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CASE MANAGEMENT**

**OCT 24 2018**

**BOARD OF PUBLIC UTILITIES  
TRENTON, NJ**

**Via Overnight Mail and Email**

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October 23, 2018

WILLIAM HARLA  
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Ms. Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> 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 Nuclear Power Plants  
BPU Docket No.: EO18080899**

**I/M/O Public Service Electric and Gas Company's Request for Approval of a  
Zero Emission Certificate Recovery Charge  
BPU Docket No.: EO18091004**

Dear Secretary Camacho-Welch:

This law firm represents the PJM Power Providers Group ("P3") in the above-referenced matter. Kindly accept this letter, in lieu of a more formal brief on behalf of P3, in support of its motion to intervene in the first listed matter as a Party pursuant to N.J.A.C. 1:1-16.1 et seq. before the Board of Public Utilities ("BPU" or the "Board").

We note initially that the Board's August 29, 2018 Order and the September 11, 2018 Notice have created certain procedural ambiguities; indeed there is confusion among stakeholders in the community related to the meaning of the August 29 Board Order and the September 11 Notice and the nature and openness of the ZEC proceeding. This procedural confusion seems in part to be derived from the Act, which requires an early tariff filing (by Day 150 after the enactment of the Act) and the August 29 Board Order requiring interventions in the



tariff portions of the proceedings by October 23, combined with the fact that the Board has not entered an Order in the ZEC proceedings to date. Accordingly, given that the ZEC program, including the establishment of a rank-ordered list of nuclear power plants eligible to be selected to receive ZECs, must be completed no later than 330 days after enactment, or by April 18, 2019, we would respectfully urge the Board to move quickly to address the procedural issues and schedule in the ZEC proceeding, including an appropriate schedule for intervention.

However, and out of an abundance of caution, P3 files the instant letter to preserve its right to intervene in the ZEC proceeding, and for the reasons set forth below, the BPU should grant P3 full Party intervenor status in that proceeding. Should the Board issue a supplemental order in that proceeding, P3 will file a more formal motion in that proceeding as well.<sup>1</sup>

The PJM Power Providers Group (P3 Group) is a non-profit organization made up of power providers whose mission it is to promote properly designed and well-functioning competitive wholesale electricity markets in the 13-state region and the District of Columbia served by PJM Interconnection. Combined, P3 members own more than 84,000 megawatts of generation assets in PJM, produce enough power to supply over 20 million homes and employ over 40,000 people. The power providers work with state and federal policymakers and other stakeholders, including PJM and the Organization of PJM States, to advance the group's mission.

Indeed, P3's intervention is vital since its members will be directly affected by the outcome of the proceeding. No other party represents the interests of P3. Only by intervening as a party to this proceeding can P3 ensure that its members' interests are represented as the BPU considers this matter.

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<sup>1</sup> We reserve our right to intervene in Docket Nos. EO18091005, EO18091003 and EO18091002 nunc pro tunc to the extent necessary and to the extent the proceeding herein becomes a surrogate for the ZEC proceedings. We are also providing the parties in the aforementioned dockets a courtesy copy of P3's application.

**A. Background Facts and Procedural History**

On May 23, 2018, Governor Murphy signed into law L. 2018, c. 16, (the "Act") which, among other things, requires the Board to create a ZEC program and determine which nuclear energy generators will be eligible to receive ZEC payments under the program. The Act requires the Board to convene several separate proceedings to establish the ZEC program, develop an application process to determine a nuclear plant's eligibility to obtain ZECs, certify and rank the nuclear plants determined to be eligible to participate in the ZEC program and to receive ZECs, and establish a mechanism for the EDCs to purchase ZECs from the selected nuclear plants. The Act further requires each EDC to file a tariff to recover the \$0.004/kwh ZEC charge from its retail distribution customers.

**B. P3 Should Be Permitted To Intervene As A Party In These Proceedings.**

In support of the instant application for intervention in the Board's ZEC proceedings described above, P3 respectfully submits that all factors for intervention set forth in N.J.A.C. 1:1-16.1, weigh in favor of the granting P3's application to intervene in all proceedings convened by the Board arising out of, or in connection with the implementation of the Act. The standard for intervention in an administrative proceeding provides:

- (a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene. [N.J.A.C. 1:1-16.1(a)].

