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Grid Deployment Office

U.S. Department of Energy

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RE: Civil Nuclear Credit Program: Draft Guidance for the Second Award Period, 87 FR 60665 (Oct. 06, 2022)

Green Scissors is a coalition of environmental and taxpayer advocates. For nearly 30 years, the coalition has worked to reduce and eliminate wasteful and environmentally harmful government spending. It is in this spirit of fiscal and environmental responsibility that we submit these comments regarding the Draft Guidance of the Second Award Period of the Civilian Nuclear Credit (CNC) program. The $6 billion appropriated to the CNC as part of the Infrastructure Investment and Jobs Act (IIJA) is a significant investment of our tax dollars. The Department of Energy (DOE) must ensure that these funds are spent prudently. This burden of responsibility is especially acute given the potential for this program to unleash negative consequences for ratepayers, taxpayers, and the climate alike.

The CNC program does not simply pick “winners and losers” in the electricity sector, it goes further: instead of subsidizing the nuclear industry at the expense of other power sources, it singles out individual reactors for support via a regulatory process. This makes it the most expansive and expensive direct intervention by a federal agency into electricity markets in recent memory. The new 45U nuclear production tax credit (PTC) created by the Inflation Reduction Act (IRA) makes the CNC program duplicative and will further distort the electricity markets at a hefty price to federal taxpayers. If the best environmental outcome can be secured without spending our tax dollars, then those tax dollars should not be spent. That is the animating principle of the Green Scissors coalition. It is also why we were concerned to learn that the DOE has already committed to spending the entire $6 billion regardless of how the program proceeds. We submit these comments in the hope that they inform a spirit of both fiscal and environmental prudence as the program is designed.

Section VII. Guidance on Certification Application and Criteria

B. Economic Factor Guidelines

The DOE is proposing to certify reactors for subsidization based on criteria that includes economic need and the likelihood of imminent closure. But in the absence of stringent safeguards, there is ample room for this criteria to be abused, especially when the second cycle is not limited to nuclear reactors that have publicly filed their intention to cease operation. In particular, we highlight two potential dangers: 1.) nuclear operators may inflate the risk of closure in the absence of strict, third party verification of economic claims and 2.) nuclear operators may benefit from an overly generous definition of the “costs of operation” resulting in the transfer of liabilities from reactor owners to taxpayers.

- **Economic Need**

The nuclear industry has a long history of exaggeration when large subsidies are involved. State legislatures and Public Utility Commissions have sometimes learned too late that evidence justifying major bailouts was faulty or outright fraudulent. The CNC must not be another example in this long history. We are encouraged that the DOE is purportedly hiring a “Big Three” accounting firm to evaluate the economic claims of nuclear operators. This is a strong sign that the agency intends to subject industry claims to third-party verification. On the other hand, major private sector accountants are expensive and likely already employed by likely applicants of the CNC program. To save the taxpayer and mitigate potential conflicts of interest, we encourage the DOE to use existing federal capacity to vet claims about reactor economics. Although the DOE likely lacks the internal capacity, the Federal Energy Regulatory Commission (FERC) does not. It is stacked with the relevant technical staff and is the best equipped of any federal agency to review the operating costs of merchant generators and bidding behavior in competitive wholesale and capacity markets. If consulting with the FERC saves the taxpayer the cost of a major accounting firm and results in a higher level of third-party scrutiny, the DOE should consider the cheaper option.

- **Operating Costs**

This program represents a massive taxpayer expenditure and should not allow for funds to be siphoned towards the enrichment of reactor owners due to loose restrictions on eligible uses. Because the intent of the program is to provide an economic “bridge” for nuclear generators that are capable of continued, financially self-sustaining operation, we therefore encourage the DOE to use a definition of operating costs that includes only those portions of the owners’ costs attributable to the period of the CNC award, and that satisfies other certification criteria. For instance, capital costs that will be amortized after the CNC award, decommissioning costs, advocacy expenses and trade association dues, and relicensing costs should be excluded. In addition, costs arising from nuclear regulatory violations and corrective actions must be disallowed; DOE should review any violations and safety performance findings issued by the Nuclear Regulatory Commission for compliance with the certification criteria, and determine if the award should be discontinued and if any amounts must be recaptured.

C. Emissions Impact Guidance

The DOE is proposing to certify reactors based on the risk of premature closure increasing greenhouse gas (GHG) emissions. But this criteria too has the potential to be abused. The reality is that electricity markets are complex mechanisms that respond to a variety of endogenous and exogenous inputs. From economic growth and extreme weather events to fuel prices and the mining of cryptocurrency, it is simply not credible to ascribe every fluctuation in emissions to the retirement of individual reactors. That is why we encourage the DOE to set a high causal standard for connecting potential reactor retirements with increased GHG emissions. Choosing too narrow a timeframe over which to consider GHG emissions increases may misrepresent an overall positive trend in emissions reductions and result in some reactors receiving undeserved subsidies. A fairer temporal snapshot is likely the four year window of the CNC award itself, with the potential for net emissions increases considered across an appropriate regional jurisdiction, such as an RTO/ISO. This tough but fair standard would protect the taxpayer by preventing reactors whose closure would not increase GHG emissions from qualifying for credit payments.

Section XI. Award Administration Information

C. Oversight & D. Recapture

The second cycle economic factor guidance requires applicants to include receipts from the Production Tax Credit (PTC) under 26 U.S.C. § 45U in their revenue streams, assuming that the PTC will begin in January 2024 and that prevailing wage requirements are met. As the deadline for submission of CNC Certification Application for the first round ended before the new 45U was established by the Inflation Reduction Act (IRA), DOE should request additional supporting documentation as the tax credit might affect revenue assumptions and no longer result in annual operating losses. And in the case that first cycle awardees are considered without factoring in 45U credit, DOE should audit all selected nuclear reactors and recapture the allocation of credits if the reactor no longer operates at an annual loss in the absence of the allocation of CNC awarded by DOE.

Conclusion

The DOE should ensure that the CNC program does not become a burden for taxpayers or a risk to the climate. Ultimately, the most important questions for decarbonizing the electricity sector are: how much can emissions be reduced, how quickly, and at what cost? If preserving merchant reactors is the most expensive option to achieve this goal, then taxpayers should not be subsidizing it. Therefore, we recommend that no CNC funding be allocated without an analysis of alternatives. If projections show emissions reductions would still be achieved more cheaply without the reactor within the four-year period of the CNC, then the intervention is imprudent for taxpayers and ratepayers alike. We appreciate this opportunity to provide input on the CNC and look forward to continued engagement with the DOE on the responsible administration of this program.

Respectfully,

The Green Scissors coalition

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