



Agenda Date: 2/14/24  
Agenda Item: 9B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE APPLICATION OF )	ORDER ON ANNUAL
PSEG NUCLEAR, LLC AND EXELON )	REVENUE REVIEW FOR
GENERATION COMPANY, LLC FOR THE )	ENERGY YEAR 2023
ZERO EMISSION CERTIFICATE PROGRAM - )	
SALEM UNIT 1 )	DOCKET NO. ER20080557
)	
IN THE MATTER OF THE APPLICATION OF )	
PSEG NUCLEAR, LLC AND EXELON )	
GENERATION COMPANY, LLC FOR THE )	
ZERO EMISSION CERTIFICATE PROGRAM - )	DOCKET NO. ER20080558
SALEM UNIT 2 )	
)	
IN THE MATTER OF THE APPLICATION OF )	
PSEG NUCLEAR, LLC FOR THE ZERO )	
EMISSION CERTIFICATE PROGRAM – HOPE )	DOCKET NO. ER20080559
CREEK )	

**Parties of Record:**

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**Aaron Karp, Esq.,** Associate Counsel – Regulatory, PSEG Services Corporation on behalf of PSEG Nuclear, LLC  
**Jeffrey W. Mayes, Esq.,** General Counsel, Monitoring Analytics, LLC  
**Carrie H. Allen, Esq.,** Constellation Energy Generation, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers Board Staff’s (“Staff”) findings pertaining to the annual revenue review of nuclear power plants (“Units”) selected to receive Zero Emission Certificates (“ZECs”) during Energy Year 2023 (“EY23”) of the second ZEC eligibility period (“ZEC 2 Period”), June 1, 2022 through May 31, 2023.

**BACKGROUND / PROCEDURAL HISTORY**

On May 23, 2018, Governor Phil Murphy signed L. 2018, c. 16, N.J.S.A. 48:3-87.3 to -87.7 (“Act”) into law. The Act requires the Board to create a program and mechanism for the issuance of ZECs (“ZEC Program”). Under the ZEC Program, the Board receives and reviews applications

from nuclear generating facilities, determines Unit eligibility, and awards ZECs to the Units upon approval.

A ZEC represents the fuel diversity, air quality, and other environmental attributes of one megawatt-hour (“MWh”) of electricity generated by a Unit selected by the Board to participate in the ZEC Program. As mandated by the Act, every three (3) years the Board conducts a proceeding to certify which, if any, Units are eligible to participate in the ZEC Program and receive ZECs in accordance with the Act. The Board subsequently requires New Jersey’s four (4) investor-owned electric distribution companies (“EDCs”) and the municipal electric distribution company Butler Electric Utility (“Butler”) to purchase ZECs from the selected Unit(s).<sup>1</sup>

On April 18, 2019, the Board awarded ZECs to Salem 1 Nuclear Generating Plant (“Salem 1”), Salem 2 Nuclear Generating Plant (“Salem 2”), and the Hope Creek Nuclear Generating Plant (“Hope Creek”) (collectively, “Selected Units”) for the Stub Period (April 18, 2019 through May 31, 2019) and the Initial Eligibility Period (June 1, 2019 through May 31, 2022).<sup>2</sup> By the April 2019 Order, the Board also directed Staff to provide the Board with recommendations regarding the ZEC Program’s continued and forward implementation (“Forward Requirements”). One Forward Requirement provided in N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3) requires the Board to ensure that a Selected Unit does not receive “double-payments” for its fuel diversity, resilience, air quality, or other environmental attributes by receiving funding awards related to those attributes from a source other than the ZEC Program.

By Order dated May 20, 2020, the Board finalized the Forward Requirements including, but not limited to, the annual revenue review whereby the Board directed ZEC recipients to file financial documents and certifications pertaining to payments, credits, and revenues received by the Selected Unit owners for generation in the prior energy year.<sup>3</sup> The Board accordingly required Staff to identify any funds found to be duplicative, and recommend to the Board, after submitting its preliminary findings for public comment, whether an equivalent number of ZECs, representing the real costs received in duplicate, should be subtracted from the prior energy year payment obligation to the Unit owners.

