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October 22, 2018

VIA EMAIL ONLY (Zec.Comments@bpu.nj.gov)

Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: I/M/O the Implementation of L. 2018, c. 16 Regarding the Establishment of a
Zero Emission Certificate Program for Eligible Nuclear Power Plants**

Dear Secretary Camacho-Welch:

Please accept these Comments submitted on behalf of NRG Energy, Inc. ("NRG") in connection with the above-captioned matter. Specifically, NRG responds to the questions posed in the notice dated September 11, 2018.

Please do not hesitate to contact the undersigned with questions. Thank you for your consideration.

Very truly yours,

/s/ Jennifer S. Hsia

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Counsel for **NRG Energy, Inc.**

Enclosure

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of the Implementation of	)	COMMENTS
<u>L.</u> 2018, <u>c.</u> 16 Regarding the	)	
Establishment of a Zero Emission	)	
Certificate Program for Eligible	)	
Nuclear Power Plants	)	
	)	
	)	Docket No. EO18080899
	)	

COMMENTS AND RESPONSES OF NRG ENERGY, INC.

On May 23, 2018, Governor Phil Murphy signed into law L. 2018, c. 16 (“Act”). The Act requires that the Board of Public Utilities (“BPU” or “Board”) establish a program for the issuance of Zero Emission Certificates (“ZECs”). On August 29, 2018 the BPU issued an order initiating the Zero Emission Certificate Program. On September 11, 2018, the Secretary issued a notice soliciting comments on the above matter and providing questions for stakeholders to answer. A request for comments is due on October 22, 2018.

I. Introduction

NRG appreciates the opportunity to comment on the questions posed in the notice. NRG requests that the Board consider the following general response in addition to the following individual responses provided to the specific questions provided for in the September 11, 2018 notice. The comments reflect NRG’s unique perspectives as the leading provider of competitive retail solutions to customers nationwide, as a merchant generator active in the PJM market, and a Fortune 500 company headquartered right here in New Jersey.

The Legislation at issue here is clear: no New Jersey ratepayer support should be given to nuclear facilities unless and until the owner proves that it is at credible risk of permanent

retirement.¹ Thus, the statute requires the owner of the nuclear unit to credibly demonstrate that a prudent owner would retire the nuclear generator unless it receives the ZEC and provide any and all information demonstrating why it would plan to retire without the ZEC. An applicant's mere statement in the press and in the public that it will require a ZEC to continue operation is not sufficient. Only after it has unequivocally established its intention to retire coupled with economic rationale supporting retirement, and that it has exhausted all other solutions to avoid a retirement, should the Board consider any payment to the applicant.

In these comments, NRG attempts to aid the Board's analysis by describing how a company like ours would determine whether one of our own power plants was economic, or whether it should be shut down. We discuss how the PJM markets operate, how discounted cash flow analyses are the predominant means for valuing power plants, how retirement costs and obligations can affect a shutdown decision, and other factors that the Board may wish to consider. In this way, NRG hopes that its analysis helps describe how "prudent" owners of power plants approach shutdown decisions.

II. Responses to Questions posed in the September 11, 2018 Notice:

1) What specific metrics should the Board utilize to determine if a nuclear power Unit ("Unit") should be deemed eligible for ZEC credits?

N.J.S.A. 48:3-87.5(3)(a) establishes that applicants for ZEC credits must demonstrate the nuclear facility is at "risk of loss because the nuclear power plant is projected to not fully cover its costs and risks, or alternatively is projected to not fully cover its costs and risks including its risk-adjusted cost of capital." In NRG's experience, prudent merchant power plant operators periodically review plant economics for a variety of reasons, among other things: to assess whether compulsory or discretionary investments meet financial criteria; to determine the level

¹ See N.J.S.A. 48:3-87.3(b)(5) (subsidies are appropriate "to the extent required to prevent the loss of nuclear energy, subject to independent review in section 3 of this act.")

of market revenues necessary to sustain operations; to drive bidding decisions prior to taking on a market commitment; to aid capital allocation decisions; or to perform fair-market valuations. Discounted cash flow analysis estimates future cash flows and “discounts” those cash flows over the remaining life of the facility at the Operator’s cost of capital, while taking into account the time value of money. If the net present value accounting for discounting is positive, then a prudent owner would expect to keep the plant in operation. If it is negative, the prudent owner would then look at shutdown costs, whether market conditions are expected to improve, the value of hedges, etc., and consider whether to permanently shut or mothball the unit.

