Nuclear Procurement Regulations and Potential Legislative Changes

Report to General Assembly

Pursuant to Uncodified Section 7 of Senate Bill 937 (Chapter 625, Acts of the 2025 Session)



January, 2026

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PUBLIC SERVICE COMMISSION

Report to General Assembly on Nuclear Procurement Regulations and Potential Legislative Changes – Pursuant to Uncodified Section 7 of Senate Bill 937

Dear President Ferguson, Speaker Peña-Melnyk, and Members of the General Assembly:

Pursuant to Uncodified Section 7 of Senate Bill 937 (Chapter 625, Acts of the 2025 Session), the Public Service Commission provides the following report addressing:

1) the status of developing regulations for the establishment and purchase of zero-emission credits in accordance with §§7–1217 and 7–1220 of the Public Utilities Article, as enacted by Section 3 of this Act; and
2) whether any legislative action is necessary to implement the zero–emission credit provisions in §§7–1217 and 7–1220 of the Public Utilities Article, as enacted by Section 3 of this Act.[1]

To develop regulations to implement a nuclear procurement process and examine the need for legislative changes, the Commission established PC71 and a Work Group of stakeholders led by Commission Technical Staff. The Commission's Technical Staff filed the *Final Report on the Status of Nuclear Procurement Regulations and Recommended Legislative Changes*, on December 4, 2025 and it has been publicly available in the Commission's docket since that time. The Staff Report reflects the work of Commission Technical Staff and participating stakeholders in the Nuclear Procurement Work Group and is transmitted to the General Assembly for informational purposes.

At this stage of implementation, the Commission has taken no docketed or public action on the Staff Report. With the exception of the changes recommended below, the Commission requires no additional statutory authority to continue the work to develop and consider regulations for the establishment and purchase of zero-emission credits (ZEC) by the fall of 2026 and to adopt final regulations by July 1, 2027.[2]

The Commission has reviewed the Staff Report and recommends only three of the proposed clarifying legislative changes to implement the zero-emission credit provisions in §§7–1217 and 7–1220.

[1] *See* uncodified Section 7 of the Next Generation Energy Act.
[2] See §7–1221.

Adjustment to Calculation Structure for Rate Impacts

The Staff Report notes that the existing statute is prescriptive in establishing how calculation of impact to ratepayers of a proposed nuclear project is structured in PUA §7-1216(b). The statute requires the same net long-term cost apply to all customer classes.[3]

The Commission believes that ratepayer impacts would likely be different for different customer classes as a matter of fact. Accordingly, clarifying language may be necessary so that the Commission has the flexibility to more accurately weigh benefits and costs.

ZEC Definition Modification

The Staff Report discussed a revision to PUA §7-1220(a) to redefine the ZEC. The current ZEC definition focuses on the difference between potential wholesale market payments and the cost of constructing the nuclear project which is similar to a contract for differences. As noted in the Staff Report:

> This raises concerns that the current ZEC definition and structure could be interpreted to interfere with the Federal Energy Regulatory Commission's ("FERC") authority over interstate wholesale electricity markets, and may therefore be subject to legal challenge.[4] Staff, therefore, recommended that the ZEC definition focus on environmental attributes similar to renewable energy credits ("REC") under the Maryland Renewable Portfolio Standard ("RPS") and to other states' nuclear ZEC programs. Redefining the ZEC to include environmental attributes reduces concerns with legal challenges to the ZEC statutory basis.[5]

The Commission will interpret statutory language to ensure that it is consistent with our authority and would not interfere with FERC's jurisdiction over wholesale rates. Nevertheless, adding clarifying language that focuses on the environmental attributes of ZECs–a matter fully within state jurisdiction–would minimize the risk of successful legal challenges based on federal preemption.

Introduction of ZEC Price Indexing

The Commission's Technical Staff proposed an addition to PUA §7-1220 which would authorize ZEC price indexing based on inflation, interest rates, and project engineering, procurement, and construction costs. "Price indexing allows the approved total project cost ($/MWh) to float up or down as project capital costs fluctuate in the years between a Commission approval and final investment decisions. Implementing price indexing could remove some or all the cost of risk and contingency from the total project cost that would be borne by the applicant."[6]

The Staff Report recommends that ZEC indexing be limited to a 15 percent increase, with no limit to a potential decrease based on lower than projected inflation, interest rates, and project

[3] Staff Report, pp. 9 – 10.
[4] *See Hughes v. Talen Energy Marketing*, *LLC*, 578 U.S. 150 (2016).
[5] Staff Report, p. 12.
[6] Staff Report, p. 12

construction costs.[7] If the project developer expects to exceed the limit, then a revised project proposal would need to be developed and approved for the project to continue.

The Commission thinks there is merit in the addition of a price index. To ensure that the Commission has the authority to implement a ZEC price indexing, the General Assembly could add language clarifying as such to PUA §7-1220.

Other proposals within the Staff Report

Regarding the other legislative changes contemplated within the Staff Report, the Commission has broad authority to interpret the statute to accomplish some of the outcomes the Staff Report seeks through its recommended changes. In response to some recommendations outlined in the Staff Report, the General Assembly could choose to provide clarity regarding the implementation of the legislation and help avoid any potential legal challenges regarding implementation of certain of the statutory provisions.

There were other proposals in the Staff Report which the Commission believes are policy issues on which the Commission does not provide any position at this time and the General Assembly may or may not decide whether to pursue.

Please let us know if the Commission may be of assistance.

Signed, PSC

[7] This proposal is consistent with the Commission's previous proposal to introduce price indexing in the OREC process. *See* Maryland Public Service Commission. "Maryland Offshore Wind Roadmap to 8.5 GW," p. 36 (December, 2024). https://www.psc.state.md.us/wp-content/uploads/HB1296-Offshore-Wind-Report-and-Recommendations_Final.pdf

	*	BEFORE THE
	*	PUBLIC SERVICE COMMISSION
	*	OF MARYLAND
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Nuclear Procurement	*	Administrative Docket PC71
Regulations	*	

Nuclear Procurement Work Group

Final Report on the Status of Nuclear Procurement Regulations and Recommended Legislative Changes

December 4, 2025

Table of Contents

Section 1: Introduction 1

Section 2: Background - Public Conference 71 1

Section 3: Status of Regulations Development 2

Section 4: Required Legislative Changes 3

PUA § 7-211. Development of clean, carbon-free nuclear power. 3

PUA § 7-1212. Application for approval of proposed nuclear energy generation project. 3

PUA § 7-1213. Time frame for approval, conditional approval, or denial of application. 6

