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BOARD OF PUBLIC UTILITIES  
NOV 07 2018

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October 31, 2018

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NOV 07 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

**Via Overnight Mail and E-mail**

Honorable Joseph L. Fiordaliso, President  
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  
BPU Docket No.: EO18091004**

Dear President Fiordaliso:

We are writing to you in your capacity as the designated Presiding Officer in the ZEC proceedings, pursuant to the Board of Public Utilities' ("BPU" or the "Board") August 29, 2018 Scheduling Order. This law firm represents the PJM Power Providers Group ("P3") in the above-referenced matter<sup>1</sup>. We respectfully submit the following letter as a follow up to our letter in lieu of a Motion of October 23, 2018 reserving our right and/or to formally intervene in the above-referenced proceedings.

As you know, the Board's August 29 Order in the first listed matter sets forth an October 23, 2018 filing deadline for intervention motions in the "tariff portion of this matter." As you also are aware, the Board has yet to issue a procedural order in the ZEC proceedings. (Docket

<sup>1</sup> The comments contained herein represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit [www.p3powergroup.com](http://www.p3powergroup.com).



*Handwritten signatures:*  
CMS  
G. Hart, Esq.  
J. Richardson, Esq.

No. 18080899). Accordingly, and out of an abundance of caution, P3 filed a place-holder letter in lieu of a more formal motion to intervene in the ZEC portion of the matter, and in the tariff portion, should that proceeding encompass the ZEC proceedings.

Subsequent to the filing of our letter brief, PSE&G has now filed opposition motions to intervention motions of the New Jersey Large Energy Users Coalition and the Independent Market Monitor of PJM. PSE&G also addressed and opposed access to confidential information in its opposition to both motions. P3's October 23 letter did not address issues related to access to confidential information since its motion was limited to compliance with the standards set forth for intervention pursuant to N.J.A.C. 1:1-16.1. Indeed, whether and if P3 is entitled to access to confidential information is a determination that is separate and distinct from its right to participate as a party in the ZEC proceedings. P3 would note only briefly that as set forth in L. 2018, c. 16, in order for a party to be permitted to review information marked "confidential" by an applicant for ZEC's:

The board and the Attorney General shall jointly approve the disclosure of such confidential information to a party that they deem essential to aid the board in making the determinations required under this subsection, provided that the party is not in a position such that disclosure could harm competition and the party agrees in writing to maintain the confidentiality of the confidential information. [L. 2018, c. 16, Section 3(a) (emphasis added)].

Clearly, the legislative provisions accepts the well established litigation construct that a decision must first come as to the granting of party status with determinations of procedural matters to follow in the normal course of litigation. Thus, access to any such confidential information would be subject to execution of a non-disclosure agreement by a party, at the appropriate time. However, engaging in potentially unnecessary and redundant motion

practice and adjudication of these issues at this juncture, until intervention status is resolved, is simply premature and wasteful.

Accordingly, P3 writes now to urge you to issue a supplemental order setting forth detailed time frames for intervention in the ZEC proceedings. As set forth above, the order should also address separately and set appropriate time frames and a schedule for dealing with access to confidential information after the intervention motions have been resolved. P3 believes that such a supplemental order will bring clarity to the procedural situation and serve to resolve the ambiguities existing among stakeholders created by the Board's August 2018 Order and the September 2018 Notice, and, importantly, create an ordered motion practice that will avoid waste and an allow for a complete, simultaneous examination of the issues raised by the intervenors and any opposition thereto. This is especially important since time is short given that the ZEC program must be completed no later than 330 days after enactment, or by April 18, 2019.

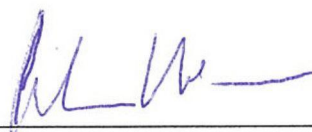
We thank you and the Board for your attention to this matter.

Respectfully submitted,

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

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William Harla

WH/sh

cc: Ms. Aida Camacho-Welch, Secretary  
Attached BPU Service List

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