

October 23, 2009

Thomas Congdon
Executive Director, State Energy Planning Board
Deputy Secretary for Energy, Office of the Governor
Executive Chamber
State Capitol, Room 245
Albany, NY 12224

Dear Mr. Congdon:

Please accept this letter as the comments of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively "Constellation") with regard to the New York Energy Planning Board's ("Board") 2009 State Energy Plan *Draft* Plan dated August 2009 ("Plan"). Constellation has been active in wholesale and retail energy markets nationally, including the New York energy market, for a number of years, and brings that experience into these comments for your consideration. Constellation appreciates the opportunity to work with the Board on these important issues.

Constellation's comments herein address four important issues the Plan raises: the Plan's impact on competitive energy markets, nuclear energy, energy efficiency and renewables.

I. Promoting Competitive Markets

Constellation recommends that the Plan include as an over-arching goal the promotion of competitive energy markets. New York has been a national leader since the late 1990s in the development of competitive energy markets, both wholesale and retail. Consumers have benefited greatly from this State's policy in myriad of forms.

On the retail side, electric and gas consumers are now able to choose from dozens of competitive retail providers offering a wide range of innovative products. These products allow consumers to manage their energy costs while also achieving their efficiency and green goals. In wholesale electric markets, consumers have benefited from the increased availability of merchant-owned power plants. The Plan notes these higher availability levels¹ and the resulting downward pressure on prices, in addition to increasing reliability. Further, the State has also seen considerable investment in new merchant generation capacity in this period. Importantly, the risk for such investment remains with the shareholders of companies, not with the ratepayers as was the case prior to the introduction of competition.

In contrast to New York, some neighboring states with inconsistent or ambiguous policies towards competition have not realized the same level of investment in their markets. While many factors contribute to private-sector investment decisions, the perception of regulatory risk is a major factor. For consumers to continue to realize the full benefits of competitive energy markets, it is necessary for New York to maintain a strong public position of support for those markets.

¹ Plan, P.30

II. Nuclear Power

Constellation applauds the Draft Plan's commitment to combating climate change and its ambitious plan to reduce greenhouse gas emissions in New York State by 80 percent by 2050.² Constellation would like to further emphasize that the Plan should recognize the potential of New York State to be a leader in the development of advanced nuclear generation. As such, Constellation would make the following points:

The Plan should identify nuclear energy as an essential part of the climate change and energy security solution - Nuclear energy is an effective and proven method to combat emissions. In fact, its lifecycle carbon emissions are comparable to other renewable sources of energy such as wind, geothermal and hydro. (See Life-Cycle Assessment of Electricity Generation Systems and Applications for Climate Change Policy Analysis," Paul J. Meier, University of Wisconsin-Madison, August, 2002.) Nuclear facilities are also a critical complement to wind and solar projects, which are limited in that they produce electricity intermittently. The three sources combined provide a balanced clean-air energy portfolio.

The current fleet of nuclear energy facilities is among the safest and most secure facilities of any kind in the world. Nuclear energy technology has expanded so that current advanced reactor designs include improved safety and security features. These advanced designs, along with regulatory oversight and guidance, ensure that America's nuclear fleet will continue to be among the world's safest and most secure facilities.

The Plan should identify new nuclear projects as substantial economic stimuli for New York State - Adding a new nuclear facility at a selected site would expand employment in the area and, perhaps equally important, add more future revenue to the state and local tax rolls. For example, a new facility at Nine Mile Point will provide approximately 4,000 jobs during construction, with approximately 400 permanent jobs through operations. The addition of these jobs will expand the tax base and provide more revenue for critical, but financially strained, county and municipal services. It is important to note that the expansion of the Nine Mile Point facility will be privately financed without burdening New York's ratepayers.

On average, nuclear energy facilities add \$20 million annually to state and local tax bases. The economic benefits of nuclear energy facilities extend beyond jobs. Each dollar spent by a nuclear facility generates, on average, an additional \$1.07 in the local economy, according to the widely used IMPLAN model for estimating direct and indirect economic impacts.