PUA § 7-1214. Specific details and information for application. 7

PUA § 7-1215. Criteria for evaluation of applications, investors. 7

PUA § 7-1216. Projected net rate impacts. 8

PUA § 7-1217. Order approving application for nuclear energy generation project. 10

PUA § 7 -1218. Order approving application; construction with other subtitles. 11

PUA § 7-1219. Approved applicant's compliance with state's minority business enterprise program. 11

PUA § 7-1220. Zero emission credit. 11

PUA § 7-1221. Authority to adopt regulations. 13

Uncodified Section 7 13

General Comments 13

Appendix A: Commission Staff's Redlined Version of Nuclear Procurement Statute 14

Section 1: Introduction

The Technical Staff of the Public Service Commission ("Staff") is filing this "Final Report on the Status of Nuclear Procurement Regulations and Recommended Legislative Changes" on behalf of the Nuclear Procurement Work Group ("Work Group") initiated through Public Conference 71 ("PC 71"). On June 25, 2025, the Public Service Commission of Maryland ("the Commission") issued a Notice that directed the Nuclear Procurement Work Group to file a status report in the PC 71 administrative docket by December 6, 2025. The status report was to address topics specified by Uncodified Section 7 of the Next Generation Energy Act, including:[1]

1. the status of developing regulations for the establishment and purchase of zero-emission credits in accordance with §§ 7–1217 and 7–1220 of the Public Utilities Article ("PUA"), as enacted by Section 3 of this Act; and,

2. whether any legislative action is necessary to implement the zero–emission credit provisions in PUA §§ 7–1217 and 7–1220, as enacted by Section 3 of this Act.

The Work Group provides a status update and recommendations discussed later in this report. In addition, the Work Group proposes legislative changes to the enabling statute of Maryland's nuclear energy procurement practices and procedures, as described below. The proposed changes include separate sections for required legislative changes to address structural issues and desired changes to improve efficiency and flexibility. It should be noted that any statement or recommendation made by a stakeholder regarding possible legislative changes in this report should not be construed as taking any position on other legislative changes in this report, or on the nuclear procurement policy codified at PUA §§ 7-211, 7-1212—1221, and Uncodified Section 7 of the statute as a whole. A stakeholder's lack of comment on a possible legislative change should also not be construed as taking a position on that legislative change or the nuclear procurement statute as a whole.

A redlined version showing Staff's recommended changes to PUA §§ 7-211, 7-1212 – §7-1221, and Uncodified Section 7, which may not reflect the positions of individual members of the Nuclear Procurement Work Group, is included in Appendix A.

[1] Senate Bill 937, Chap. 625, Acts of the 2025 Session of the Maryland General Assembly.

Section 2: Background - Public Conference 71

On June 25, 2025, the Commission issued a "Notice Convening A Public Conference And Establishing A Nuclear Procurement Work Group."[2] This followed the enactment of SB 937 or the Next Generation Energy Act ("Next Generation Act"), which went into effect on June 1, 2025.[3] The Commission initiated PC 71 to collect data and establish a Work Group to propose regulations on the Nuclear Zero Emission Credit ("ZEC") Procurement. The Commission directed the Nuclear Work Group Leader to file a work plan by July 25, 2025. The Commission also directed the Nuclear Work Group to file a final report on the status of Nuclear ZEC Procurement Regulations and any necessary recommended legislative changes by December 6, 2025. In addition, the Work Group was directed to file proposed regulations by September 1, 2026. The Work Group Leader filed a work plan with the Commission on July 25, 2025.[4] The Commission noted the filing and authorized the Work Group to proceed with implementation of the proposed work plan on July 29, 2025.[5]

The Work Group has met regularly since July 31, 2025, to discuss the topics directed by the Commission. The Work Group's participating stakeholders include Baltimore Gas and Electric Company, Calvert County Chamber of Commerce, Calvert County Government-Office of the County Administrator, Constellation Energy Corporation, Exelon Corporation, First Energy Corporation, HB Strategies Maryland (on behalf of Constellation Energy Corporation), Manno and Associates, LLC (on behalf of the Mid Atlantic Pipe Trades Association (United Association), Iron Workers District Council of Mid Atlantic States, and Mechanical Contractors Association of Metropolitan Washington), Maryland Department of Natural Resources-Power Plant Research Program, Maryland Energy Administration, Maryland Tech Council, NorthBridge Group (on behalf of Constellation Energy Corporation), Nuclear Energy Institute, Office of People's Counsel ("OPC"), Pepco Holdings Inc., Staff, and X-energy, LLC. Staff thanks the many stakeholders for their participation in the Nuclear Work Group.

Section 3: Status of Regulations Development

The nuclear ZEC procurement regulations remain in an early conceptual state. The Nuclear Procurement Work Group followed the work plan filed in the PC 71 administrative docket and focused its early discussions on identifying necessary changes to the nuclear procurement statute. This enabled the Work Group to meet the Commission's directive of

[2] Notice Convening A Public Conference And Establishing A Nuclear Procurement Work Group, PC 71, ML 319896 (June 25, 2025).
[3] Senate Bill 937, Chap. 625, Acts of the 2025 Session of the Maryland General Assembly.
[4] Nuclear Zero Emission Credit Procurement Program Work Group Preliminary Work Plan, PC 71, ML 320740 (July 25, 2025).
[5] Nuclear Procurement Regulations Notice to Proceed, PC 71, ML 320812 (July 29, 2025).

producing this report by the established deadline. During this time, Staff initiated a request for proposal ("RFP") process for technical assistance in drafting the nuclear ZEC procurement regulations. The Nuclear Procurement Work Group remains on schedule according to the filed work plan.

Section 4: Required Legislative Changes

PUA § 7-211. Development of clean, carbon-free nuclear power.

Micro-Reactor Inclusion

The Nuclear Energy Institute ("NEI") proposes a minor modification to PUA § 7-211, regarding micro-reactors. PUA § 7-211 requires the Maryland Energy Administration to coordinate with the Commission and the Maryland Department of Natural Resources ("DNR"), Power Plant Research Program ("PPRP") to pursue cost sharing agreements with neighboring states and agreements with federal agencies regarding the siting of small modular reactors on or near federal facilities, including military or national security installations. NEI proposes that state agencies should be specifically authorized to include micro-reactors in these discussions as micro-reactors and small modular reactors ("SMR") do not necessarily share a definition. Micro-reactors are typically nuclear reactors with a capacity of 50 megawatts ("MW") or fewer while SMRs are typically 50 MW or greater. This change would provide more clarity to the state agencies during future discussions about a wider array of nuclear projects.