Put another way, it is appropriate for the Board to consider whether the plants at issue are recovering their going-forward costs from the PJM wholesale market, including inflows and outflows from incremental investment, as well as the cost of buying back market obligations to effectuate a retirement. Generally, if a plant is cash-flow positive on a pre-tax basis (as determined by the discounted cash-flow analysis), the benefits of keeping it open outweigh the expenses of closing the facility, and thus, going-forward costs are a proxy for determining whether an applicant power plant is likely to remain open. Indeed, it appears that this is exactly the type of analysis that the Legislature envisioned when they required applicants to quantify costs “that would be avoided by ceasing operations,” which is consistent with industry practice in NRG’s experience.

In performing the discounted cash-flow analysis, obviously, revenue and costs, including fuel and Operations & Maintenance (“O&M”), are the most important factors to consider. On the revenue side, the analysis determines the energy and capacity revenues that the applicant is expected to make on a go-forward basis. In New Jersey, the largest share of a nuclear facility’s revenues are typically earned in the energy markets, with the PJM capacity markets also providing a major source of revenues. Revenue projections should include planned changes to

the PJM capacity and energy markets. Hedges or other forward sales likewise affect the profitability of a nuclear facility and should be considered in the Board’s analysis.

On the expense side, the Board should examine the historical operating costs of the nuclear applicant, including refueling costs, operations and maintenance, and any expected mandatory² capital expenditures. Any forward-looking adjustments to the company’s cost structure should be properly scrutinized to determine the validity of variances to historical costs and to compare against prior bidding behavior. This is consistent with the legislative requirement that applicants provide, at a minimum, “certified cost projections over the next three energy years, including operation and maintenance expenses, fuel expenses, including spent fuel expenses, non-fuel capital expenses,” among other factors.

The statute also requires the Board to consider the amount of “fully allocated overhead costs . . . that would be avoided by ceasing operations[.]” The means by which corporate costs are allocated to subsidiary assets can have a significant effect on the overhead costs at a plant level. In deciding whether the allocations are appropriate, careful consideration must be given to determine which costs are avoidable and which are necessary to support day-to-day operations of the facility so not to overstate allocated overhead.

2) Referencing N.J.S.A. 48:3-87.5(a) and (e)(3), how should the risk-adjusted cost of capital for a Unit be determined?

Applicants should consider two different risk-adjusted cost of capital scenarios: one “merchant scenario” that assumes the nuclear unit-applicant remains subject to market risks, and one “regulated scenario” that assumes the applicant successfully receives ZEC subsidies that insulate the resource from market forces.

² Only mandatory capital expenditures should be included in the analysis. Discretionary expenditures, for example, to increase output or efficiency, should not be funded by New Jersey ratepayers.

Under the merchant scenario, the Board should utilize the risk-adjusted cost of capital used for merchant generators operating in the organized markets, without contracts or price supports. PJM, for example, regularly determines a risk-adjusted Weighted Average Cost of Capital (“WACC”) in connection with its capacity market updates every four years. The Brattle Group (“Brattle”) performed the most recent WACC study and determined that:³

We assume an after-tax weighted-average cost of capital (ATWACC) of 7.5% for a merchant generation investment, which we estimated based on various reference points. An ATWACC of 7.5% is equivalent to a return on equity of 12.8%, a 6.5% cost of debt, and a 65/35 debt-to-equity capital structure with an effective combined state and federal tax rate of 29.25%.

Applicants should be expected to utilize their actual debt-to-equity capital structure in determining their WACC.

In regard to Return on Equity and risk premia, the Brattle Group’s recent study for PJM is also instructive. Brattle explains that it estimated:⁴

...the required return on equity (ROE or cost of equity) using the Capital Asset Pricing Model applied to samples of U.S. and Canadian merchant generation companies. The ROE for each company is derived as the risk-free rate plus a risk premium given by the expected risk premium of the overall market times the company’s “beta.” The “beta” describes each company stock’s (five-year) historical correlation with the overall market, where the “market” is taken to be the S&P 500 index. The resulting required return on equity ranges from 8.5 to 12.8% for the sample companies included in the analysis.

