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November 13, 2018

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

VIA OVERNIGHT MAIL AND EMAIL

Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
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NRG Energy, Inc.
804 Carnegie Center
Princeton, NJ 08540

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NOV 14 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**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
BPU Docket No. EO18080899**

Dear Secretary Camacho-Welch:

Please accept this letter, in lieu of a more formal brief, on behalf of NRG Energy, Inc. ("NRG") in response to the opposition of Public Service Electric and Gas Company ("PSE&G"), PSEG Power LLC ("PSEG Power") and PSEG Nuclear LLC ("PSEG Nuclear") (collectively, the "PSEG Companies") to NRG's participation in this proceeding and in further support of NRG's informal motion to participate in the above matter.¹ The PSEG Companies' opposition can be boiled down to this: unsubstantiated claims that NRG would cause delay and to the dubious argument that NRG has failed to meet the standard for participation.

As an initial matter, PSEG Power, PSEG Nuclear, and PSE&G have moved to intervene in the ZEC proceeding, but their motions have not been granted. Accordingly, they have no standing to oppose NRG's request to participate. Furthermore, the Division of Rate Counsel has opposed their motion to intervene. In addition, not only do the PSEG Companies oppose NRG's motion to participate, but the PSEG Companies have opposed every party's motion to intervene. The only conclusion for PSEG Companies' actions is that they want to limit the proceeding to only the Board of Public Utilities ("Board"), the PSEG Companies, and the New Jersey Rate Counsel so they can better control the proceeding. However, Governor Murphy has stated that these proceedings will be conducted in a manner to ensure that ratepayer dollars are not spent unnecessarily, and therefore, need to include all parties who have any interest in the matter.²

Turning to PSEG Companies' opposition, PSEG Companies argue that NRG has not demonstrated that it has met the standard under N.J.A.C. 1:1-16.6 and that NRG's participation would cause confusion and undue delay. First, N.J.A.C. 1:1-16(a) provides that "[a]ny person or entity with a significant interest in the outcome of a case may move for permission to

¹ NRG notes that on November 9, 2018, the Division of Rate Counsel filed a response to PSEG Companies' opposition to NRG's motion to participate and supports NRG's motion to participate.

² See November 2, 2018 Letter of the New Jersey Large Energy Users Coalition ("NJLEUC"), p. 2.

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participate.” NRG meets the standard for participation. NRG has a “significant interest” in this proceeding on many levels. NRG’s headquarters are in Princeton, New Jersey, and is a large energy user that will be affected by the ZEC surcharge. NRG serves retail customers in New Jersey, who will be directly affected by the ZEC surcharge. NRG has power plants that participate in the PJM wholesale market. Any award of ZECs will affect competition in the wholesale market. The ZEC subsidies will advantage one or more power generators to the detriment of competing power producers like NRG. The point of this proceeding is to award ZECs only if needed. NRG has an interest in making sure this happens so as to minimize any harmful impact on competition in the PJM market as well as individual economic and business harm to NRG and its customers. As such NRG has a “significant interest” in this proceeding and will be able to assist and inform the Board on the impacts to the retail and wholesale markets through the issuance of the ZEC subsidies.

Second, PSEG Companies’ arguments that NRG’s participation would cause undue delay are disingenuous, speculative, and have no basis in fact. Undue delay usually refers to interested who file motion to intervene or participate late in the proceeding. As noted in NRG’s initial letter, there is no procedural schedule issued for the instant case regarding the ZEC application process. So, there is no undue delay. NRG is fully aware of the tight schedule as provided for in the Act and has no intention to “slow down this process.” The Board should not be fooled by PSEG Companies’ arguments that allowing NRG in as a participant (not an intervenor) would slow down the process. Under N.J.A.C. 1:1-16.6(c), “[t]he judge shall determine the nature and extent of participation in the individual case.” Participation is limited to arguing orally, filing briefs, and filing exceptions. It is unclear how being a participant would “slow down this process.” Moreover, if the Board does have a concern about the potential for NRG to “slow down this process,” then the remedy is for President Fiordaliso to determine the extent of the participation. It is not to outright deny the motion to participate. The Board should not deny the due process rights of any party.

Third, the issue of whether, when, and if NRG is entitled to access confidential information is a determination that is separate and distinct from its right to participate in the ZEC proceedings. Per the procedure followed in administrative proceedings and as contemplated in the Act, the determinations of access to confidential information are decided after a ruling to participate. As the rulings on participation and access to confidential information are separate, it is premature to address the issue of confidentiality when weighing a motion to grant participation status.

Fourth, to the extent the Board wishes to consider what “essential” means, NRG submits that the plain language of the statute weighs in favor of allowing NRG access to confidential information in some form. It is the Board and the Attorney General’s office that decide who is “essential.” While PSEG Companies would undoubtedly prefer to squelch opinions that differ from their own, consideration of all perspectives is essential to the full consideration of this matter. Due process is not as easily circumvented as PSEG Companies would like. NRG’s participation and its review of confidential information, as well as the participation of other qualified parties and their ability to access confidential information, are thus “essential” to the full consideration of this matter.