NEI proposes the General Assembly should amend PUA § 7-211(b)(2) to specifically include micro-reactors in discussions with neighboring states and the federal government. MEA and Commission Staff have no objections to this change. No other stakeholder provided specific comments regarding this proposed change.

PUA § 7-1212. Application for approval of proposed nuclear energy generation project.

Application Schedule

Commission Staff proposes a major revision to the application process in PUA § 7-1212 to greatly improve the efficiency and flexibility for the Commission. PUA § 7-1212(a) and (b) specify the application process and schedule for the nuclear procurement program which is identical to the Round 1 Offshore Wind Renewable Energy Credit ("OREC") program specified in PUA § 7-704.1(a)(3). This application process is structured in an open-ended and inefficient manner, which can lead to long procurement cycles and unnecessary delays. There are no pre-determined application period open or close dates. Instead, the Commission will accept applications on a rolling basis once the regulations have been implemented. The review period is

determined once the first application is received and determined to be administratively complete. This creates an inefficient and lengthy application process which can result in unnecessary delays. It also creates transparency issues with procurement process timing, which can make it difficult for prospective applicants to plan and design nuclear projects. A modified application schedule with formal open and close dates, a 30-day administrative completeness period, and one year review period could be completed in 455 days. An illustrative application schedule is included below in *Table 1: Maryland Nuclear Application Schedule.*

Table 1: Maryland Nuclear Application Schedule	
Event	**Cumulative Duration (Days)**
Commission Notice of Application Period	(60)
Application Period Opens	0
Application Period Closes	90
Administrative Completeness Deadline (Review Begins)	120
Commission Order Deadline (Review Ends)	455

Commission Staff proposes the General Assembly should specifically authorize the Commission to adopt, by order or regulation, a new application and review schedule. The application schedule should not be specified in statute to preserve flexibility for the Commission to adjust the application schedule, for good cause, in the event of unforeseen events. No other stakeholder provided specific comments regarding this proposed change.

Procurement Schedule

Staff proposes an addition to PUA § 7-1212 to authorize the Commission to create a formal nuclear procurement schedule. The inclusion of a formal nuclear procurement schedule would provide transparency and market certainty for developers to plan project development and investments. The formal nuclear procurement schedule would take into account the time needed to complete an individual application period (estimated 455 days) into account and sequence multiple application periods accordingly. The formal nuclear procurement schedule would include a minimum of the three application periods currently required by PUA § 7-1212(c). In addition, the Commission would preserve its ability to hold additional application periods if needed, as allowed by PUA § 7-1212(d). Whether or not this change is adopted, it is unlikely the Commission would be able to complete the three required application periods by January 1, 2031. Therefore, Staff also proposes that the deadline to complete the three applications should

be modified to January 1, 2032. The proposed procurement schedule is included below in *Table 2: Maryland Nuclear Procurement Schedule.*

Table 2: Maryland Nuclear Procurement Schedule					
Round	**Announcement Date**	**Application Open**	**Application Close**	**Award Date**	**Estimated Operational Date**
1	Q2 2027	Q3 2027	Q4 2027	Q4 2028	2038 - 2043
2	Q4 2028	Q1 2029	Q2 2029	Q2 2030	2040 - 2045
3	Q2 2030	Q3 2030	Q4 2030	Q4 2031	2041 - 2046

Commission Staff proposes that the General Assembly should specifically authorize the Commission to adopt, by order or regulation, a nuclear procurement schedule for at least three application periods with procurements completed by January 1, 2032. To provide the necessary flexibility, the General Assembly should not prescribe a nuclear procurement schedule in statute, but only the minimum number of application periods and an overall target date for their completion. In addition, the Commission should be provided flexibility to adjust the procurement schedule forward or backward for good cause, to allow it to respond to changing circumstances. No other stakeholder provided specific comments regarding this proposed change.

Number and Type of Application Periods

NEI proposes major revisions to PUA § 7-1212 to create two additional application process tracks to support long-term operations at Calvert Cliffs Clean Energy Center (a nuclear power generating station owned by Constellation) and capacity uprates at existing facilities. The application tracks would be in addition to the current application process for new nuclear generation facilities. Separating different types of nuclear applications into different application process tracks would ensure new projects are not competing with existing projects. It would also clarify the Commission's evaluation criteria and help differentiate the cost and risk profiles of the different competing project types.

NEI proposes the General Assembly revise PUA § 7-1212(a) to create three separate application tracks for new nuclear generation, uprates at existing facilities, and long-term operational support for Calvert Cliffs. MEA and Commission Staff do not support this proposed change, as it is unnecessary and unwarranted. The current statute already allows both new generation facilities and capacity uprates at existing facilities, which the Commission and participating stakeholders

are capable of differentiating in the Commission's review process. The statute was not designed to support long-term operations of existing nuclear facilities.

Revised Project Proposals

Commission Staff proposes an addition to PUA § 7-1212 to create a revised application and review process. This would authorize the Commission to accept and review modifications to projects that have already received Commission approval orders. This would allow approved projects to renegotiate major project elements including the ZEC long term price schedules. This would provide awarded project developers with greater flexibility and a formal avenue for major project modifications. This could also reduce the likelihood an approved project would withdraw from a Commission approval. There would be no formal application period as applications would be received on a rolling basis. Once a revised application is received, the Commission would have 30 days to determine if the submission is administratively complete. The revised application review period could be expedited and completed in as little as 180 days; however, this would require additional changes to PUA § 7-1213 as discussed below.

Commission Staff proposes the General Assembly should create a revised application and review process to provide approved project developers and the Commission with greater flexibility. No other stakeholder provided specific comments regarding this proposed change.

<u>PUA § 7-1213. Time frame for approval, conditional approval, or denial of application.</u>

Revised Project Proposal - Length of Review Period

Commission Staff proposes an addition to PUA § 7-1213 to specify the maximum length of the review period required for a revised application. Staff proposes the revised application review period should not exceed 180 days, unless extended by the Commission for good cause. A one-year review period is not expected to be needed, since revised projects have already gone through the initial application process. In addition, the revised application review process would not entail a re-review of the entire project, just limited review of some project elements including, but not limited to, the ZEC long term price schedules. This change is only needed if the General Assembly creates the revised application period in PUA § 7-1212. Commission Staff proposes the General Assembly specify the revised application period to not exceed 180 days unless extended by the Commission for good cause. No other stakeholder provided specific comments regarding this proposed change.