The betas for the comparable companies should be unlevered, averaged, then re-levered using the project capital structure. This risk adjusted beta would then be used in the Capital Asset Pricing Model (“CAPM”) formula to find cost of equity, which would then be used in the WACC formula to find the risk adjusted cost of capital.

³ Brattle Report at p. iv. <https://www.pjm.com/~media/committees-groups/committees/mic/20180425-special/20180425-pjm-2018-cost-of-new-entry-study.ashx>

⁴ Brattle Report at p. 39. <https://www.pjm.com/~media/committees-groups/committees/mic/20180425-special/20180425-pjm-2018-cost-of-new-entry-study.ashx>

NRG also recommends that Applicants provide a “regulated scenario” of their risk-adjusted WACC that assumes that the subsidies are granted, and thus, that the risk of operating in a merchant environment is eliminated. There is no question that the risks associated with a merchant nuclear facility operating are greater than the risks of operating a nuclear facility receiving subsidies over multiple refueling cycles. Thus, the risk-adjustment calculation should shift if the Board decides to grant subsidies and the lower risk profile associated with fully regulated entities should be utilized to establish the amount of ZEC money necessary to keep the units “profitable.”

3) Referencing N.J.S.A. 48:3-87.5(a), the Act requires the Board to consider the cost of “operational risks” and “market risks” for Units. What information should or should not be included in these two categories?

Other elements of the statute require each applicant to prove that the “nuclear power plant will cease operations within three years unless the nuclear power plant experiences a material financial change” or is unable to recover enough to cover “operational” and “market” risks.

Operational Risks: Under the statute, “operational risks” are defined to “include, but need not be limited to, the risk that operating costs will be higher than anticipated because of new regulatory mandates or equipment failures and the risk that per megawatt-hour costs will be higher than anticipated because of a lower than expected capacity factor.” In evaluating operational risks, NRG recommends that the Board consider each of the required elements individually. The risks and opportunities associated with new regulatory mandates (discussed elsewhere) absolutely need to be considered on both the cost and revenue side of the ledger. The analysis of risk of equipment failure should primarily rely on past operational data (such as

Equivalent Forced Outage Rate, or EFOR⁵). Generally, unit characteristics such as EFOR bear on the plant's future revenues impacted by unit availability. Higher forced outage rates put revenues at a greater risk. The discounted cash-flow analysis, discussed above, should include projected outage rates as an input to the analysis.

The Board should also request that applicants compare their specific unit availability metrics to those of similarly classified facilities against industry norms of performance risk. For example, the Nuclear Energy Institute ("NEI") provides performance benchmarks that may be useful in evaluating the Applicant's performance against industry norms. In regard to the requirement that applicants consider "the risk that per megawatt-hour costs will be higher than anticipated because of a lower than expected capacity factor," most nuclear plants operate at extremely high capacity factors, since they self-schedule in the PJM energy markets (i.e., they operate regardless of the PJM energy market price) and thus has very little risk of decreased capacity factor. While improper maintenance practices can lead to derates and forced outages, and thus reduced capacity factors, but as noted above in the discussion of forced outage rates, the lower availability would otherwise be reflected in facility's projected revenues.

Market Risks: The statute likewise requires the Board to consider "market risk." Market risks "shall include, but need not be limited to, the risk of a forced outage and the associated costs arising from contractual obligations, and the risk that output from the nuclear power plant may not be able to be sold at projected levels." In analyzing the market risk, the Board should focus on forward power projections and company hedges⁶ to determine the market risk.

⁵ Further background on outage expectations can be found from the PJM training session on the topic: <https://www.pjm.com/~media/training/special-events/ip-eforp/eforp-training-slides.ashx>

⁶ Most companies hedge their forward power sales at the holding company level. This inherently means that forward hedges are difficult to allocate to specific power plants. To minimize the level of complexity, we

Any standard discounted cash-flow analysis accounts for market risk in their valuation of the facility. Any performance risks, such as scarcity pricing or the impacts of PJM's Capacity Performance market (which rewards/penalizes generators for their real-time performance) should already have been accounted for in the discounted cash-flow analysis.

Further, the Board should ensure that applicants do not "double count" the impact of any operational risks (such as the risk of forced outage) in its market risk analysis. As noted above, operational risks are generally accounted for in any discounted cash-flow analysis. Finally, NRG recommends that both operational and market risks should be limited to historic trends or current future or modeled conditions. "What if" or "worst case" bookend scenarios should be excluded, since they are, by definition, outlier events.