Lastly, as noted in NRG's October 22, 2018 letter, out of an abundance of caution, NRG filed the letter to preserve its right to participate in the ZEC proceeding. Since PSEG Companies are opposing our informal request, for the sake of clarity and out of an abundance of caution, NRG attaches hereto as Exhibit A a formal motion to participate.

For the foregoing reasons, NRG should be granted full rights as a participant in this matter pursuant to N.J.A.C. 17:27-16.6(c) including, without limitation, the ability to offer oral argument, file statements and briefs, and participate in conferences.

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

Very truly yours,

/s/ Jennifer S. Hsia

Abraham H. Silverman

Jennifer S. Hsia

Counsel for **NRG Energy, Inc.**

Cc: Service List (Email Only)

Attachment A

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

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)))))))	MOTION TO PARTICIPATE Docket No. EO18080899
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NRG ENERGY, INC.'S MOTION TO PARTICIPATE

NRG Energy, Inc. ("NRG") hereby moves before the New Jersey Board of Public Utilities ("Board") for leave to participate in the above-captioned proceeding pursuant to N.J.A.C. 1:1-16.6. In support of its motion, NRG respectfully submits:

1. On May 23, 2018, Governor Phil Murphy signed in law L. 2018, c. 16, requiring the Board to create a program and mechanism for the issuance of Zero Emission Certificates ("ZECs").
2. By Order dated August 29, 2018, the Board directed the Board staff to establish a ZEC application process, ordered the EDCs file tariffs in compliance with the Act, stated that President Fiordaliso will be the presiding officer, and provided that any entity seeking to intervene or participate in the tariff portion of the matter file the appropriate application with the Board by October 23, 2018.
3. NRG Energy, Inc. is ("NRG") a Fortune 500 company with headquarters in Princeton, New Jersey.
4. NRG employees hundreds of people in its New Jersey office.

5. NRG owns approximately 26,000 MW of generation assets and serves more than three million retail customers across the United States. One million of those customers are in the Northeast markets, which includes customers in New Jersey.
6. NRG is in a unique position to provide the Board with critical insight as to the method and application process for determining the eligibility and selection of nuclear power plants and the establishment of a mechanism for each Electric Distribution Company (“EDC”) to purchase ZECs from selected nuclear power plants because it has been involved in other related ZEC proceedings in other states, participates in the PJM wholesale market, and participates in New Jersey’s retail market.
7. Moreover, the cost of the ZEC will affect New Jersey ratepayers, which includes the employees at NRG as well as ratepayers that are NRG customers.
8. NRG has power plants that participate in the PJM wholesale market. Any award of ZECs will affect competition in the wholesale market. The ZEC subsidies will advantage one or more power generators to the detriment of competing power producers like NRG.
9. As a player in the New Jersey retail market as well as the PJM wholesale market, NRG will be uniquely affected by the outcome of this case and has significant interest in the outcome of this case. Moreover, NRG’s extensive experience at both the wholesale and retail level will only assist the Board in its ZEC process.
10. As such NRG has a “significant interest” in this proceeding and will be able to assist and inform the Board on the impacts to the retail and wholesale markets through the issuance of the ZEC subsidies.
11. N.J.A.C. 17:27-16.6(c) provides that “[a]ny person or entity with a significant interest in the outcome of a case may move for permission to participate.”

12. NRG's motion is timely and will not delay or otherwise disrupt the prosecution of this proceeding.
13. NRG's participation in this proceeding will contribute to the development of a complete record for consideration by the Board on these issues.
14. For the foregoing, NRG respectfully requests a participant status in the above-mentioned proceeding that will include the ability to offer oral argument, file statements and briefs, and participate in conferences. N.J.A.C. 1:1-16.6(c), see, e.g., In re the Petition of Public Service Electric & Gas Company for Approval of the Energy Strong Program, BPU Dkt. Nos. EO13020155; GO130201562013, N.J. PUC LEXIS 307, Final Decision (October 16, 2013) (environmental organization permitted to "appropriately share its expertise... by participating in conferences and site visits, and filing statements and briefs including its perspective on the various proposals.").
15. Copies of all correspondence and other communications relating to this proceeding should be addressed to:

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WHEREFORE, NRG requests an Order: (1) granting NRG full rights as a participant in this matter pursuant to N.J.A.C. 1:1-16.6(c) including, without limitation, the ability to offer oral argument, file statements and briefs, and participate in conferences; and (2) providing such other or further relief as the Board may deem just and proper.

November 13, 2018

Respectfully submitted,

/s/Jennifer S. Hsia
Abraham Silverman
Jennifer Hsia
NRG Energy, Inc.

Attorneys for NRG Energy, Inc.

Certification Of Service

I hereby certify that I have served via electronic mail copies of the foregoing Motion to Participate to the parties identified on the service list. An original and 10 copies have been forwarded via first class mail to Aida Camacho-Welch, Secretary of the Board of Public Utilities, and via email to each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Houston, Texas this 13th day of November, 2018.

/s/ Jennifer Hsia

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