When evaluating a motion for intervention, the following factors should be considered: (1) the nature and extent of the movant's interests in the outcome of the case; (2) determination of whether the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case; (3) the prospect of confusion or undue delay arising from the movant's inclusion; and, (4) any other appropriate matters. N.J.A.C. 1:1-2415198v1

16.3; see also Atlantic Employers Ins. Co. v. Tots & Toddlers Pre-School Day Care Center, Inc., 239 N.J. Super. 276, 280 (App. Div.), certif. den. 122 N.J. 147 (1990) (noting courts apply a liberal construction to intervention rules); State by Bontempo v. Lanza, 39 N.J. 595, 599 (1963), cert. den. 375 U.S. 45 (1964) (same); R. 4:33-1 (intervention as of right must be granted when “the applicant claims an interest relating to the ... transaction which is the subject of the action and ... the disposition of the action may as a practical matter impair or impede the ability to protect that interest ...).

P3 meets each of the criteria set forth above. Moreover, since the outcome of the proceeding will have direct economic consequences for P3 and its members, its request satisfies the standard for intervention in this proceeding. In Independent Energy Producers of New Jersey v. New Jersey Department of Environmental Protection and Energy, 275 N.J. Super. 46 (App. Div.), certif. den. 139 N.J. 187 (1994), the court recognized the broad right of trade association intervention, and more particularly, that the concerns of business competitors support a grant of intervention. In granting trade association intervenor status, it said:

In administrative law cases such as this, business entities competing with the respective permittee may be the only institutions with a sufficient private interest in harmony with the public concern of the consumer ... If business competitors are not accorded standing in such cases, an administrative determination favorable to the permittee, whether right or wrong, proper or arbitrary, takes on a conclusive character to the possible great detriment of the people as a whole. [Id., 275 N.J. Super. at 56 (quoting Elizabeth Federal Savings & Loan Ass’n v. Howell, 24 N.J. 488, 501 (1957))].

Indeed, New Jersey courts have consistently recognized the broad right of intervention for trade associations. See New Jersey Retail Liquor Stores Ass’n v. Degnan, 180 N.J. Super. 475 (App. Div. 1981) (permitting a trade association of about 800 independently owned retail liquor dealers which attacked the validity of a regulation of the Division of Alcoholic Beverage Control of Department of Law and Public Safety to intervene as an objector to the regulation);

Gundaker Cent. Motors, Inc. v. Gassert, 23 N.J. 71, 77 (1956) (noting that on appeal, the New Jersey Automotive Trade Association had been permitted to intervene as amicus curiae); In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 80 (App. Div. 2004) (where COAH granted the New Jersey Builders Association's, a non-profit trade association with some 1,600 members comprised of builders, developers, consulting professionals, general and subcontractors, tradespersons, and others engaged in real estate development in New Jersey, motion for leave to intervene to oppose COAH's grant of extended substantive certifications to the nine municipalities with matters pending at the time.

New Jersey courts also have recognized the independent status and purpose of organizations representing collective interests. See, e.g. Right to Choose v. Byrne, 91 N.J. 287, 313-315 (1982); Jordan v. Horseman's Benev. & Protect. Ass'n., 90 N.J. 422, 431-432 (1982); see also New Jersey Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 416 (App. Div. 1997) (an association has standing solely as the representative of its members). Moreover, the U.S. Supreme Court has recognized that associations have standing in their own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy; moreover, in attempting to secure relief from injury to itself the association may assert the rights of its members. Warth v. Seldin, 422 U.S. 490, 511 (1975).

P3 proposes to advance industry-wide interests aimed at ensuring that competitive standards are addressed in a thorough manner. P3's full participation in this proceeding will contribute to the development of a complete record for consideration by the BPU.

