

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

**Comments of the Electric Power Supply Association on
Proposed Guidance for the Civil Nuclear Credit Program Second Award Cycle**

Reference Number: DOE-HQ-2022-0006

November 4, 2022

I. INTRODUCTION

The Electric Power Supply Association (EPSA)¹ respectfully submits these comments in response to the updated Guidance for the second award cycle of the Civil Nuclear Credit (CNC) Program released by the U.S. Department of Energy (DOE) on September 30, 2022.

Regarding the CNC Program, EPSA provided initial comments on DOE's Notice of Intent and Request for Information in March 2022 as well as on the Proposed Guidance Amendment in June 2022. In Section V of the September 30 updated Guidance, DOE highlights changes to the established criteria governing nuclear facilities that may apply for CNC Program funding – no longer requiring that (eligible) facilities publicly announce intentions to retire within the previously established four-year timeframe. Rather, the updated guidance would allow for an applicant to offer a narrative explanation on the “likelihood” that the facility will retire within four years. As the CNC Program eligibility criteria becomes broader, EPSA continues to call on DOE to develop an efficient process (consistent with the intent of Congress) that relies on the best available expertise to determine the most appropriate use of Program funding.

¹ EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. These comments represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

II. BACKGROUND

EPSA is a fuel- and technology-neutral organization committed to preserving and promoting well-functioning competitive wholesale electricity markets. Our members own and operate all types of electric generation resources, including two nuclear power plants in the competitive Texas electricity market. Furthermore, EPSA supports efforts to combat climate change through transparent, open, and nondiscriminatory competitive markets² in an affordable and reliable manner, such as an economy-wide price on carbon or a well-designed clean energy standard. These tools recognize the environmental benefits that all non-emitting generators, including nuclear, provide, and create revenue opportunities for those resources, thereby reducing the risk of closure of existing carbon-free resources.

In the absence of a national, market-based policy to address carbon emissions in the near-term, EPSA remains committed to competitive electricity markets which utilize fuel- and technology-neutral market mechanisms to procure and deliver energy, capacity, and ancillary services. Notably the CNC Program represents an out-of-market payment structure, providing federal credits to nuclear power plants located in competitive electricity markets that can show that they will cease operation due to economic factors. This focus is intended to strike a balance between providing limited financial support to nuclear reactors that are truly at risk of closure and the preservation of vibrant competitive wholesale electricity markets that can, if designed properly, provide incentives to deploy the extensive resources necessary to meet the Administration's clean energy and decarbonization goals.

² <https://epsa.org/about-epsa/our-principles/>

III. COMMENTS

In its announcement of the second award cycle, DOE notes that it seeks to expand the CNC Program to entities without restricting “eligibility to applicants who have publicly announced intentions to cease operations.” Further, the Department notes that “Applicants will be required to provide a narrative explanation, with supporting documentation, of the *likelihood* that the reactor is projected to close within the four-year award period” (emphasis added). EPSA’s earlier call for an independent, neutral party to evaluate applications is even more relevant now that the criterion for qualifying entities is broader and less defined.

As eligibility for the CNC Program expands, DOE will be required to evaluate the merits of the applications of a greater number of nuclear facilities. EPSA continues to advocate for DOE to engage (and rely on) independent experts to evaluate and analyze both the submitted data and determine the likelihood of an applicant’s eventual retirement. At its core, the CNC Program is designed to aid nuclear plants at risk of economic retirement. The vagaries and specific circumstances of each applicant’s likelihood of retirement will require the Department to engage in analysis that could more readily be done by third parties with experience and expertise in this area.

As EPSA noted in its March 2022 comments, the Independent System Operators/Regional Transmission Organizations (ISO/RTOs), particularly the Independent Market Monitors (IMM) within ISO/RTOs, would seem ideally suited for this task. IMMs already possess an understanding of the nuances of relevant generator data, as well as the economic environment and the role that individual nuclear facilities play in their regions. In addition, ISO/RTOs are already familiar with the regional and/or state policy landscapes in their markets that may affect the economics of the plant, and thus the likelihood that it will retire in the next four years, outside of revenues received through wholesale markets. Further, allowing ISO/RTO review of CNC Program applications would eliminate the need for DOE to create a uniform application across all ISO/RTO regions – an

administrative and logistical burden that would slow the Program's progress and may not yield equally reliable assessments.

Should the CNC Program expand beyond nuclear facilities in ISO/RTO regions, EPSA recommends that the Department engage state public utility commissions to review applications. Similar to the oversight of an IMM in wholesale markets, a state utility commission has both an understanding of the economics of individual generating assets and the economic and policy environment in which they operate.

Additionally, EPSA supports recommendations from our member companies for the CNC program be structured as an ex-post "insurance policy" using the statutory authority established in the Infrastructure Investment and Jobs Act (PL 117-58) to audit and recapture excess credits. This methodology ensures credits are applied based on actual historic losses and there is maximum economic efficiency from the CNC Program. The establishment of § 45U nuclear production tax credit in the Inflation Reduction Act creates additional financial support for existing nuclear reactors, and an ex-post "insurance policy" model guarantees that the reactors most at risk for closure receive credits based on actual need. This approach also lessens the administrative burden of executing a credit and recapture program based on projections.

IV. CONCLUSION

EPSA appreciates the opportunity to provide input on the updated guidance for the second award cycle. As noted, EPSA believes that harnessing the expertise of a neutral, independent third party in assessing applications from an expanding pool of applicants would not only lead to more efficient use of DOE funding but would eliminate the need for the Department to create a process for evaluating the merits of each application.

Respectfully submitted,

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