4) Referencing N.J.S.A. 48:3-87.5(a) and (e)(3), what specific financial information should the Board request that Units applying for the ZEC program provide?

The Board should specifically request the following items from each Applicant:

- Audited financial statements for the facility that is applying for ZECs;
- Updated financial and cash flow projections until expected retirement of the facility applying for ZECs;
- Presentations to the Applicant's Board of Directors related to the profitability of nuclear units, investment decisions, any retirement announcements, the expected life of facilities, anticipated capacity prices, anticipated energy revenues, or any other presentations related to nuclear subsidies, as well as any analysis of same prepared for Management, but not shared with the Board of Directors;
- Any analyses or presentation regarding an applicant-unit's avoided costs of not retiring, including any documents referencing decommissioning costs, shut-down expenses, anticipated severance costs, lay-up costs, etc.;
- Any analyses or presentations regarding whether an immediate retirement would require additional funding and accelerate costs that would otherwise be deferred under continued operation;

recommend that applicants either demonstrate that they hold plant-specific hedges or allocate, on a per-MW ratio basis the impact of hedges held at the holding company level.

- Any impairment analysis of the Applicant's nuclear facilities prepared for, or in connection with, the Applicant's financial auditors;
- An estimate of the costs of exiting the PJM capacity market through the incremental markets;
- All past offers associated with the applicant-unit in the PJM Base Residual Auction and incremental auctions (including price and MW quantities, both of the Applicant's units and any affiliates of the Applicant units that may benefit from price uplift);
- Hedges related to energy market or capacity market activity, including natural gas hedges, all types of forward energy or capacity sales, contracts for differences, Basic Generation Supply contracts, or other like forward sales of energy or capacity;
- Property tax appraisals; and
- Any ROE or cost of capital studies conducted over the past 10 years.

The Board should also ask for all expenses, which are predominately O&M costs.

5) Referencing N.J.S.A. 48:3-87.5(e)(2), what information should be provided to the Board to demonstrate that the Unit makes a significant and material contribution to the air quality in the state? What information should be provided to demonstrate that the Unit minimizes harmful emissions that adversely affect the citizens of the state? What information should a Unit provide to demonstrate that, if the Unit were to be retired, the retirement would significantly and negatively impact New Jersey's ability to comply with State air emissions reduction requirements?

The Board needs to commission an independent study to determine what the supply stack looks like with and without the nuclear unit and model the emissions in each scenario. When modeling, the Board should also incorporate scenarios where ZECs would otherwise be replaced by renewables so that the zero-emission contribution of a subsidized nuclear unit is not overstated versus the status quo in which retirement and replacement with cleaner resources may otherwise occur.

Additionally, the Board should require Applicants to supply the full carbon and life cycle impacts from re-fueling and handling the residual wastes. This assessment should include all the

air quality impacts (carbon and pollutant) from the entire supply chain of fuels extraction, processing, storage, use placement, waste disposal and lifetime security/care.

- 6) Referencing N.J.S.A. 48:3-87.5(e)(4), the Act requires that eligible Units certify that they do not receive any direct or indirect payment or credit under a law, rule, regulation, order, tariff, or other action of this State or any other state, or a federal law, rule, regulation, order, tariff, or other action, or a regional compact, despite its reasonable best efforts to obtain any such payment or credit, for its fuel diversity, resilience, air quality, or other environmental attributes that will eliminate the need for the Unit to be retired. What should the Board interpret fuel diversity, resilience, air quality, and other environmental attributes to include?**

The Board should focus on the carbon benefits associated with nuclear power. Based on current information from PJM and other grid operators, there is no meaningful need for fuel diversity or resilience that might be provided by nuclear power plants.⁷ Should PJM or the Federal Energy Regulatory Commission, or other federal entity, decide that there is a need for these attributes, the most reasonable expectation is that there would be a separate value incorporated into the wholesale market that would adequately reflect these benefits.

- 7) What information about other benefits, subsidies, or tax implications should be provided to the Board as part of a ZEC application?**

The Board should mandate that the applicant and the applicant's affiliates certify that it and its affiliates are not being provided any other benefits, subsidies, or tax implications that benefit the Unit requesting the ZECs.

