

# **After Lower Court Ruling Against Them, Citizens' Groups File Notice of Appeal to Pursue Their Claim a \$7.6 billion New York State Subsidy for Exelon's Nuclear Plants Is Illegal and Improper**

[Albany, NY -- November 6, 2019] After a New York State Supreme Court judge ruled against citizens groups last month in their [Article 78 lawsuit](#) challenging massive ratepayer subsidies to bail out aging, uncompetitive nuclear plants, the plaintiffs are filing a notice of appeal to pursue the case further.

It is currently the only lawsuit challenging the nuclear subsidies on their intrinsic merits/demerits, including whether the New York State Public Service Commission violated due process when it approved the subsidies, as opposed to technical/jurisdictional questions like whether states or the Federal Energy Regulatory Commission have jurisdiction over electricity markets.

Despite the lower court ruling against them, plaintiffs in the suit say the subsidies are illegal and improper, and the basic questions of law and fairness they pose are too important to drop.

They therefore plan to mount an appeal. On November 5, 2019, Hudson River Sloop Clearwater *et al* filed a notice with the New York State Supreme Court Appellate Division to appeal the NYS Supreme Court's decision of October 8, 2019, in which it denied their Article 78 suit challenging the nuclear subsidies.

Nuclear subsidies were added to New York's Clean Energy Standard (CES), which was introduced in 2015 to support existing and new renewable energy capacity. The CES was intended to require utilities and other load-serving entities to purchase renewable energy credits (RECs) to help meet the State's ambitious renewable energy and climate goals.

Soon after the CES was established, Entergy announced plans to retire the FitzPatrick nuclear plant, which was no longer economically viable without a subsidy. Then, following concerted lobbying from the nuclear industry, the PSC added a mandatory third tier to the CES of so-called "zero emission credits" (ZECs) aimed at subsidizing nuclear plants. On the strength of this new Tier 3 subsidy, nuclear giant Exelon bought the FitzPatrick nuclear plant. Since Exelon already owned the Ginna and Nine Mile nuclear plants, the FitzPatrick purchase positioned it as the sole primary beneficiary of the Tier 3 subsidies.

But nuclear energy is not renewable, so it shouldn't be eligible for CES subsidies designed to boost renewables, the plaintiffs argue. The rationale behind Tier 3 is corporate welfare, not clean energy, opponents of the subsidies say. It was due to competition from more cost-effective generation that the owners threatened to close the plants early unless they got a public bailout.

Without adequate public notice or an effective process for public input, the PSC complied. It allocated \$7.6 billion in subsidies for nuclear plants to be paid out over 12 years, funded by ratepayer surcharges hidden on customers' electric bills -- even on the bills of those who choose to opt into renewable power sources.

After the first year of subsidies, 99.5% of the Clean Energy Standard subsidies went to prop up three upstate New York nuclear plants, all owned by Exelon, while just 0.5% went to renewables such as wind and solar. To date, Exelon has received over \$1.25 billion in CES subsidies, despite being the wealthiest private utility in the US, with 2018 revenues of \$35.9 billion.

A March 2017 [presentation](#) by a former Exelon consultant boasted that subsidies billion windfall were a favorable result of its “investment” in lobbying, politicking and other outlays in New York. One of its slides under the heading “Is Politics Profitable?” compared what Exelon spent in New York on the FitzPatrick plant, capital expenditures, and lobbying and PR campaigns to the \$7.6 billion it got back in state subsidies, and calculated its “ROI” (return on investment) to be 750%. An illustration showed copious amounts of cash spiraling down a drain.

Clearwater and its co-petitioners, the Nuclear Information and Resource Service, the Indian Point Safe Energy Coalition and Goshen Green Farms, contend that these outsized nuclear subsidies divert ratepayer funds from renewables with storage and efficiency that could help meet New York’s climate goals, build its clean energy future, and create permanent jobs. They reject using the terms “clean energy” or “zero emissions” to describe nuclear power. And they point out the subsidies unfairly impact low-income ratepayers and those who opt into 100% renewable energy.

“We believe that the allocation of resources to combat climate change and build a clean energy infrastructure in New York should be determined lawfully and transparently,” said Greg Williams, Executive Director of Hudson River Sloop Clearwater. “Our appeal has legal merit, and this filing preserves the opportunity to ensure lawful transparency.”

“Bad decisions and wasteful spending are not going to solve the climate crisis—in fact, they will make it worse,” said Tim Judson. “Under a fog of intense political pressure and economic blackmail, the PSC made a bad call in 2016, violated state rules and forced New Yorkers to pay the largest corporate bailout in state history. If the PSC had followed the law, New York would be paying less for electricity and creating more jobs in clean energy, instead of paying hundreds of millions per year for outdated, uneconomical nuclear reactors.”

“Tier 3 elevates the enormous costs and safety risks imposed by these dangerous aging nuclear reactors,” said Marilyn Elie of the Indian Point Safe Energy Coalition. “What the public receives for its money is years of more high-level nuclear waste on the shores of Lake Ontario.”

Meanwhile In July, New York enacted the Climate Leadership and Community Protection Act (CLCPA), which adopted more ambitious emissions reduction goals, and increased New York’s goal for renewable generation to 70% of the state’s energy mix by 2030. It’s now more urgent than ever that ratepayer dollars go to renewable energy infrastructure and not into subsidizing aging nuclear facilities, plaintiffs say.