



Agenda Date: 11/19/18
Agenda Item: 9B

STATE OF NEW JERSEY

Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314

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Trenton, New Jersey 08625-0350

www.nj.gov/bpu/

DIVISION OF STATE ENERGY SERVICES

IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u>)	ORDER ON MOTIONS TO
2018, <u>c.</u> 16 REGARDING THE ESTABLISHMENT OF A)	INTERVENE OR PARTICIPATE
ZERO EMISSION CERTIFICATE PROGRAM FOR)	AND FOR ADMISSION PRO HAC
ELIGIBLE NUCLEAR POWER PLANTS)	VICE
)	
)	DOCKET NO. EO18080899

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Jeffrey W. Mayes, Esq., General Counsel, Monitoring Analytics, LLC

BY THE BOARD¹:

BACKGROUND

On May 23, 2018, Governor Phil Murphy signed into law L. 2018, c. 16 (C.48:3-87.3 to -87.7) ("Act"). The Act requires the New Jersey Board of Public Utilities ("BPU" or "Board") to create a program and mechanism for the issuance of Zero Emission Certificates ("ZECs"), each of which represents the fuel diversity, air quality, and other environmental attributes of one megawatt-hour of electricity generated by an eligible nuclear power plant selected by the Board to participate in the program. Under the program, certain eligible nuclear energy generators may be approved to provide ZECs for the State's energy supply, which in turn will be purchased by New Jersey's four (4) investor-owned electric distribution companies, i.e., Atlantic City Electric ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and municipal electric

¹ Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion of this matter.

distribution company Butler Electric Utility ("Butler") (collectively, "EDCs"). The Act identifies the basic steps required to establish this program, including program logistics, funding, costs, application, eligibility requirements, selection process, and the timelines associated with each aspect of the legislation.

The Act requires that the Board complete a proceeding within 180 days after the date of enactment of the Act, i.e., by November 19, 2018, to allow for the commencement of a ZEC program. In the proceeding, the Board is required – after notice, the opportunity for comment, and public hearings – to issue an order establishing a ZEC program for selected nuclear power plants. The Board's Order must include but need not be limited to: (i) a method and application process for determination of the eligibility and selection of nuclear power plants; and (ii) establishment of a mechanism for each EDC to purchase ZECs from selected nuclear power plants. See N.J.S.A. 48:3-87.5(b).

The Act also requires that the Board complete the proceeding to certify applicant nuclear power plants as eligible for the program and establish a rank-ordered list of the nuclear power plants eligible to be selected to receive ZECs. This proceeding must be completed no later than 330 days after the date of enactment of the Act, i.e., by April 18, 2019, after notice, the opportunity for comment, and public hearing. See N.J.S.A. 48:3-87.5(d).

In addition, within 150 days after the date of enactment of the Act, i.e., by October 22, 2018, the Act requires each EDC to file with the Board a tariff to recover from its retail distribution customers a charge in the amount of \$0.004 per kilowatt-hour, which, according to the Act, reflects the emissions avoidance benefits associated with the continued operation of selected nuclear power plants. The Act provides that the Board shall approve the appropriate tariff after notice, the opportunity for comment, and public hearings, within 60 days after the EDCs' tariffs are filed. See N.J.S.A. 48:3-87.5(j).

PROCEDURAL HISTORY

Under the Act, the Board is responsible for creating and administering the ZEC program. On August 29, 2018, the Board approved an Order² initiating the creation of the ZEC program. Specifically, the Board (i) directed Staff to facilitate the establishment of a ZEC application process and related Act activities, and take all necessary steps required per the Act, including scheduling public hearings; establishing a comment process, and preparing for consideration by the Board a completed application process by November 19, 2018; (ii) directed the EDCs to file tariffs in compliance with the Act by October 22, 2018, for approval by the Board; (iii) designated President Joseph L. Fiordaliso as the Presiding Officer, who is authorized to rule on all motions that arise during the pendency of final Board action as required under the Act and modify any schedules that may be set as necessary to secure a just and expeditious determination of the

² 1/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. EO18080890039, Order dated August 29, 2018.

issues; and (iv) directed that any entities seeking to intervene or participate in the tariff portion of this matter file the appropriate application with the Board by October 23, 2018.

The Board's establishment of a ZEC program for selection of eligible nuclear power plants is accomplished in the Order Establishing the Program, Application, and Procedural Process, I/M/O the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, Docket No. EO18080899, Order dated November 19, 2018.