- 8) What forecasts, projections, or estimates should be included, or disallowed, as part of a ZEC application process?**

In determining future anticipated energy market revenues, the Board should rely on forward energy (at PJM East Hub) prices. Because nuclear units typically operate on an around-

⁷ See, e.g., Testimony of PJM President & CEO Andrew L. Ott before the United State Senate Committee on Energy and Natural Resources, October 11, 2018, available at: <https://www.pjm.com/-/media/library/reports-notices/special-reports/2018/20181011-ott-written-senate-testimony-on-system-restoration.ashx> ("PJM is working to ensure that the grid, which is reliable today, is also resilient when faced with new levels of cyber and physical threats. . . . The grid is reliable today and will continue to be into the future.") (Emphasis added).

the-clock basis, their energy market revenues closely track PJM's average round-the-clock locational marginal price at the node associated with the nuclear Applicant's unit. Forward energy contracts typically trade at least years into the future. Estimates of revenues in future years that are not traded in the energy markets can be accomplished by switching to a fundamentals-based view of power prices, which is available from consultants like Cambridge Energy Research Associates (CERA) or ABB. That will allow the Board to compare future power prices beyond the end of the currently traded financial energy futures markets.

Because forward price projections are inherently uncertain, NRG recommends utilizing "sensitivities" of \$0.50, \$1.00 and \$2.00 swings in the price of natural gas versus current market, a sensitivity that looks at variations in Regional Green House Gas ("RGGI") compliance costs, the impact of new PJM energy and capacity market pricing reforms, the impact of recent tax law changes, and any future federal or regional support for nuclear units. These sensitivities will provide an upward and downward estimates of market risk, as directed by the Legislation. The applicants should then provide an options-based estimate of the value of keeping the applicant nuclear units in the market.⁸

9) What other information, confidential or not, should the Board request to fully evaluate whether or not a Unit is at risk of closure due to financial hardship?

As noted above, the Board should focus on whether the Applicant is profitable based on a discounted cash-flow analysis over the remaining expected life of the facility. The Board should request hedging and forward sales that the company has in place for PJM capacity and energy commitments.

Further, the Board should seriously examine past capacity market offers for any applicant. A fundamental principle of the capacity market design is to provide a mechanism for,

⁸ In other words, maintaining a large generating unit has an "option" value that should be factored into prudent retirement analyses.

and in fact incent a generator to present its own view of the revenues it requires to remain in operation. While offers may be below this level at times for various reasons, at the point in which a resource is truly in financial stress and ready to exit, it is expected that these most recent bids would reflect its “walk away” threshold to either retire or continue to provide the service. Depending on how those offers were structured, the Board should seriously examine why an Applicant was willing to stay in the market at its capacity market offers prior to the possibility of receiving a subsidy. Such offers, untainted by the prospect of subsidies, likely represents the truest estimate of a facility’s needs. Applicants should be required to point to specific data justifying why they were willing to operate at their offer price previously, but are no longer willing to do so.

The Board should also benchmark the nuclear facility against best in class operating facilities in order to ensure that a financial hardship determination is neither the consequence of nor rewards poor performance, lack of cost control and inefficiencies that are within the control of its owners and management.

10) What other relevant factors, such as sustainability or long-term commitment to nuclear energy production, should be Board consider and evaluate?

NRG sees no additional benefits to long-term commitment to nuclear facilities that is not already captured in other elements of the Board’s analysis.

11) What factors and expenses should the Board consider in analyzing a Unit’s avoided costs if the Unit retires?

In addition to the items discussed above, in NRG’s experience there are a variety of material costs associated with shutting down a facility. For example, avoiding the costs of shutting down a unit may incentivize a mildly cash-flow negative generating resources to continue to operate. For a nuclear plant, aside from nuclear decommissioning costs, there are deactivation costs, severance costs, carrying costs to maintain the facility in a safe and

environmental compliant mode, non-nuclear-related site remediation and demolition obligations, and the like.⁹ Further, the impacts of retiring an Applicant's units in the 2021/2022 time-frame may have implications for their nuclear decommissioning cost and risks. Applicants should be required to address those costs and risks, based on the facts and circumstances of each individual units, as part of their filings.

Additionally, large wholesale generators have an "option value" that is often not captured in traditional cash flow analyses. For example, should natural gas prices unexpectedly rise, a nuclear generating facility would be expected to earn significantly more revenues. The implementation of carbon pricing would similarly cause the value of these facilities to spike, as would implementation of the proposed PJM reforms in the energy market. Any evaluation of the value of these facilities should include this option value.