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<sup>1</sup> The EDCs are Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company

<sup>2</sup> In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337, Order dated April 18, 2019 (“April 2019 Order”).

<sup>3</sup> In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337, Order dated May 20, 2020 (“May 2020 Order”).

On April 27, 2021, the Board awarded ZECs to Salem 1, Salem 2, and Hope Creek for the ZEC 2 Period.<sup>4</sup> As such, Staff was required to submit its preliminary findings regarding any double-payment received by the Selected Nuclear Plants during EY23 for public comment by December 2023 and present its final findings to the Board for consideration by February 2024, pursuant to the May 2020 Order.

On June 30, 2023, PSEG Nuclear, LLC (“PSEG Nuclear”), and Constellation Energy Generation, LLC (“Constellation”) submitted the requisite annual revenue review data to the Board for EY23. The data included information on total power generated by the Selected Units, employment information, and the amount of money held in ZEC accounts. The data also included information on the MWh of electricity distributed by the EDCs and Butler, ZEC Price and Monthly Purchase Detail calculations, and MWh generation details for the Selected Units. Additionally, this information contained personnel affidavits and certifications from PSEG Nuclear and Constellation.

### **PROCESS**

Staff reviewed and analyzed the Selected Units’ certified data and documentation submitted pursuant to the Act and the May 2020 Order. Staff found no evidence of double-payments, direct or indirect payments, or credits related to the resilience, air quality, or other environmental attributes associated with electricity generated or sold by Salem 1, Salem 2, or Hope Creek during EY23.<sup>5</sup>

Staff utilized the submitted confidential materials to conduct the required Annual Revenue Review pursuant to the Act. The confidential materials included the Annual Revenue Review, Estimated Hedge Profit and Loss Proportion, PJM Power Hedges, MWh generation details, Selected Unit Generation Losses, ZEC Price and Monthly Purchase Details, and employment information. PSEG Nuclear and Constellation also submitted actual confidential information covering the periods of June 2022 through May 2023, including the MWh of electricity distributed by the EDCs and Butler and generated by the Selected Nuclear Plants, ZEC Price and Monthly Purchase Details, and personnel affidavits and certifications.

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<sup>4</sup> In re the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC for the Zero Emission Certificate Program - Salem Unit 1, BPU Docket No. ER20080557; In re the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC for the Zero Emission Certificate Program - Salem 2, BPU Docket No. ER20080558; In re the Application of PSEG Nuclear, LLC for the Zero Emission Certificate Program – Hope Creek, BPU Docket No. ER20080559, Orders dated April 27, 2021.

<sup>5</sup> See N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3).

## COMMENTS

In accordance with the Forward Requirements, a Request for Comments was posted on the Board's website on December 21, 2023 seeking input on the above preliminary findings and subsequently reviewed all comments received.<sup>6</sup>

The Board received written comments from PJM Power Providers ("P3"), PSEG Nuclear and Constellation jointly, the New Jersey League of Conservation Voters ("NJ LCV"), and the New Jersey Division of Rate Counsel ("Rate Counsel"). The Board also received individual public comments from Sylvia Lockwood of Cape May Court House, NJ, and Sally Jane Gellert of Woodcliff Lake, NJ. The comments are summarized below.

### P3

P3 expressed its opposition to any subsidies, ZECs in particular, and remains opposed to any subsidies that interfere with the competitive, regional, federally regulated wholesale markets. P3 Comments at 2. P3 noted it supports nuclear power alongside other forms of generation on a level playing field but is concerned with the market-distorting effects that the ZECs have on the interstate market. Ibid.

P3 noted that PJM Independent Market Monitor data shows that the plants receiving ZECs in New Jersey have sufficient revenues for continued operations without additional ZECs and requests that the Board be mindful of the federal tax credits nuclear plants are expected to receive because of the Inflation Reduction Act of 2022 and recommends an end to the NJ ZEC Payments. Id. at 3.

### PSEG Nuclear and Constellation

PSEG Nuclear and Constellation jointly agreed with the preliminary findings of no duplicative payment received by the nuclear power plants for EY23. PSEG Nuclear and Constellation Comments at 2.