Review Commencement Timing

Staff proposes revisions to PUA § 7-1213(a) that would change the start of the review period to when all applications have been determined to be administratively complete. Stakeholders participating in the nuclear procurement application reviews do not receive the application materials until after the applications are determined to be administratively complete. Moving the start of the review period provides participating stakeholders with one full year to review the application proposals. This will ensure the nuclear project application reviews are carried out in an exhaustive and thoughtful manner. Staff proposes the General Assembly change the start of the review period to the date when all applications are administratively complete. No other stakeholder provided specific comments regarding this proposed change.

PUA § 7-1214. Specific details and information for application.

Application Requirements - Certificate of Public Convenience and Necessity

Staff proposes revisions to PUA § 7-1214 to facilitate the merger of the Certificate of Public Convenience and Necessity ("CPCN") and ZEC application processes. The current statute requires a nuclear project to submit applications to obtain both a ZEC and CPCN approval orders separately from the Commission. This results in increased administrative burden for the applicants and the Commission as the ZEC and CPCN processes could take at least 2.5 years to complete when combined. Commission Staff proposes merging the CPCN application requirements into the ZEC application requirements. This change would allow nuclear projects to apply to the Commission for ZEC and CPCN approval through a single application and review process. This would create administrative efficiencies for the Commission and nuclear applicants, without diminishing application requirements for either the ZEC or CPCN processes. This proposal also requires additional changes to PUA §§ 7-1215 and 7 -1217.

Commission Staff proposes the General Assembly should incorporate the CPCN application requirements into the nuclear procurement application requirements. No other stakeholder provided specific comments regarding this proposed change.

PUA § 7-1215. Criteria for evaluation of applications, investors.

Addressing Large Loads

X-energy proposes a minor revision to the wording of PUA § 7-1215 to provide greater flexibility to the Commission when considering cost impacts to ratepayers. The General Assembly should remove the word "lowest" from PUA § 7-1215(a)(1). This would allow the Commission to evaluate and compare applications based on their best value to ratepayers when considering other project benefits, instead of just the lowest cost. This change is proposed by X-

energy. Commission Staff supports this change. No other stakeholder provided specific comments regarding this proposed change.

Evaluation Requirements - Certificate of Public Convenience and Necessity

Staff proposes revisions to PUA § 7-1215 to facilitate the merger of the CPCN and ZEC application processes. The current statute requires a nuclear project to submit applications to obtain both a ZEC and CPCN approval orders separately from the Commission. This results in increased administrative burden for the applicants and the Commission as the ZEC and CPCN processes could take at least 2.5 years to complete when combined. Staff propose merging the CPCN evaluation criteria into the ZEC evaluation criteria. This change would allow nuclear projects to apply to the Commission for ZEC and CPCN approval through a single application and review process. This would create administrative efficiencies for the Commission and nuclear applicants without diminishing application requirements for either the ZEC or CPCN processes. This proposal also requires additional changes to PUA §§ 7-1214 and 7 -1217.

Commission Staff proposes the General Assembly should incorporate the CPCN evaluation criteria into the nuclear procurement evaluation criteria. No other stakeholder provided specific comments regarding this proposed change.

<u>PUA § 7-1216. Projected net rate impacts.</u>

Project Location Requirements

Several stakeholders stated the location requirements for nuclear energy projects in PUA § 7–1216(a)(1) could be better defined. The statute states the Commission may not approve an application unless "the project is connected to the electric system serving the state." It is clear through the legislative process that this was intended to require that projects must be located within Maryland; however, the current language does not explicitly state this. The word "distribution" was removed from the original legislative text as nuclear projects of this size would be connected to the transmission system and not the distribution system. The word "distribution" would have limited nuclear energy projects to be located only in Maryland. The current language is broad enough to also mean projects could be located in Maryland or anywhere in PJM Interconnection ("PJM") or possibly outside of PJM but serving PJM and Maryland. MEA believes the legislative intent is to support in-State generation, demonstrated by the use of similar language to distinguish in-State resources in the current statutes establishing eligibility in the Renewable Energy Portfolio Standard ("RPS"). Staff concurs with MEA on this issue. The nuclear energy project location requirements could be amended to specify an in-State location during the development of the regulations. The Nuclear Working Group did not identify a proposed solution to this issue.

Confidential ZEC Price Cap and Ratepayer Impact Caps

OPC and NEI independently propose changes to PUA § 7-1216 regarding the transparency of the ratepayer impact caps and price cap. The current statute requires the ratepayer impact caps and price cap to be kept confidential by the Commission. The confidential nature of these price caps could run afoul of open government and public information act laws. These confidential caps are difficult for prospective bidders to navigate as they develop and price projects for submission. Further, OPC believes the ratepayer impact caps and price cap are major policy decisions that should be specified or outright set by the General Assembly. OPC and NEI did not propose specific changes to the statute text. If the confidentiality of the ratepayer impact caps and price cap remain within the statute, MEA believes the ratepayer impact caps and price cap should be exempted from disclosure under the Open Meetings Act and Maryland Public Information Act.

Staff agrees with OPC and NEI that the confidential ratepayer impact caps and price cap are problematic; however, Staff does not agree with their proposed solution. Instead, Staff recommends the ZEC ratepayer impact caps and price cap be removed entirely and replaced with a Benefit Cost Analysis ("BCA"). As stated in the Commission's recent offshore wind report, the Commission has utilized BCAs in the EmPOWER Maryland Program, its Electric Vehicle pilot, its Energy Storage pilot, and other proceedings.[6] The Commission has also undertaken a Unified Benefit Cost Analysis ("UBCA") proceeding to enable a similar methodology to be used across cases at the Commission for a variety of renewable, clean, and distributed energy resources.[7] The use of a BCA would align the nuclear procurement process with the Commission's other BCA methodologies across different technologies and proceedings. The use of the BCA aligns with the BCA submission requirements in PUA § 7–1214(4) and their evaluation in PUA § 7–1215(a)(6), and ensures approved nuclear projects are a net benefit to Maryland's economy, public health, and environment. With these proposed changes, PUA § 7-1216(c) would become irrelevant and should also be removed. Constellation supports Commission Staff's proposed change. OPC opposes Commission Staff's proposed change. The other stakeholders did not provide specific comments regarding this proposed change.

