

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Nuclear FitzPatrick, LLC

Docket No. EC16-169

Exelon Generation Company, LLC

Dated October 20, 2016

Reply of Public Citizen, Inc.

On October 19, the Applicants filed an answer to Public Citizen's October 11 Protest, arguing that our request for FERC to consider the application incomplete and deficient for failing to include any mention or analysis of a new Zero Emission Credit (ZEC) subsidy is "outside the scope of the Commission's review of the proposed Transaction" [Answer, at Page 2]. The Answer does not dispute that the Applicants' market analysis, performed by Julie Solomon of Navigant Consulting, fails to include any discussion of the ZEC's potential effects on competition or rates. Rather, the Applicants attempt to argue that the ZEC is irrelevant to their application. They are wrong. The Commission must consider the proposed transaction's impact on competition and rates, and the Applicants have stated plainly in other contexts that the ZEC is so economically significant that Exelon would have no interest in the proposed transaction without it. They offer no basis for the puzzling claim that a colossal government subsidy, which they admit is critical to the proposed transaction, has no relevance to a market analysis of the deal. The Application's failure to include an analysis of the ZEC's impact on competition and rates renders it deficient and incomplete.

The ZEC is not only firmly within the scope of the Commission's review of the proposed transaction, but is a central factor when considering whether the transaction is consistent with the public interest regarding the impact on competition and rates. As Public Citizen raised in our October 11 Protest, when the Applicants asked the Nuclear Regulatory Commission to approve the proposed transaction, the companies explicitly stated that the ZEC "program significantly changes the economics of FitzPatrick, thus leading to Exelon Generation's interest in this proposed transaction ... The transaction is also conditioned upon ... the implementation of the NYPSC [ZEC] program as anticipated" [Public Citizen Protest, at Pages 5-6]. In other words, the Applicants themselves have said that the ZEC so "significantly changes the economics of FitzPatrick" that, absent the ZEC, Exelon would have no interest in buying the nuclear power facility.

The ZEC amplifies the economic impacts on Exelon's post-FitzPatrick operations in NYISO because it applies not only to FitzPatrick but to Exelon's entire NYISO operations. That is because the ZEC has been structured so that only Exelon's existing nuclear facilities in NYISO (Ginna and Nine Mile Point) can qualify.

Not only did the Applicants err in failing to include the ZEC in their analysis; they also omitted the Letter of Credit that guarantees a payment of \$35 million from a ZEC party, the New York Power Authority, to Entergy if certain conditions of the FitzPatrick transaction are not met.¹ While the existence of this Letter of Credit was reported by the media, the text of the Letter is not currently available to the public. Such a letter of credit is highly unusual involving a

¹ Tim Knauss, "Why won't New York show details of \$35M deal with FitzPatrick nuke owner?" The Syracuse Post-Standard, October 12, 2016, www.syracuse.com/news/index.ssf/2016/10/why_wont_new_york_show_details_of_35m_deal_with_fitzpatrick_nuke_owner.html

public entity, and the dual role that the New York Power Authority has in promoting and implementing the ZEC raises collusive concerns with regards to the Transaction's impact on competition and rates. Given that the Letter of Credit involves a party that is central to the coordination and payment of the ZEC, and involves the FitzPatrick transaction, FERC should request that the Applicants add the Letter of Credit to the record in this proceeding.

Conclusion

The failure of the Applicants to include an analysis of a state subsidy that "significantly changes the economics of FitzPatrick" in the transaction's impact on competition and rates must render the Application incomplete and deficient. Further, Public Citizen hereby requests that FERC order the Letter of Credit between the New York Power Authority and Entergy to be a part of this Docket.

Respectfully submitted,

Tyson Slocum, Energy Program Director
Public Citizen, Inc.
215 Pennsylvania Ave SE
Washington, DC 20003
(202) 454-5191
tslocum@citizen.org

Document Content(s)

FitzReply1.DOCX.....1-3