### NJ LCV

The NJ LCV voiced their support for the continued safe operation of existing nuclear power plants and recommended that the Board require companies with existing facilities to apply for federal funding when available and confirm compliance through a verification process. NJ LCV Comments at 1.

### Rate Counsel

Rate Counsel confirmed receipt of annual filing records from PSEG Nuclear and Constellation for EY23 and found no indication that PSEG Nuclear or Constellation received any direct or indirect payments other than ZECs. Rate Counsel Comments at 4. Rate Counsel recommended that the Board direct PSEG Nuclear and Constellation to provide copies of annual reports and certifications, including confidential information, to Rate Counsel and IMM at the same time this information is provided to the Board and Staff. Ibid.

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<sup>6</sup> [https://www.nj.gov/bpu/pdf/publicnotice/Notice\\_RequestforComments\\_EY23ZECDoublePayments.pdf](https://www.nj.gov/bpu/pdf/publicnotice/Notice_RequestforComments_EY23ZECDoublePayments.pdf)

Rate Counsel also noted that New Jersey's three (3) nuclear power plants will qualify for the nuclear production tax credit ("PTC") under the 2022 Inflation Reduction Act of up of \$15 per MWh from 2024 through 2032, starting January 1, 2024 and therefore recommended that the Board require PSEG Nuclear and Constellation to provide to BPU and intervenors, no later than May 15, 2024, illustrative calculations of the monetary value of PTC and how the NJ ZEC amount will be reduced. Id. at 5.

Sylvia Lockwood

Sylvia Lockwood of Cape May Court House, NJ, suggested that NJ follow the federal government's lead for increasing nuclear power, noting it is the most efficient and reliable energy source with the least environmental impact.

Sally Jane Gellert

Sally Jane Gellert of Woodcliff Lake, NJ, expressed concern with the lifecycle emissions of nuclear energy, stating that subsidies to nuclear energy should instead be redirected to cleaner energy sources and toward working on better storage solutions.

**DISCUSSION AND FINDINGS**

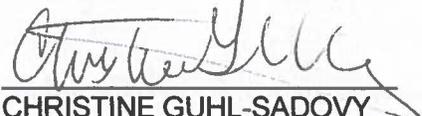
Upon review, the Board **HEREBY NOTES** that the comments from Rate Counsel and the joint comment from PSEG Nuclear and Constellation generally concur with Staff's findings that the Units did not receive double-payments for fuel diversity, resilience, air quality, or other environmental attributes during EY23. Other comments received and summarized above are beyond the scope of the annual revenue review.

After reviewing the record in this matter, including Staff's revenue review report (see Attachment A) and all written comments, the Board **HEREBY ADOPTS** Staff's ZEC revenue review findings that qualified nuclear power plants awarded ZECs in EY23 received no double-payments for fuel diversity, resilience, air quality, or other environmental attributes by receiving funding awards related to those attributes from a source other than the ZEC Program.

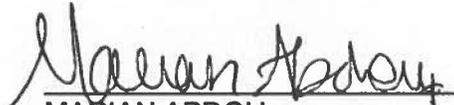
This Order shall be effective on February 21, 2024.

DATED: February 14, 2024

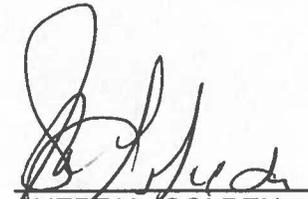
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ATTEST:   
SHERRI L. GOLDEN  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF PSEG NUCLEAR, LLC AND EXELON GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 1

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC AND EXELON GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM -SALEM UNIT 2

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM - HOPE CREEK

DOCKET NOS. ER20080557, ER20080558, ER20080559

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Marian Abdou  
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**NOTICE<sup>7</sup>**

**REQUEST FOR COMMENTS**

**IN THE MATTER OF THE IMPLEMENTATION OF L. 2018, c. 16 REGARDING THE  
ESTABLISHMENT OF A ZERO EMISSION CERTIFICATE PROGRAM FOR ELIGIBLE  
NUCLEAR PLANTS**

Docket No. [EO18080899](#)

And

**APPLICATION OF PSEG NUCLEAR, LLC AND EXELON GENERATION COMPANY, LLC  
FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 1**

Docket No. [ER20080557](#)

**APPLICATION OF PSEG NUCLEAR, LLC AND EXELON GENERATION COMPANY, LLC  
FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 2**

Docket No. [ER20080558](#)

**APPLICATION OF PSEG NUCLEAR, LLC FOR THE ZERO EMISSION CERTIFICATE  
PROGRAM – HOPE CREEK**

Docket No. [ER20080559](#)

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<sup>7</sup> Not a paid legal advertisement.