MOTIONS

Six (6) entities filed motions in the program proceedings. The New Jersey Division of Rate Counsel ("Rate Counsel") filed a Motion for Access to Confidential Information, and five (5) motions were filed to intervene or participate in the proceedings by the New Jersey Large Energy Users Coalition ("NJLEUC"); PJM Independent Market Monitor ("IMM"); NRG Energy, Inc. ("NRG"); PJM Power Providers Group ("P3"); and Public Service Electric and Gas Company ("PSE&G"), PSEG Power LLC, and PSEG Nuclear LLC ("PSEG Companies"). In addition, NJLEUC and the IMM filed motions for admission pro hac vice.

The Board addresses the motions by Rate Counsel and the IMM in the companion Order Establishing the Program, Application, and Procedural Process, I/M/O the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, Docket No. EO18080899, Order dated November 19, 2018.

NJLEUC Motion to Intervene and Motion for Admission *Pro Hac Vice*

By motion dated October 16, 2018, NJLEUC, an association whose members include large volume electric customers served by PSE&G, Jersey Central Power and Light Company ("JCP&L"), and Atlantic City Electric Company ("ACE"), submitted its request to intervene in these proceedings and be afforded full access to all information designated as confidential by applicants for ZECs. NJLEUC asserted that all factors for intervention set forth in the Act and N.J.A.C. 1:1-16 weigh in favor of granting its motion. Primarily, NJLEUC argued that, since its members may be exposed to the potential payment of millions of dollars in ZEC taxes and that, unlike residential ratepayers, nuclear subsidies would affect corporate decisions regarding hundreds of employees and future capital investments in the state, NJLEUC members must be accorded the right to meaningfully participate and represent themselves to avoid being deprived of their significant property interests without due process. NJLEUC stated that its participation is essential to this proceeding given the potential impact of the proceeding on the interests of the New Jersey business community as well as given NJLEUC'S long-standing and well-recognized role as a leading representative of those interests in utility ratemaking matters.

By motion dated October 16, 2018, NJLEUC, via Steven S. Goldenberg, Esq., also moved for the admission pro hac vice of Paul F. Forshay, Esq. Mr. Goldenberg states that Mr. Forshay is a member in good standing admitted to the bar of the District of Columbia, has had significant

experience representing the interests of large end-use customers in utility rate and regulatory proceedings, and has an attorney-client relationship with NJLEUC. The motion included a sworn affidavit by Mr. Forshay, in which he represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and he has experience representing large end-use customers before the Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in regulatory matters and issues, with a particular emphasis on the litigation of utility rate cases and the regulatory treatment of rate-related issues. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice. Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff ("Staff").

The PSEG Companies, a movant for intervention in this matter, submitted a brief dated October 26, 2018 in opposition to NJLEUC's motion to intervene and stated that, in the alternative, NJLEUC's involvement should be as a participant without access to confidential information. First, among its primary arguments, the PSEG Companies asserted that NJLEUC failed to satisfy the statutory criteria that its participation is essential to aid the Board in making the determinations required under the Act. The PSEG Companies stated that the Board itself has the inherent capabilities to make those determinations with its own personnel and that, based on court cases defining the meaning of "essential terms," NJLEUC's involvement is therefore neither "basic and necessary" nor "of the utmost importance." Second, the PSEG Companies argued that NJLEUC failed to satisfy the regulatory criteria for intervention because NJLEUC failed to demonstrate that its interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the proceeding. The PSEG Companies argued that NJLEUC has no genuine interest in the outcome of the proceeding because NJLEUC cannot impact how much ratepayers will pay for ZECs, since the Legislature has established the rate for ZECs at issue in this proceeding. The PSEG Companies further argued that, if the Board grants Rate Counsel's request for intervention, Rate Counsel will adequately represent NJLEUC's interests in Rate Counsel's representation of residential, small business, commercial, and industrial customers. Finally, the PSEG Companies argued that NJLEUC's intervention might delay the Board's deliberations and impose extraordinary burdens on the Board as it seeks to meet its statutory obligations in a timely manner.

NJLEUC filed an answer in response by letter dated November 2, 2018, in which it acknowledged the important role served by Rate Counsel for ratepayers generally while arguing that that role was not intended and has never been interpreted to preclude the intervention of other ratepayer representatives in Board proceedings. NJLEUC cited N.J.A.C. 1:1-16.3(b) in which regulations provide that "in cases where one of the parties is a State agency authorized by law to represent the public interest in a case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency." Further, NJLEUC asserted that the competitive, commercial, and business management interests represented by NJLEUC are interests that Rate Counsel does not seek to represent. NJLEUC also argued that the "essential party" definition offered by the PSEG Companies is unknown to administrative law practice.