Addressing Large Loads

X-energy proposes changes to PUA §7-1216(b) regarding how the Commission will calculate impacts to residential and nonresidential ratepayers. The Work Group found the existing statute

[6] Maryland Public Service Commission. Maryland Offshore Wind Roadmap to 8.5 GW. (December, 2024). https://www.psc.state.md.us/wp-content/uploads/HB1296-Offshore-Wind-Report-and-Recommendations_Final.pdf

[7] *Unified Benefit Cost Analysis (UBCA) Framework for Distributed Energy Resources,* Case No. 9674, https://webpscxb.psc.state.md.us/DMS/case/9674

to be too prescriptive in establishing how the calculations are structured, and that it limits the Commission's flexibility to consider rate impacts derived from large load users. The proposed changes would allow the Commission to consider the projects with the greatest benefit to Maryland.

X-energy proposes that the General Assembly amend PUA §7-1216(b) by replacing "the Commission shall apply the same net long–term cost per megawatt–hour to residential and nonresidential customers" with "the Commission may consider the net long-term cost per megawatt hour as applied to residential, commercial, and industrial customers." Staff agrees with X-energy's proposal; however, Staff recommends replacing "residential, commercial, and industrial customers" with "residential and nonresidential ratepayers" for consistency with other sections of the nuclear procurement statute. No other stakeholder provided specific comments regarding this proposed change.

PUA § 7-1217. Order approving application for nuclear energy generation project.

Project Cost Overruns and Prepayment of Development Costs

Constellation, NEI, and X-energy have jointly proposed striking PUA § 7-1217(a)(3), which specifies the provisions regarding project cost overruns and payments before commercial operations. According to their joint comments, the provisions for cost overruns incentivizes the bidder to include in the price of their bid the risk of project costs above expectations or an extended build schedule in order to mitigate their own risk. If a project is selected, the ratepayer is then responsible for paying for ZECs at a level that would embed these project cost overrun expectations, regardless of whether those project cost overruns materialize. Removing the provisions for cost overruns would allow the Commission to consider a wide array of alternative mechanisms to account for potential project cost overruns, and whether they should be recovered through ZECs. The provisions in PUA § 7-1217(a) prohibiting payment before commercial operation of a project may increase ratepayer costs. The construction of new nuclear facilities requires large outlays that must be funded over long periods of time with no revenues to provide returns to investors in the interim. Access to capital offerings with these characteristics is limited, and the cost of capital can be a substantial expense. Typically, banks and equity investors require a higher return for investments in nuclear projects of this nature. The higher cost of capital would then become embedded into the total project cost that would be bid into Maryland's new nuclear procurement process. This would result in increases in the ZEC price and costs recovered from ratepayers.

Constellation, NEI, and X-energy jointly propose that the General Assembly strike the provisions in PUA § 7-1217(a)(3) to provide the Commission with greater flexibility. MEA and Commission Staff agree that these issues may lead to higher ZEC prices and ratepayer impact

costs, but both disagree with striking the provisions regarding project cost overruns and payment before commercial operation. MEA stressed that project cost overruns and possible payments prior to commercial operations should be presented and considered by the Commission. Commission Staff agrees with MEA and has independently proposed amending the statute to allow applicants to include project cost overruns and payments prior to commercial operations in ZEC project applications. These issues would be considered on a project-by-project basis during the ZEC application review period by the Commission and all intervening parties; however, Commission approval is not guaranteed. In addition, Commission Staff's proposal regarding the ZEC price indexing and the creation of a revised application process are alternative mechanisms intended to help address the issue of project cost overruns. OPC does not support the removal of these two provisions, as OPC believes it would expose Maryland ratepayers to massive and unacceptable risks. OPC cites the project costs for Vogtle units 3 and 4, the only nuclear power plant built in the United States in the last three decades, where costs ballooned from the initial estimate of $14 billion to $36.8 billion, a 163 percent increase.

CPCN Authorization

Staff proposes a revision to PUA § 7-1217 authorizing the Commission to issue a combined ZEC and CPCN approval through a single order. The current statute requires a nuclear project to obtain ZEC and CPCN approval orders through separate proceedings from the Commission. This results in increased administrative burden for the applicants and the Commission, as the ZEC and CPCN processes could take at least 2.5 years to complete when the time periods for the proceedings are combined. Staff propose authorizing the Commission to issue a single order approving a nuclear project to construct via CPCN requirements and to generate and receive payment for ZECs. This would create administrative efficiencies for the Commission and nuclear applicants without diminishing either the ZEC or CPCN application and review processes. This proposal would also require additional changes to PUA §§ 7-1214 and 7 -1215, as previously discussed.

Staff proposes that the General Assembly should amend the statutes to provide for a ZEC approval by the Commission as authorization to construct and operate the nuclear energy project consistent with the CPCN requirements. No other stakeholder provided specific comments regarding this proposed change.

<u>PUA § 7 -1218. Order approving application; construction with other subtitles.</u>

The Nuclear Work Group did not identify any necessary changes to this section.

<u>PUA § 7-1219. Approved applicant's compliance with state's minority business enterprise program.</u>

The Nuclear Work Group did not identify any necessary changes to this section.

PUA § 7-1220. Zero emission credit.

ZEC Definition

Constellation and Staff independently propose major revisions to PUA § 7-1220(a) to redefine the ZEC. The current ZEC definition is structurally flawed, as it only focuses on the monetary aspects of the credit and is essentially a contract for differences ("CFD"). The current ZEC definition ignores the environmental attributes of nuclear energy generation as well. This raises serious concerns that the current ZEC definition and structure could interfere with the Federal Energy Regulatory Commission's ("FERC") authority over interstate wholesale electricity markets.[8] Any ZEC approval order issued by the Commission is likely to be subject to a legal challenge. The ZEC definition should focus on environmental attributes similar to renewable energy credits ("REC") under the MarylandRPS and to other states' nuclear ZEC programs. Redefining the ZEC to include environmental attributes should eliminate any concerns with the legal defensibility of the ZEC statutory basis.

Constellation and Staff independently propose that the General Assembly should change the definition in PUA § 7-1220(a) to state, "In this section - a "zero–emission credit" is a credit equal to the environmental attributes of 1 megawatt–hour of electricity that is derived from a nuclear power facility approved by the Commission under PUA § 7-1217." This change is proposed by Constellation and Commission Staff and supported by MEA and NEI.