III. Achieving Energy Efficiency Goals

In order to achieve the State's "15 by 15" goal, the State will have to ensure that customers are receiving proper price signals. To that end, Constellation would make the following recommendations:

The Plan should adopt Universal Advanced Meter Infrastructure (AMI) Deployment – As a number of other states move forward with plans for the universal AMI deployment, New York risks losing its leadership position in energy innovation without the adoption of a similarly

² Plan, P.XIII

ambitious strategy. As the Plan notes, the New York PSC has established a goal of installing interval meters for all customers greater than 500 kW have in the near-term³. Some utilities including New York State Electric & Gas have surpassed that goal and have near-term plans to install interval meters for customers greater than 300 kW. However, compared to states such as Delaware, Maryland, Texas and California where universal AMI deployment plans are either in the review or implementation phases, New York's 500 kW goals appears quite modest.

Even if New York is not prepared to support universal deployment of AMI at this time, the State should set a more ambitious deployment goal than that which is currently in place. To provide some perspective on the 500 kW interval meter cut-off, an average commercial customer of this size might spend approximately \$400,000 on electricity in a single year⁴. Without an interval meter, this customer would be unable to receive any form of hourly or time-of-use price signal. Additionally, this customer would realize little benefit by shifting load away from high priced periods because the energy and capacity portions of its bill would be calculated based not on the actual usage incurred; rather the bill would be calculated on a class-average, load-shape basis.

The other important aspect of advanced meters is the available of the usage data. Usage data should be made available to customers and competitive providers on a real-time, or close to real-time basis. Additionally, to encourage the full utilization of this data, the information should be made available for no charge. Enabling all customers to receive an hourly price signal is an essential component of achieving the state's "15 by 15" goal, and should be a near-term goal of the State's.

Restructure New York Power Authority's ("NYPA") economic development programs - NYPA's programs provided thousands of megawatts of below-market power to customers. However, providing these customers with economic development incentives in the form of discount power prevents these customers from receiving an accurate price signal to invest in energy efficiency measures. This lack of accurate price data undermines the State's efficiency goals and discourages the very customers that have the greatest need to reduce their consumption from doing so.

Under New York's wholesale market structure, NYPA has the ability to sell all of its power into the market and receive the cash equivalent of its market value. NYPA also has the ability to monetize many of the supporting components of its program offerings, including transmission rights. This cash may then be used to credit delivery bills for customers. With the adoption of this simple program change, customers would gain an understanding of their actual pricing inputs and receive an incentive to invest in energy efficiency, while still receiving the benefit value as under the current program structure. Finally, the State should decouple any incentives paid to customers under the programs from the volume of their energy usage. While these changes may require both legislative and utility changes Constellation believes that a one year implementation target is reasonable.

³ Plan, P.34

⁴ Based on 500 kW customer operating at a 50% load factor with a combined supply and delivery rate of \$0.20/kWh

IV. Transitioning to Market-Based Renewable Portfolio Standard (“RPS”)

Constellation supports the Plan’s recommendation on the creation of the REC tracking system.⁵ Constellation would also recommend that, in addition to the creation of a REC tracking system, the State design the RPS to shift away from a central procurement model towards one that is based on a portfolio requirement similar to those of most other states with Renewable Portfolio Standards. Unlike other state policies that have promoted the development of robust markets for commodities such as energy, capacity, and carbon allowances, the State’s current RPS structure has focused more on subsidizing individual projects than supporting the development of a market for renewable power. Additionally, the State’s unique structure has prevented greater integration with neighboring renewable markets, resulting in a hesitancy on the part of renewable developers and equipment providers to make longer-term investments in New York. If adopted, these two actions would drive greater and more sustained renewable investment in the State and provide a higher level of program transparency and stability.

Once again, Constellation appreciates the Board’s time and efforts in preparing the Plan, and we look forward to working with the Board in achieving the important goals identified. Please feel free to call me with any questions at 410.470.3582.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph E. Donovan", with a long horizontal flourish extending to the right.

Joseph E. Donovan
Senior Counsel
Constellation Energy Resources, LLC
On behalf of Constellation Energy Commodities Group, Inc.

⁵ Plan, P.XIII