Rate Counsel filed a letter dated November 2, 2018 in support of NJLEUC's motion to intervene and receive confidential information, reiterating NJLEUC's argument that Rate Counsel's prospective status as a party in this matter would not be a reason to deny intervention to NJLEUC, pursuant to N.J.A.C. 1:1-16.3(b). Also, Rate Counsel argued that the outcome of this proceeding will "substantially, specifically and directly" affect the interests of NJLEUC's members since they would be required to pay millions of dollars annually in ZEC charges; that NJLEUC has the right to dispute the PSEG Companies' legal argument that the Board may not consider the reasonableness of a .004 dollars per kWh ZEC charge; and that NJLEUC has an interest in the Board's determination whether any nuclear units qualify to receive ZECs.

NRG Motion to Participate

By letter dated October 22, 2018, NRG filed its request to participate, including the ability to offer oral argument, file statements and briefs, and participate in conferences. NRG stated that it owns approximately 26,000 MW of generation assets and serves more than three million retail customers across the United States, including one million retail customers in the Northeast markets that encompass New Jersey. NRG asserted that, 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, 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 EDC to purchase ZECs from selected nuclear power plants.

The PSEG Companies, a movant for intervention in this matter, submitted a brief dated November 2, 2018 in opposition to NRG's motion to participate, asserting that NRG did not satisfy the regulatory or statutory criteria for participation and arguing that NRG's participation would not add constructively to the case and, rather, would result in undue delay or confusion with the introduction of irrelevant and speculative issues into this proceeding that would interfere with the resolution of issues actually before the Board for determination. First, the PSEG Companies asserted that the NRG failed to satisfy the regulatory criteria for intervention based on the following: (a) NRG does not have a significant interest in the outcome of this proceeding because it has not explained how it would be affected by implementation of the ZEC program; (b) NRG would not constructively participate in the proceeding given its position that nuclear subsidies would "create obvious and massive economic distortions" (quoting a May 17, 2018 NRG filing before the Federal Energy Regulatory Commission); and (c) NRG's participation would delay the Board's deliberations, would introduce out-of-scope issues, and could impose extraordinary burdens on the Board as it seeks to meet its statutory obligations in a timely manner. Second, the PSEG Companies argued that NRG's statement that it could offer critical insight merely supports its claim that it participated in other proceedings, participates in wholesale markets, and supplies retail load but does not satisfy the statutory criteria requiring it to demonstrate that it is "essential" to aid the Board in making the determinations required under the Act. The PSEG Companies stated that the Board itself has the inherent capabilities to make those determinations with its own personnel and that, based on court cases defining the

meaning of "essential terms," NRG's involvement is therefore neither "basic and necessary" nor "of the utmost importance."

NRG submitted a letter dated November 13, 2018 in response to the PSEG Companies' opposition to NRG's participation in the proceeding and in further support of NRG's request to participate, arguing, in summary, that the PSEG Companies lack standing to oppose NRG's request to participate because its motions to intervene have not been granted, that the PSEG Companies offered unsubstantiated claims that NRG would cause delay, and that NRG has a significant interest in the proceeding in ensuring that ZECs are awarded only if needed 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 retail customers.

P3 Motion to Intervene

By letter dated October 23, 2018, P3 submitted its motion to intervene in this proceeding. P3 described itself as a nonprofit organization made up of power providers whose mission is to promote properly designed and well-functioning competitive wholesale electricity markets in the thirteen-state region and District of Columbia served by PJM Interconnection, LLC. P3 stated that, combined, P3 members own more than 84,000 megawatts of generation assets in PJM and produce enough power to supply more than 20 million homes and employ more than 40,000 people. P3 argued that its participation as a party in this matter is vital since the outcome of the proceeding will have direct economic consequences for P3 and since no other party represents the unique interests of P3's members. P3 proposed "to advance industry-wide interests aimed at ensuring that competitive standards are addressed in a thorough manner" and achieving fairness in the wholesale energy market, asserted that its full participation would contribute to the development of a complete record for the Board's consideration, argued that its inclusion would promote judicial economy by removing the need for its members to bring individual motions, and stated that it would abide by all scheduling orders and thus not create any delay in this proceeding.