ZEC Indexing

Staff proposes an addition to PUA § 7-1220 which would authorize ZEC price indexing based on inflation, interest rates, and project engineering, procurement, and construction costs. Price indexing allows the approved total project cost ($/MWh) to float up or down as project capital costs fluctuate in the time between a Commission approval and final investment decisions as they can occur years apart. This would remove some or all of the cost of risk and contingency from the total project cost that would be borne by the applicant. If there are no project cost overruns, then this would reduce the ZEC price and benefits to ratepayers when compared to the ZEC price and benefits when not using indexing. If there are project cost overruns, then there would be a net effect comparable to not using price indexing. ZEC indexing should be limited to a 15 percent increase but there should be no limit to a potential decrease based on lower than projected inflation, interest rates, and project construction costs. If the project developer expects to exceed the limit, then a revised project proposal would be needed. In recent years, large

[8] *See Hughes v. Talen Energy Marketing*, LLC, 578 U.S. 150 (2016).

energy infrastructure projects have faced a number of global macro-economic issues including high inflation, increases in interest rates, and global supply chain bottlenecks as a result of the COVID-19 pandemic and Russian invasion of Ukraine in 2022. Other states such as Massachusetts have recently employed price indexing for their offshore wind project awards. Providing greater flexibility to the Commission and nuclear project developers could ultimately lead to lower overall costs to ratepayers.

The General Assembly should include ZEC price indexing in PUA § 7-1220 and limit it to a 15 percent increase; however, there should be no limit on any decrease.[9] This change is proposed by the Staff and no other stakeholder provided specific comments regarding this proposed change.

PUA § 7-1221. Authority to adopt regulations.

The Nuclear Work Group did not identify any necessary changes to this section.

Uncodified Section 7

The Nuclear Work Group did not identify any necessary changes to this section.

General Comments

NEI proposes allowing large load customers to subscribe for a portion of the energy and environmental attributes from an approved nuclear project. This would allow a large load customer to financially support an approved nuclear project by an amount proportional to the amount of the energy and environmental attributes it would receive. This would reduce grid benefits and costs to ratepayers for the energy and environmental attributes in a proportional amount to the large load customer subscription. Allowing large load customers to subscribe would ultimately reduce generation added to the power grid, which would limit the nuclear facility's impact on congestion, capacity, and electricity prices. This would be especially true if the large load customer is co-located with the nuclear project. However, allowing some level of large load customer subscription may be preferable to allowing large load customers access to the electric transmission grid without any generation support. Further, approved ZEC projects are not required by statute to sell all of the electricity generated by a project into the wholesale market. The ZEC price is determined by the difference between the cost to construct the project and what the project may receive on PJMs wholesale market. Theoretically, an approved project could sell the electricity and ancillary services to a large load customer through a corporate power purchase agreement ("PPA") at a rate higher than what would be received from participating in PJM's wholesale market. In this scenario, a project would receive revenues from

[9] This recommendation is consistent with the Commission's recommendation to allow OREC Price Indexing as described in its offshore wind report of December 18, 2024.

electricity sales to the large load customer under the PPA and additional revenue under the ZEC schedule from ratepayers.

At this time, Staff and MEA do not have a position regarding NEIs proposal. Staff notes NEIs proposal may already be enabled by the existing statute and could be discussed further during the regulations development process. No other stakeholder provided specific comments regarding this proposed change.

Appendix A:
Commission Staff's Redlined Version of Nuclear Procurement Statute

§7–211.

(a) The General Assembly finds and declares that it is the policy of the State to encourage the development of clean, carbon–free nuclear power, including development through innovative designs.

(b) The Maryland Energy Administration, in coordination with the Commission and the Department of Natural Resources, shall pursue:

(1) cost–sharing agreements with neighboring states in the PJM region to mitigate the risks of developing new nuclear energy generating stations; and

(2) agreements with federal agencies regarding the siting of small modular reactors and micro-reactors:

(i) on federal land; or

(ii) on or near federal facilities, including military and national security installations.

(c) On or before December 1, 2026, the Maryland Energy Administration shall report to the General Assembly, in accordance with § 2–1257 of the State Government Article, on:

(1) the status of the efforts made under subsection (b) of this section, including an assessment of any opportunities to participate with other states, federal agencies, and public or private partners in a multistate procurement of new nuclear energy technology; and

(2) an evaluation and status of the nuclear energy procurement process established under Subtitle 12, Part III of this title.

§7–1212

(a) (1) The Commission shall, by order or regulation, establish an application and review schedule where a person may submit an application to the Commission for approval of a proposed nuclear energy generation project, including an application to upgrade the generation capabilities of an existing nuclear energy

generating station. ~~After the effective date of Commission regulations implementing this part, a person may submit an application to the Commission for approval of a proposed nuclear energy generation project, including an application to upgrade the generation capabilities of an existing nuclear energy generating station.~~

(2) The Commission shall set the closing date for the application period to be no sooner than 90 days after the opening of the application period.

~~(2)~~**(3)** For an application submitted in accordance with paragraph (1) of this subsection, the long–term pricing schedule shall be based only on any new generation proposed in the application, including new generation at an existing nuclear energy generating station.

~~(b) (1) On receipt of an application for approval of a proposed nuclear energy generation project, the Commission shall:~~

~~(i) open an application period during which other interested persons may submit applications for approval of a proposed nuclear energy generation project; and~~

~~(ii) provide notice that the Commission is accepting applications for approval of proposed nuclear energy generation projects.~~

~~(2) The Commission shall set the closing date for the application period to be not sooner than 90 days after the notice provided under paragraph (1) of this subsection.~~

~~(c)~~**(b)** The Commission shall, by order or regulation, adopt a procurement which provide**s** for at least ~~two~~ three ~~additional~~ application periods before ~~January 1, 2031~~ January 1, 2032.

(c) The Commission may, by order or regulation, amend the procurement schedule adopted under subsection (b) of this section for good cause.

(d) The Commission may provide additional application periods that meet the requirements of this section.

(e) The Commission shall, by order or regulation, establish an application and review schedule where a person may submit a revised application to the Commission for approval of modifications to an already approved nuclear energy generation project, including a revised

application to upgrade the generation capabilities of an existing nuclear energy generating station.

§7–1213.

(a) Subject to subsection ~~(b)~~(c) of this section, the Commission shall approve, conditionally approve, or deny an application submitted under § 7–1212(a) of this subtitle within 1 year after a favorable determination of administrative completeness. ~~the close of the application period.~~

(b) Subject to subsection (c) of this section, the Commission shall approve, conditionally approve, or deny an application submitted under § 7–1212(e) of this subtitle within 180 days after a favorable determination of administrative completeness.

~~(b)~~(c) The Commission may extend the time to approve, conditionally approve, or deny an application under subsection (a) of this section for good cause.

§7–1214.

