

March 24, 2017

The Honorable Jeffrey Dinowitz
Chair, NYS Assembly Committee on Chair, Corporations, Authorities & Commissions
941 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 Brian Kavanagh
Chair, NYS Assembly Committee on Consumer Affairs & Protection
419 Legislative Office Building, Albany, NY 12248

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

RE: Cuomo administration letter and analysis concerning Zero Emissions Credit program

Dear Assembly Members Dinowitz, Englebright, Kavanagh and Paulin,

We write to respond to the Cuomo administration's letter released this week defending its policy of bailing out upstate aging nuclear power plants. At the outset, we are deeply disappointed that the administration continues to obfuscate and mislead the public on its decision-making process that led to this multibillion-dollar bailout plan and refuses to appear before your committees to answer questions in broad daylight.

More than 130 organizations and 70 local elected officials have signed on to call a halt to this bailout.

Our organizations agree with the science that climate change is real and the result of human activities, largely the burning of fossil fuels. Our record of fighting fossil fuels and supporting aggressive renewable energy development speaks for itself.

However, we reject the administration's contention that the state must either continue to burn fossil fuels or subsidize aging, unsafe nuclear power plants. This is a false choice. We have shared with you the analysis of one of the nation's experts on renewable power that shows that for less money, the state could generate as much power with lower CO₂ emissions and more jobs than the Cuomo administration's approach.

Moreover, the administration has refused to publicly release and defend its internal analysis that they assert indicates otherwise. We believe that the administration simply was not interested in considering alternatives to the nuclear bailout and thus has no internal analysis to offer.

As far as we can tell, neither the administration nor Exelon has been willing to provide any public evidence as to the size of the financial loss being incurred with the operation of these plants. Such information is critical to determine whether the size of the bailout makes any sense in relation to the problem it is allegedly seeking to address.

Nuclear subsidies have no place in a clean energy plan to fight climate change. That was the conclusion the U.S. Environmental Protection Agency reached as it rejected the idea of giving nuclear plants credit for greenhouse gas emissions reduction under its Clean Power Plan. As EPA pointed out, maintaining existing nuclear plants does nothing to reduce carbon emissions, it just maintains the status quo.

We note that in Mr. Kauffman's letter, the administration backs away from the incorrect assertion that nuclear power has zero carbon emissions, instead now asserting that it is comparable to renewable energy. The administration, however, continues to ignore the many environmental, financial and public safety problems associated with nuclear power, starting with the cost and risks associated with accidents and the storage of nuclear waste.

In terms of costs, the administration criticizes the analysis of the independent think tank the Public Utility Law Project (PULP). PULP's \$7.6 billion estimate of the cost of the subsidy is consistent with other studies. It relied on publicly available information. And the reason we requested their work was simply because the Cuomo administration had refused to estimate the cost of the 12-year subsidy beyond the first two years (estimated at \$1 billion).

In this week's letter, the administration argues that the cost would be substantially less than PULP's estimate. Yesterday, for the first time, a full *seven months* after the PSC's vote to approve the deal and a mere *eight days* before the subsidy goes into effect, the administration provided some analysis to buttress their estimate.

Of course, the debate over the numbers will continue since the newly-released analysis assumes a steady increase in wholesale electricity prices. That's quite an assumption given that prices are in the midst of a downward trend and have been low for the last nine years. New York's plan to add cheaper renewables to the energy system and ongoing efficiency improvements will also contribute to reducing electricity prices in the long term.

On the other hand, even if these new numbers were correct, the impact of the \$1 billion increase for the first two years to hospitals, school systems, public housing, transit, municipalities and residents remains the same. It's also worth noting that by their calculation, the plants would be profitable again by 2022, but there is no "claw back" provision to ensure ratepayers get their money back. It's a classic lose-lose for consumers.

The bottom line is that this debate – and the impact on the wallets of all New Yorkers, municipalities and institutions – must be conducted openly, not behind the closed doors of an insiders-only lobbying game. The public deserves better.

In the letter, the administration defends its public process on the nuclear subsidies by citing that many public hearings were held on the bailout plan. This is perhaps their most disingenuous argument. We all know that those hearings occurred *before* the summer and that the administration's last-minute near-total rewrite of its bailout plan was hatched behind closed doors and rammed through within weeks of it being finalized. In fact, the last public hearing occurred three weeks *before* the radically changed nuclear subsidy proposal was released on July 8, 2016, which was only two weeks before the final deadline for comments on the changed proposal.

To argue that the hearing process that took place for the original proposal is proof that the administration's decision is the result of an open process is obviously misleading. A look at the facts about the timeline of the hearings and public announcements clearly demonstrates that the process was anything but open.

The Cuomo administration then argues that an "independent" study concluded that failure to bail out the upstate plants would lead to a significant electric rate hike. Once again, the administration does not disclose the identity of the report that supports this conclusion or where the public can go to review the accuracy of its conclusions.

The administration should release that report. If the report is the one conducted by the Brattle Group, which was cited by the Public Service Commission in its proceedings, then the administration's assertion that it is "independent" is clearly misleading.

As you know, the author of that report testified before you under oath. When asked who paid for the report, he answered, "Exelon." The report that was made public (December 2015) makes no mention of Exelon as a sponsor of the study, identifying only labor unions and municipalities as the sponsors. One can guess why Exelon was not listed—it stood as the multibillion-dollar beneficiary of the bailout plan and as such had a substantial financial stake in a report that moved the administration toward the bailout.

It is certainly possible that during the proceedings the administration was unaware of Exelon's role in the report, but certainly not *after* your hearing.

Our organizations do not like this deal; we think it's bad for the environment, a threat to public safety and far too expensive. We have made our opinions public, we have disclosed our methodologies and all of the underpinnings of the research we've requested, we have cited all of our assertions.

The Cuomo administration has not behaved in the same fashion.

We testified under oath before your committees. We expect that the administration will do the same—make their case in public and under oath.

If the administration feels they are unable to answer questions due to pending litigation, it is probably wise to delay implementation of the subsidies until after those lawsuits are settled and they feel free to respond to legislators' concerns. We note, however, that this week the heads of the FBI and the NSA were able to testify before Congress despite an ongoing investigation by the intelligence community. While their testimony was restricted in some areas, they were still able to provide some key information. In the case of the nuclear power plant bailout, there is no risk of giving away national secrets or litigation strategy. This is the state government being asked about the process by which it made its decisions and the information it relied upon in doing so. That is the bare minimum the administration owes the public.

Sincerely,

Blair Horner, New York Public Interest Research Group
Alex Beauchamp, Food & Water Watch