions; Consumer Affairs and Protection; Energy; and Environmental Conservation by Richard L. Kauffman, Chairman of Energy and Finance for New York; Audrey Zibelman, CEO, New York State Department of Public Service; and John B. Rhodes, President and CEO, New York State Energy Research and Development Authority

³ See The Brattle Group Report, *Comments on the New York DPS “Clean Energy Standard White Paper – Cost Study”* (April 18, 2016).