An application submitted for a nuclear energy generation project under § 7–1212 of this subtitle shall include:

(1) a detailed description and financial analysis of the project;

(2) the proposed method of financing the project, including documentation demonstrating that the applicant has applied for all current eligible State and federal grants, rebates, tax credits, loan guarantees, and other programs available to offset the cost of the project or provide tax advantages;

(3) a commitment that the applicant will use best efforts to apply for all eligible State and federal grants, rebates, tax credits, loan guarantees, or other similar benefits as those benefits become available;

(4) a cost–benefit analysis that shall include, at a minimum:

(i) a detailed input–output analysis of the impact of the project on income, employment, wages, and taxes in the State;

(ii) detailed information concerning assumed employment impacts in the State, including the expected duration of employment opportunities, the

salary of each position, and other supporting evidence of employment impacts;

(iii) an analysis of any impact on residential, commercial, and industrial ratepayers over the life of the project;

(iv) an analysis of any long–term effect on energy and capacity markets as a result of the project;

(v) an analysis of any impact the project would have on businesses in the State;

(vi) an analysis of the anticipated environmental benefits, health benefits, and economic impacts of the project to the citizens of the State; and

(vii) an analysis of other benefits resulting from the project, including increased in–State construction, operation and maintenance needs, and equipment purchases;

(5) a proposed long–term pricing schedule for the project that shall specify a price for the generation attributes, including the energy, capacity, ancillary services, and environmental attributes;

(6) a decommissioning and waste storage plan for the project, including provisions for decommissioning or waste storage as required by the U.S. Nuclear Regulatory Commission;

(7) a commitment to abide by the requirements set forth in § 7–1202 of this subtitle;

(8) a description of the applicant's plan for engaging small businesses, as defined in § 14–501 of the State Finance and Procurement Article;

(9) if applicable, the statement specified in § 7–1215(b)(2) of this subtitle, ~~; and~~

(10) If applicable, all information required to be considered by the Commission under § 7–207 or § 7-208 of this title for an application for a certificate of public convenience and necessity if the project has not already obtained a certificate of public convenience and necessity from the Commission; and,

~~(10)~~(11) any other information the Commission requires.

§7–1215.

(a) The Commission shall use the following criteria to evaluate and compare applications for nuclear energy generation projects submitted during an application period under § 7–1212 of this subtitle:

(1) the ~~lowest~~ cost impact on ratepayers of the price set under a proposed long–term pricing schedule;

(2) potential reductions in transmission congestion prices within the State;

(3) potential changes in capacity prices within the State;

(4) potential reductions in locational marginal pricing;

(5) potential long–term changes in capacity prices within the State from the project as it compares to conventional energy sources;

(6) the extent to which the cost–benefit analysis submitted under § 7–1214 of this subtitle demonstrates positive net economic, environmental, and health benefits to the State;

(7) the extent to which an applicant's plan for engaging small businesses meets the goals specified in Title 14, Subtitle 5 of the State Finance and Procurement Article;

(8) the extent to which an applicant's plan provides for the use of skilled labor, particularly with regard to the construction and manufacturing components of the project, through outreach, hiring, or referral systems that are affiliated with registered apprenticeship programs under Title 11, Subtitle 4 of the Labor and Employment Article;

(9) the extent to which an applicant's plan provides for the use of an agreement designed to ensure the use of skilled labor and to promote the prompt, efficient, and safe completion of the project, particularly with regard to the construction, manufacturing, and maintenance of the project;

(10) the extent to which an applicant's plan provides for compensation to its employees and subcontractors consistent with wages outlined under Title 17, Subtitle 2 of the State Finance and Procurement Article;

(11) siting and project feasibility;

(12) the extent to which the project would require transmission or distribution infrastructure improvements in the State, ~~; and~~

(13) If applicable, whether the project complies with the siting, environmental, and socioeconomic requirements under § 7–207 or § 7-208 of this title for an issuance of a certificate of public convenience and necessity if the project has not already obtained a certificate of public convenience and necessity from the Commission; and,

(14) public comments and results of engagement and communications with units of state and local government and the general public; and,

~~(13)~~(15)any other criteria that the Commission determines are appropriate.

(b) (1) In this paragraph, "minority" means an individual who is a member of any of the groups listed in § 14–301(k)(1)(i) of the State Finance and Procurement Article.

(2) If an applicant is seeking investors in a proposed nuclear energy generation project, the applicant shall take the following steps before the Commission may approve the proposed project:

(i) make serious, good–faith efforts to solicit and interview a reasonable number of minority investors;

(ii) as part of the application, submit a statement to the Commission that lists the names and addresses of all minority investors interviewed and whether or not any of those investors have purchased an equity share in the entity submitting the application;

(iii) sign a memorandum of understanding with the Commission that requires the applicant to again make serious, good–faith efforts to solicit and interview a reasonable number of minority investors in any future attempts to raise venture capital or attract new investors to the project;

(iv) sign a memorandum of understanding with the Commission that requires the applicant to use best efforts and effective outreach to obtain, as a goal, contractors and subcontractors for the project that are minority business enterprises, to the extent practicable, as supported by a disparity study; and

(v) sign a memorandum of understanding with the Commission and skilled labor organizations that requires the applicant to follow the portions of the applicant's plan that relate to the criteria set forth in subsection (a)(8) and (9) of this section.

(3) The Governor's Office of Small, Minority, and Women Business Affairs, in consultation with the Office of the Attorney General, shall provide assistance to all potential applicants and potential minority investors to satisfy the requirements under paragraph (2)(i) and (iii) of this subsection.

§7–1216.

(a) The Commission may not approve an application for a nuclear energy generation project submitted under § 7–1212 of this subtitle unless:

(1) the project is connected to the electric system serving the State;

~~(2) over the duration of the proposed long–term pricing schedule, the projected net rate impact for an average residential customer, based on annual consumption of 12,000 kilowatt–hours and combined with the projected net rate impact of other nuclear energy generation projects, does not exceed an amount determined by the Commission;~~

~~(3) over the duration of the proposed long–term pricing schedule, the projected net rate impact for all nonresidential customers, considered as a blended average and combined with the projected net rate impact of other nuclear energy generation projects, does not exceed a percentage determined by the Commission of nonresidential customers' total annual electric bills; and~~

~~(4) the price specified in the proposed long–term pricing schedule does not exceed an amount determined by the Commission.~~

(b) When calculating the projected net average rate impacts for nuclear energy generation projects under this section, the Commission may consider the net long-term cost per megawatt

hour as applied to residential and nonresidential ratepayers.~~shall apply the same net long–term cost per megawatt–hour to residential and nonresidential customers.~~

~~(c) The Commission shall keep confidential any amounts determined under subsection (a) of this section.~~

§7–1217.