12) What information about parent or affiliate companies of the nuclear power plant should be requested for the Board to holistically consider the Unit's financial condition?

Because nuclear facilities are typically imbedded in a holding company's overall capital structure, the Board should be prepared to examine the books of the parent company and affiliates as well. As just one example noted above, energy market hedges may be reflected as financial revenues in corporate, rather than plant, results. Any understanding of the past, present and future value of any Applicant facility must include an analysis of the corporation's overall financial position in the markets.

13) Assuming that any Unit is deemed eligible to receive ZECs by the Board, in ranking eligible units (N.J.S.A. 48:3-87.5(d) through (g)), how should the Board factor each Unit's potential to maximize benefits to New Jersey and to minimize the rate impact on the ratepayers of New Jersey's electric distribution companies?

⁹ Note that any decommissioning costs, including shortfalls, should not be included in any net present-value discounted cash-flow analysis. These costs were already sunk and were created by the initial decision to build the plant. These costs are not impacted by operations therefore should not be considered in evaluating the profitability of any Applicant facility going forward.

Assuming that any Applicant is deemed eligible to receive ZECs, the Board should allocate the scarce funds of New Jersey citizens in the manner that provides the largest amount of carbon-free generation, at the lowest possible price. Any analysis should include whether the entire nuclear facility needs ZECs, or whether providing ZECs to less than 100% of a facility's output would provide it with the financial incentive to remain in the market.

ZECs should also be subject to an annual renewal and determination of need based on current market economics and should be structured to incentivize the resource to meet best in class operating cost performance with the goal being to minimize the level and duration of any subsidy.

14) Assuming that any nuclear power plant is deemed eligible to receive ZECs by the Board, in ranking eligible Units (N.J.S.A. 48:3-87.5(d) through (g)) how should the Board factor the Unit's physical location (in-state, out-of-state, and specific venue) within PJM?

NRG urges the Board to provide ZECs to the most efficient provider of low-carbon generation without regard to location within PJM. Any other position creates significant legal problems.

15) Referencing N.J.S.A. 48:3-87.5(i)(3), how should the Board determine the revenue amount received by any selected nuclear power plant in an energy year for its fuel diversity, resilience, air quality, or other environmental attributes from other sources?

It should assume the nuclear plant will avail itself of any and all revenue opportunities to the fullest extent from other programs that provide value for these attributes. Such accounting should immediately incorporate any new programs or PJM market rule changes that would improve the nuclear units financial picture.

16) Should the application include/allow voluntary commitments as a condition of approval?

No, this introduces the potential for additional complications and difficulty in conducting an apples-to-apples evaluation and comparison of alternatives.

17) Please discuss how the recently issued FERC Order regarding the PJM Capacity Market, Docket Nos. EL16-49, ER18-1314, and EL18-178, relates to or otherwise impacts the Board's consideration of the ZEC program?

It is too soon to determine the impacts of any FERC order regarding the PJM markets in Docket Nos. EL16-49, ER18-1314, and EL18-178. Those dockets provide for a paper hearing, which is currently ongoing. Until we get the final decision from FERC, we cannot know the interplay between the PJM Capacity Market reforms and the NJ ZEC. To account for this inherent uncertainty, NRG strongly recommends that the Board consider incorporating a re-opener or true-up mechanism that ensures that New Jersey ratepayers do not see higher energy bills because of the ZEC subsidy and the Applicants do not receive the benefits of higher capacity revenues while also receiving ZECs.

Additionally, NRG recommends that the Board consider the impacts of the current energy market price formation proceeding, pending before FERC in Docket Nos. RM17-3 and EL18-34-000, as well as the energy market price formation reforms (including allowing block-loaded generating facilities, such as nuclear facilities) and scarcity pricing reforms being contemplated by PJM. Further, as has been widely reported, the federal government is contemplating bailouts for coal and nuclear interests.

In any of these cases, the market reforms (or alternative subsidy regimes) may cause Applicants to substantially increase the amount of money they earn, and the Board may wish to have a claw-back mechanism built into the ZEC program. After all, it would be unjust to give these facilities corporate welfare benefits if the subsequent market reforms return them to the enormous profitability they say in the 2000s. A true-up or claw-back mechanism, that for

example, requires any Applicant to refund excess future revenues would ensure that New Jersey ratepayers are protected.