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BOARD OF PUBLIC UTILITIES
TRENTON, NJ



November 9, 2018

**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

VIA ELECTRONIC DELIVERY & OVERNIGHT MAIL

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, Suite 314
P.O. Box 350
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CASE MANAGEMENT

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Dear Secretary Camacho-Welch:

Enclosed are an original and ten copies of Public Service Electric and Gas Company's, PSEG Power LLC's and PSEG Nuclear LLC's Reply Brief in Support of Their Motion to Intervene in the above-captioned proceeding.

By copy of this letter, copies of this submission are being forwarded on this date via electronic mail to all persons whose name appears on the attached Service List.

Thank you for your anticipated courtesies.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Joseph F. Accardo Jr.", written in a cursive style.

Joseph F. Accardo Jr., Esq.

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**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) BPU Docket No. E018080899
Emission Certificate Program for Eligible Nuclear)
Power Plants)

**PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S,
PSEG POWER LLC'S AND PSEG NUCLEAR LLC'S REPLY BRIEF
IN SUPPORT OF THEIR MOTION TO INTERVENE**

Please accept an original and 10 copies of this reply 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 the November 2, 2018 response of the Division of Rate Counsel ("Rate Counsel") to the PSEG Companies' Joint Motion to Intervene. Rate Counsel claims that joint representation by counsel for PSE&G and its affiliates PSEG Power, and PSEG Nuclear should not be permitted because PSE&G has a conflict of interest with those other companies. Rate Counsel maintains that PSE&G can only be permitted to participate if it has separate legal counsel and if the Board "direct[s] PSE&G to act in accordance with its interests as a public utility."¹ Rate Counsel's contentions are meritless.²

The claimed conflict of interest is purely chimerical. PSE&G, PSEG Power, and PSEG Nuclear all share the same goals in this proceeding – namely, that the Board of Public Utilities ("BPU" or the "Board") should implement the ZEC Act in a fair manner consistent with the

¹ Rate Counsel response, p. 8.

² On November 2, 2018, Rate Counsel also submitted responses to the PSEG Companies' briefs (1) in opposition to the motions to intervene of the New Jersey Large Energy Users Coalition ("NJLEUC") and the Independent Market Monitor of PJM ("IMM"), (2) in opposition to NJLEUC's motion for access to confidential information, and (3) in support of the IMM's access to confidential information. Regarding these responses by Rate Counsel, the PSEG Companies stand by their briefs in opposition to NJLEUC's and the IMM's intervention and access to confidential information, dated October 26 and October 29, 2018, respectively.

goals of the New Jersey Legislature. There is no need for separate legal representation for the three affiliates to pursue these interests. Further, the goals PSE&G is seeking to achieve are already “consistent with its obligations as a public utility.”³ Admittedly, PSE&G is not in agreement with all of Rate Counsel’s positions. Rate Counsel, however, has misinterpreted important provisions of the ZEC Act and other provisions of law that could adversely affect the ZEC Act’s implementation. Many of Rate Counsel’s positions, if accepted, would impede the Board’s ability to achieve the Legislature’s ZEC Act goals and add needlessly to the BPU’s administrative burdens.

Rate Counsel identifies five positions taken by the PSEG Companies in their joint comments that supposedly demonstrate PSE&G’s conflict of interests.⁴ Yet in reality, all of these are actually disagreements with Rate Counsel about the intent of the legislation or about Rate Counsel’s powers. For example, Rate Counsel claims that PSE&G is engaged in “zealous advocacy” on behalf of PSEG Nuclear because of a disagreement with Rate Counsel that a Constitutional right exists allowing the Board to change the \$0.004 kWh rate -- in direct contradiction of the ZEC Act itself -- as part of the application process.⁵ The PSEG Companies’ joint comments explained in detail why there is not a Constitutional deficiency in the ZEC Act.⁶

³ *Id.*, p. 8.

⁴ *Id.*, p. 4-5.

⁵ *Id.*, p. 4.

⁶ In its written comments filed in this proceeding on October 22, 2018, Rate Counsel for the first time identified the purported legal support for its Constitutional arguments as *In Re Industrial Sand Rates*, 66 N.J., 12, 23-24 (1974). Yet as shown in the PSEG Companies’ comments and discussed further below, this case is inapposite to the instant facts. The PSEG Companies’ comments showed that the ZEC Act incorporates robust due process protections for consumers that would be more than adequate to meet any applicable Constitutional standards. PSEG Companies Joint Comments, pp. 7-8. Further, the holding in *Industrial Sand Rates* addressed traditional cost of service rates charged by public utilities. But, as shown in the PSEG Companies’ comments, the \$0.004 kWh rate is not a cost-of-service rate and instead is based on the social cost of carbon. Further, ZEC recipients will not become public utilities under New Jersey law. For all of these reasons, *Industrial Sand Rates* has no applicability to the ZEC Act.

Rate Counsel never explains why PSE&G is acting inconsistently with its status as a New Jersey electric utility in contending through reasoned legal analysis that the Board should implement the ZEC Act in the manner envisioned by the New Jersey Legislature.

Rate Counsel further contends that PSE&G “should, at most, have . . . neutral position[s]” regarding elements of the ZEC Act.⁷ PSE&G does not agree. PSE&G believes that the Legislature acted wisely in enacting the ZEC Act. The loss of nuclear plants serving the State would have significant negative impacts on air quality within New Jersey,⁸ as well as reduce fuel diversity and resilience of the State’s electric grid. In addition, the loss of nuclear plants serving the State would increase costs to New Jersey residents.⁹ PSE&G’s advocacy supporting reasonable processes for implementing the ZEC Act is consistent with its views regarding the value of the ZEC Act to its customers.

PSE&G, as well as PSEG Power and PSEG Nuclear, recognize that the Board has the obligation to fulfill the intent of Legislature as expressed by the provisions of the ZEC Act. This will require an analysis of all the factors identified in the law and a determination of which, if any plants, to select. But PSE&G does not believe -- as Rate Counsel contends -- that it should have to stand on the sidelines regarding how to best serve the public weal, and not express its views regarding the elements of a fair administrative process for implementation of the ZEC Act.

⁷ Rate Counsel response, p. 5.

⁸ See “Salem and Hope Creek Nuclear Power Plants’ Contribution to the New Jersey Economy,” p. 2, Berkman and Murphy, Brattle Group, November 2017 (finding that closure of Salem and Hope Creek nuclear plants would “[a]void 13.8 million metric tons of CO2 emissions annually over the next ten years, valued at \$585 million per year)(http://files.brattle.com/files/11755_salem_and_hope_creek_nuclear_power_plants_contribution_to_the_new_jersey_economy.pdf.)

⁹ *Id.* (“New Jersey consumers would pay \$400 million more for electricity annually, about \$3.3 billion more in present value over the next ten years, without [Salem and Hope Creek].”).

For the foregoing reasons, Rate Counsel's contentions should be rejected. PSE&G should be entitled to participate jointly with PSEG Power and PSEG Nuclear as intervenors in this proceeding in order to promote a fair administrative process for determining the eligibility and ranking of applicant nuclear plants consistent with the provisions of the ZEC Act.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Joseph F. Accardo Jr.", with a stylized flourish at the end.

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