(a) An order the Commission issues approving an application for a nuclear energy generation project submitted under § 7–1212 of this subtitle shall:

(1) specify the long–term pricing schedule;

(2) specify the duration of the long–term pricing schedule, not to exceed 30 years unless an extension is approved by the Commission;

(3) provide that:

(i) a payment may not be made under a long–term pricing schedule until electricity supply is generated by the project unless authorized by the Commission in an approval order; and

(ii) ratepayers and the State shall be held harmless for any cost overruns associated with the project unless authorized by the Commission in an approval order; and

(4) require that any debt instrument issued in connection with the project include language specifying that the debt instrument does not establish a debt, an obligation, or a liability of the State.

(b) An order approving a nuclear energy generation project vests the owner of the project with the right to receive payments according to the terms in the order.

(c) An order approving a nuclear energy generation project constitutes authorization by the Commission to construct and operate facilities that would otherwise require a certificate of public convenience and necessity under § 7–207 or § 7–208 of this title, unless the project has already received a certificate of public convenience and necessity from the Commission.

~~(c)~~(d) On or before March 1 each year, the Commission shall report to the Governor and, in accordance with § 2–1257 of the State Government Article, the Senate Committee on Education, Energy, and the Environment and the House Economic Matters Committee on:

(1) applicant compliance with the minority business enterprise participation goals under § 7–1215(b) of this subtitle; and

(2) with respect to the community benefit agreement under § 7–1202 of this subtitle:

(i) the availability and use of opportunities for local businesses and small, minority, women–owned, and veteran–owned businesses;

(ii) the success of efforts to promote career training opportunities in the manufacturing, maintenance, and construction industries for local residents, veterans, women, and minorities; and

(iii) compliance with the minority workforce goal under § 7–1202 of this subtitle.

§7–1218.

(a) If the Commission approves an application that demonstrates, based on the criteria specified in § 7–1214 of this subtitle, positive net economic impacts and environmental and health benefits to the State, the Commission shall issue an order in compliance with § 7–1217 of this subtitle.

(b) The Commission may not issue an order to facilitate the financing of a nuclear energy generation project unless the project is subject to a community benefit agreement under § 7–1202 of this subtitle.

§7–1219.

(a) The findings and evidence relied on by the General Assembly for the continuation of the Minority Business Enterprise Program under Title 14, Subtitle 3 of the State Finance and Procurement Article are incorporated in this section.

(b) To the extent practicable and authorized by the United States Constitution, an applicant approved for a nuclear energy generation project under § 7–1213 of this subtitle shall comply with the State's Minority Business Enterprise Program.

(c) (1) Within 6 months after the issuance of an order that approves a nuclear energy generation project and includes a long–term pricing component, the Governor's Office of Small, Minority, and Women Business Affairs, in consultation with the Office of the Attorney General and the approved applicant, shall establish a clear plan for setting reasonable and appropriate minority business enterprise participation goals and procedures for each phase of the nuclear energy generation project.

(2) To the extent practicable, the goals and procedures set in accordance with paragraph (1) of this subsection shall be based on the requirements of Title 14, Subtitle 3 of the State Finance and Procurement Article and the regulations implementing that subtitle.

(3) Every 6 months following the issuance of an order that approves a nuclear energy generation project and includes a long–term pricing component, the approved applicant shall submit a report on the progress made to establish and implement minority business enterprise goals and procedures to the Commission.

§7–1220.

(a) In this section, a "zero–emission credit" or "ZEC" means a credit equal to the environmental attributes of 1 megawatt–hour of electricity that is derived from a nuclear power facility approved by the Commission under PUA § 7-1217. ~~means the difference between the price that a nuclear energy generating station with a long–term pricing schedule approved in an order issued under § 7–1217 of this subtitle may receive on the wholesale market and the cost of constructing the nuclear energy generating station.~~

(1) The total project cost in the long-term price schedule may be indexed by a percentage approved by the Commission, not to exceed 15 percent.

(b) The Commission shall adopt regulations that:

(1) establish the nuclear energy long–term pricing purchase obligation sufficiently in advance to allow an electric company to reflect nuclear energy long–term pricing costs as a nonbypassable surcharge that is added to the electric company's base distribution rate on customer bills;

(2) define rules that facilitate and ensure the secure and transparent transfer of revenues and long–term pricing payments among parties;

(3) define the terms and procedures of the nuclear energy long–term pricing schedule obligations, including:

(i) establishing a formula and process to adjust the value of the long–term pricing schedule every 2 years based on projected wholesale market prices adjusted by the locational value and earning potential in the PJM region of the nuclear energy generating station; and

(ii) establishing a per megawatt hour cap on any long–term pricing schedule specified in an order issued under § 7–1217 of this subtitle;

(4) require the Commission to establish an escrow account; and

(5) to meet the total statewide long–term pricing purchase obligation for all applications approved in an order issued under § 7–1217 of this subtitle, require the Commission to annually establish each electric company's zero–emission credit purchase obligation based on the most recent final electricity sales data as reported by PJM Interconnection and measured at the customer's meter in proportion to the electric company's share of statewide load.

(c) (1) Each electric company shall procure from the escrow account established by regulation under this section a quantity of zero–emission credits equal to the electric company's respective percentage of retail electric sales each year.

(2) Subject to any escrow account reserve requirement the Commission establishes, if there are insufficient zero–emission credits available to satisfy the electric companies' zero–emission credit purchase obligations, the overpayment shall be distributed to electric companies to be refunded or credited to each distribution customer based on the customer's consumption of electricity supply that is subject to the renewable energy portfolio standard.

(d) A debt, an obligation, or a liability of a nuclear energy generation project or of an owner or operator of a nuclear energy generation project may not be considered a debt, an obligation, or a liability of the State.

§7–1221.

On or before July 1, 2027, the Commission shall adopt regulations to carry out this part.

Uncodified Section 7.

And be it further enacted, that on or before January 15, 2026, the Public Service Commission shall report to the General Assembly, in accordance with § 2–1257 of the State Government Article, on:

(1) the status of developing regulations for the establishment and purchase of zero–emission credits in accordance with § 7–1220 of the Public Utilities Article, as enacted by Section 3 of this Act; and

(2) whether any legislative action is necessary to implement the zero–emission credit provisions in § 7–1220 of the Public Utilities Article, as enacted by Section 3 of this Act.