The PSEG Companies submitted a brief in opposition to P3's motion to intervene dated November 2, 2018 and stated that, in the alternative, P3's involvement should be as a participant without access to confidential information. First, the PSEG Companies argued that P3 failed to satisfy the statutory criteria requiring it to demonstrate that it is "essential" to aid the Board in making the determinations required under the Act. The PSEG Companies stated that the Board itself has the inherent capabilities to make those determinations with its own personnel and that, based on court cases defining the meaning of "essential terms," P3's involvement is therefore neither "basic and necessary" nor "of the utmost importance." Second, among its primary arguments, the PSEG Companies asserted that P3 failed to satisfy the regulatory criteria for intervention because (a) P3's interests as a trade organization relate to speculative, indirect impacts that the legislation could have on the PJM market as a whole; (b) P3 and its members will not be directly affected by the outcome of this proceeding because P3 and its members do not seek participation as owners of nuclear power plants in the ZEC program who could supply the environmental and fuel diversity interests that the Act is designed

to preserve; (c) P3's stated interest in competitive standards is not within the defined scope of the proceeding because the Board will not be addressing how the selection of a ZEC recipient may or may not affect competition in the PJM markets; (d) P3's challenge to the integrity of the legislature in enacting the Act makes clear that it lacks an actual interest in constructively participating in this matter; and (e) P3's intervention would delay the Board's deliberations, introduce confusing and out-of-scope issues, and impose extraordinary burdens on the Board as it seeks to meet its statutory obligations in a timely manner.

Rate Counsel filed a letter dated November 9, 2018 in response to the PSEG Companies' opposition and in support of P3's motion to intervene. Rate Counsel noted that, unless and until the Board acted on the PSEG Companies' joint motion to intervene, none of the PSEG Companies was a party at the time that they filed their opposition and, thus, none has standing to oppose P3's intervention. Rate Counsel argued that P3 met the standard for intervention because the granting of ZECs would affect the operation of PJM wholesale electricity markets and thus would "substantially, specifically, and directly" affect the ability of P3's members to compete in these markets. In addition, Rate Counsel argued that P3's members are in a position to contribute significantly to the development of a record in this proceeding and thereby assist the Board in understanding the issues and making its determinations relating to the impact of ZECs on PJM wholesale markets.

P3 filed a reply brief dated November 13, 2018 in further support of its motion to intervene and in reply to the opposition brief submitted by the PSEG Companies. P3 noted that the PSEG Companies lack standing to oppose P3's intervention because the PSEG Companies' motion to intervene has yet to be granted. P3 argued, in summary, that it has a substantial, specific, and direct interest in seeing that the ZEC program is properly established such that the competition interests of P3's diverse power producing members, including competitors of PSEG Nuclear, are not adversely affected.

PSEG Companies Motion to Intervene

By letter dated October 23, 2018, the PSEG Companies submitted its motion to intervene in this proceeding. The PSEG Companies asserted that each of the PSEG Companies satisfies the regulatory requirement that any person or entity seeking leave to intervene must demonstrate that it will be substantially, specifically, and directly affected by the outcome of the proceeding. The PSEG Companies argue that each of its three companies has a unique interest that cannot be represented by any other party and that each would therefore be in a position to add measurably and constructively to the proceeding. Specifically, the PSEG Companies note that PSE&G is an electric distribution company subject to the requirements of the Act, and PSEG Nuclear – a wholly owned direct subsidiary of PSEG Power – intends to file an application for the receipt of ZECs for the three nuclear units it operates at its Hope Creek and Salem plant sites in Salem County, New Jersey.

Rate Counsel filed a letter dated November 2, 2018 in response to the PSEG Companies' motion to intervene, arguing that the PSEG Companies should not be allowed to act jointly in

these proceedings. Rate Counsel argued that PSE&G should not be permitted to be represented jointly with its non-utility affiliates because those affiliates' interest in this proceeding – namely, PSEG Nuclear and PSEG Power's interests in advocating for an application process and selection criteria that will facilitate a successful application by PSEG Nuclear – are in conflict with PSE&G's obligations as a regulated public utility to provide safe, adequate, and proper utility service at rates that are just and reasonable. Rate Counsel asserted that PSE&G's only role in the legislative scheme at issue is collecting and paying out the proceeds of the ZEC charge, if one is implemented, and that if PSE&G chooses to assert any positions, those positions should be to advance an application process and selection criteria that would protect ratepayers against unnecessary or excessive subsidies for nuclear power plants. In conclusion, Rate Counsel argued that, if the Board grants intervenor or participant status to the PSEG Companies, the Board should require PSE&G to be represented by separate counsel and should direct PSE&G to act in a manner consistent with its obligations as a regulated public utility, pursuant to the Board's general regulatory authority over PSE&G and the specific provisions of the Board's Public Utility Holding Company Standards at N.J.A.C. 14:4-4.1 et seq.