The New Jersey Board of Public Utilities (“Board”) invites all interested parties and members of the public to provide written comments regarding Board Staff’s (“Staff”) revenue review of the nuclear power plants (“Units”) that received Zero Emission Certificates (“ZECs”) during Energy Year 2023 of the Second Eligibility Period (June 1, 2022 through May 31, 2023).

## **BACKGROUND AND PROCEDURAL HISTORY**

A ZEC represents the fuel diversity, air quality, and other environmental attributes of one megawatt-hour of electricity generated by a Unit.<sup>8</sup> On May 23, 2018, Governor Phil Murphy signed the ZEC Act, N.J.S.A. 48:3-87.3 *et seq.*, (“Act”) into law, requiring the Board to create a program and mechanism whereby, every three years, the Board receives and reviews Unit applications; determines eligibility; and, if approved by the Board, the Units receive ZECs in accordance with the Act (“ZEC Program”).<sup>9</sup> If a Unit is deemed eligible and is awarded ZECs, New Jersey’s four (4) investor-owned electric distribution companies (“EDCs”), and the municipal electric distribution company Butler Electric Utility, shall purchase ZECs from the Unit, and the proceeds help the Unit prevent premature retirement.<sup>10</sup>

On August 29, 2018, the Board initiated the ZEC Program.<sup>11</sup> On April 18, 2019, the Board determined that the Hope Creek Nuclear Generating Station (“Hope Creek”), the Salem 1 Nuclear Generating Station (“Salem 1”), and the Salem 2 Nuclear Generating Station (“Salem 2”) were eligible to participate in the ZEC Program, and would receive ZECs for the “stub period” (April 18, 2019 through May 31, 2019) and the Initial Eligibility Period (June 1, 2019 through May 31, 2022).<sup>12</sup>

On July 10, 2019, in compliance with the Act, the Board established criteria regarding the forward implementation of the ZEC Program (“Forward Requirements”).<sup>13</sup> By Order dated May 20, 2020, the Board required the Forward Requirements to include, among other things, the directive that

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<sup>8</sup> N.J.S.A. 48:3-87.4.

<sup>9</sup> See N.J.S.A. 48:3-87.5(e) (criteria to determine eligibility), and N.J.S.A. 48:3-87(d) (the Board has no obligation to certify any Unit as eligible).

<sup>10</sup> The EDCs are Atlantic City Electric Company, Jersey Central Power and Light Company, Public Service Electric and Gas Company, and Rockland Electric Company.

<sup>11</sup> In re the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899, Order dated August 29, 2018. In a series of Orders dated November 19, 2018, the Board also approved the ZEC application, the ZEC Program process, and the associated tariffs. On February 27, 2019, the Board established the ranking criteria to ensure that an eligible Unit receives ZECs without exceeding the cap provided in the Act.

<sup>12</sup> In re the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants; Application for Zero Emission Certificates of Salem I Nuclear Power Plant; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket Nos. EO18080899, EO18121338, EO18121339, and EO18121337, Order dated April 18, 2019 (“April 2019 Order”).

<sup>13</sup> In re the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants; Application for Zero Emission Certificates of Salem I Nuclear Power Plant; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, Order Determining The Forward Steps in the ZEC Program and Currently Approved Applications, BPU Docket Nos. EO18080899, EO18121338, EO18121339, and EO18121337, Order dated July 10, 2019 (“July 2019 Order”).