With the aforementioned principles in mind, P3 should be granted the right to intervene in these proceedings. P3 is comprised of a diverse group and some members, on their own, may

not be able to pursue intervention.<sup>2</sup> Moreover, P3's inclusion in these proceedings promotes the goals of judicial economy by sparing its constituent members from bringing individual motions to intervene. For all of these reasons, P3 has a unique interest in this proceeding, including in ensuring fairness in the wholesale energy market. These interests will not be completely addressed by any other party in this proceeding. Moreover, P3's full participation in this proceeding will contribute to the development of a complete record for consideration by the Board, as well as to promote judicial economy. Indeed, only P3 will be able to provide the unique perspective of its members. Finally, P3's intervention will not create any delay in this matter since this matter is at its inception. P3 will abide by all scheduling orders in this proceeding.

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<sup>2</sup> Any comments filed by P3 represent the position of P3 as an organization but not necessarily the views of any particular member with respect to any issue. See, i.e., Greate Bay Hotel & Casino, Inc. v. City of Atl. City, 264 N.J. Super. 213 (Law Div. 1993) (holding that business trusts were separate entities and that the firm's representation of the entity did not create an attorney-client relationship between the members of the entity and the firm representing the entity).

**CONCLUSION**

For the foregoing reasons, P3 should be granted permission to intervene in the ZEC proceedings as a Party to ensure that its specific interests are appropriately represented and protected.

Respectfully submitted,

**DECOTIIS, FITZPATRICK,  
COLE & GIBLIN, LLP**

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*Attorneys for the PJM Power Providers Group  
("P3")*

By:  \_\_\_\_\_  
William Harla

WH/sh

cc: Attached BPU Service List *(via email only)*



**CASE MANAGEMENT**

**OCT 24 2018**

**BOARD OF PUBLIC UTILITIES**

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*Attorneys for PJM Power Providers Group ("P3")*

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

I/M/O THE IMPLEMENTATION OF L. 2018, c. 16  
REGARDING THE ESTABLISHMENT OF A ZERO  
EMISSION CERTIFICATE PROGRAM FOR  
NUCLEAR POWER PLANTS

Docket No. EO18080899

I/M/O PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY'S REQUEST FOR APPROVAL OF A  
ZERO EMISSION CERTIFICATE RECOVERY  
CHARGE

BPU Docket No. EO18091004

ORDER

This matter having been presented by DeCotiis, FitzPatrick, Cole & Giblin, LLP, attorneys for the PJM Power Providers Group ("P3") on notice to the Board of Public Utilities (and the Honorable Joseph L. Fiordaliso) and the parties and persons set forth on the attached Service List, and having considered the motion and other documents on file in this matter, including the Letter Brief submitted in support of the motion, and other good cause appearing,

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 2018,

**ORDERED** that the PJM Power Providers Group ("P3") is hereby granted leave to intervene and fully participate in the above-entitled matter as a Party, and that it be placed on the Service List for receipt of all documents, papers, discovery materials, exhibits, and notifications of all hearings, conferences, presentations and all other proceedings in this matter.

\_\_\_\_\_  
Hon. Joseph L. Fiordaliso,  
Commissioner



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

I/M/O THE IMPLEMENTATION OF L. 2018, c. 16  
REGARDING THE ESTABLISHMENT OF A ZERO  
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BPU Docket No. EO18080899

I/M/O PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY'S REQUEST FOR APPROVAL OF A  
ZERO EMISSION CERTIFICATE RECOVERY  
CHARGE

BPU Docket No. EO18091004

CERTIFICATION OF SERVICE

I, William Harla, an Attorney at Law of the State of New Jersey, hereby certifies as follows:

- 1) On October 23, 2018, I caused to be served via overnight mail and email an original and ten (10) copies of the enclosed Notice of Motion to Intervene as a Party, the supporting Letter Brief on the Secretary to the New Jersey Board of Public Utilities; and
- 2) On the same date, I also caused to be served by electronic mail a copy of the enclosed Notice of Motion to Intervene, the supporting Letter Brief, on each party on the Service List.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

**DECOTHS, FITZPATRICK,  
COLE & GIBLIN, LLP**

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*Attorneys for the PJM Power Providers Group ("P3")*

By:  \_\_\_\_\_  
William Harla

Dated: October 23, 2018