Staff conduct an annual revenue review to ensure that a Unit does not receive double-payment for its fuel diversity, resilience, air quality, or other environmental attributes.<sup>14</sup> As such, Units must file, with the Board, financial documents detailing payments, credits, and revenues received for generation in the prior energy year. After review, the May 2020 Order requires Staff to submit its preliminary findings for public comment before presenting its final findings to the Board for consideration.

On August 12, 2020, the Board established the application process for the second three (3)-year eligibility period.<sup>15</sup> On April 27, 2021, the Board awarded ZECs to Salem 1, Salem 2, and Hope Creek (collectively, "Selected Units") for the Second Eligibility Period.<sup>16</sup>

On June 30, 2023, Public Service Enterprise Group Nuclear, LLC ("PSEG") and Constellation Energy Generation, LLC ("Constellation Energy") submitted data on behalf of their Units for Energy Year 2023.<sup>17</sup> The data included information on the megawatt hour ("MWh") quantity generated by the Selected Nuclear Plants, employment information, and the amount of money held in the ZEC accounts, as well as information on the MWh of electricity distributed by the EDCs Price and Monthly Purchase Detail calculations. Additionally, this information contained personnel affidavits and certifications from PSEG Services Corporation, PSEG Nuclear, and Constellation Energy.

In response to the May 2020 Order, PSEG and Constellation Energy submitted confidential materials for Energy Year 2023. Staff utilized the confidential materials to conduct the required Annual Revenue Review pursuant to the Act, specifically N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3). The confidential materials included the Annual Revenue Review, Estimated Hedge Profit and Loss Proportion, PJM Power Hedges, MWh generation details, Selected Nuclear Plants Generation Losses, ZEC Price and Monthly Purchase Details, and employment information.

### **PRELIMINARY FINDINGS**

Staff thoroughly reviewed and analyzed the Selected Nuclear Plants' certified data and

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<sup>14</sup> In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; and Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337, Order dated May 20, 2020 *at Page 12* ("May 2020 Order").

<sup>15</sup> In the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899, Order dated August 12, 2020.

<sup>16</sup> In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC for the Zero Emission Certificate Program – Salem Unit 1, BPU Docket No. ER20080557, Order dated April 27, 2021;

In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC for the Zero Emission Certificate Program – Salem Unit 2, BPU Docket No. ER20080558, Order dated April 27, 2021; In the Matter of the Application of PSEG Nuclear, LLC for the Zero Emission Certificate Program – Hope Creek, BPU Docket No. ER20080559, Order dated April 27, 2021.

<sup>17</sup> Formally known as Exelon Generation Company, LLC.

documentation. Staff finds no evidence of double-payment, direct or indirect payments, or credits related to the resilience, air quality, or other environmental attributes associated with electricity generated or sold by Salem 1, Salem 2, or Hope Creek during Energy Year 2023 of the Second Eligibility Period.<sup>18</sup> Accordingly, Board Staff does not recommend any reduction to the payment obligation to the nuclear plant owners during Energy Year 2023.

### **COMMENTS**

**The deadline for comments on this matter is 5 p.m. on January 22, 2024.**

Please submit comments directly to Docket No. EO18080899 listed above using the “Post Comments” button on the Board’s [Public Document Search](#) tool. Comments are considered “public documents” for purposes of the State’s Open Public Records Act. Only public documents should be submitted using the “Post Comments” button on the Board’s Public Document Search tool. Any confidential information should be submitted in accordance with the procedures set forth in N.J.A.C. 14:1-12.3. In addition to hard copy submissions, confidential information may also be filed electronically via the Board’s e-filing system or by email to the Secretary of the Board. Please include “Confidential Information” in the subject line of any email. Instructions for confidential e-filing are found on the Board’s webpage, <https://www.nj.gov/bpu/agenda/efiling>.

Emailed and/or written comments may also be submitted to:

**Sherri L. Golden**  
**Secretary of the Board**  
44 South Clinton Ave., 1<sup>st</sup> Floor  
PO Box 350  
Trenton, NJ 08625-0350  
Phone: 609-292-1599  
Email: [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Dated: December 21, 2023

*Sherri L. Golden*

Sherri L. Golden  
Secretary of the Board

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<sup>18</sup> See N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3).