The PSEG Companies filed a reply brief dated November 9, 2018 in support of their motion to intervene. They challenged Rate Counsel's claim that PSE&G has a conflict of interest with PSEG Power and PSEG Nuclear, asserting instead that all three affiliates share the same goals of implementing the Act in a fair manner consistent with the goals of the New Jersey Legislature, that these interests are not inconsistent with PSE&G's status as a New Jersey electric utility, and that there is thus no need for separate legal representation for the three affiliates to pursue these interests. The PSEG Companies also argued that the positions taken by the PSEG Companies in their joint comments that Rate Counsel offers as demonstration of PSE&G's conflict of interest are actually disagreements with Rate Counsel about legislative intent in the Act. The PSEG Companies assert that PSE&G should be able to advocate for fair and reasonable processes for implementing the Act and to express its views that the Act has value to PSE&G customers because the loss of nuclear plants serving New Jersey would have significant negative impacts on air quality in the state, reduce fuel diversity and resilience of the state's electric grid, and increase costs to state residents.

DISCUSSION AND FINDINGS

The Board considers these motions consistent with the legislative scheme contemplated in the Act regarding the numerous opportunities for public comment and public hearings, N.J.S.A. 48:3-87.5(a) regarding access to confidential documents, and Title 1 of the New Jersey Administrative Code regarding intervenor and participant status. N.J.S.A. 48:3-87.5(a) provides:

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.

[N.J.S.A. 48:3-87.5(a)]

The standards for considering intervention motions are set forth at N.J.A.C. 1:1-16.3(a). That rule requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

Alternatively, motions for intervention shall be treated as request for permission to participate pursuant to N.J.A.C. 1:1-16.5 if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. N.J.A.C. 1:1-16.6(c).

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener establish that it would be substantially, specifically, and directly affected by the outcome of the proceeding and that its interest is sufficiently different from that of the other parties so as to add measurably and constructively to the scope of the case. See Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

NJLEUC Motion to Intervene and Motion for Admission *Pro Hac Vice*

The Board has considered NJLEUC's motion and Rate Counsel's motion in support. The Board acknowledges that, on behalf of the large volume electric customers that NJLEUC represents, NJLEUC has an interest in whether any nuclear power plants qualify to receive ZECs due to the potential impact of ZECs on rates in retail electric markets, which would in turn potentially impact corporate decisions regarding employees and capital investments. Also, the Board acknowledges that Rate Counsel's intervention in this proceeding would not preclude intervention by NJLEUC solely on the basis that NJLEUC's interest may be represented by Rate Counsel. On the other hand, the Board must meet its statutory obligations in a timely manner. After weighing the issues carefully, the Board **FINDS** that NJLEUC has not made a showing that its interest in this matter warrants granting its motion to intervene, given the statutory scheme with its numerous opportunities for public participation through public comments and public hearings, the explicit provision at N.J.S.A. 48:3-87.5(a) concerning confidential documents, and the need for prompt and expeditious administrative proceedings. In addition, while NJLEUC

would likely contribute to the Board's understanding of issues in this proceeding, the Board **FINDS** that NJLEUC is not essential to aid the Board in making these determinations. Therefore, the Board **HEREBY DENIES** the motion for intervention and **DENIES** disclosure to NJLEUC of information marked "confidential" by applicants for ZECs.

However, pursuant to N.J.A.C. 1:1-16.5, the Board will treat this motion, in the alternative, as a motion to participate. Considered under this standard, NJLEUC's interest in the impact of ZEC charges on large energy users in the state may be deemed a significant interest, as contemplated by N.J.A.C. 1:1-16.6(a). On the basis of NJLEUC's familiarity with and knowledge of corporate business interests, the Board **FINDS** that NJLEUC may add constructively to this proceeding. Given NJLEUC's experience as a stakeholder in regulatory and rate proceedings before the Board, the Board does not believe that granting participant status will result in undue delay or confusion. Accordingly the Board **GRANTS** NJLEUC participant status. In this proceeding, NJLEUC shall be permitted to file a statement or brief, which may include filing comments on applications received.

The Board has reviewed NJLEUC's motion for admission pro hac vice and the supporting affidavit of Mr. Forshay. The Board **FINDS** that Mr. Forshay has satisfied the conditions for admission pro hac vice and has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2. Therefore, Mr. Forshay is **HEREBY ADMITTED** to practice before the Board pro hac vice in this matter, provided that he shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

NRG Motion to Participate

The Board has reviewed NRG's motion to participate. The Board acknowledges that, given NRG's participation in the PJM wholesale electricity market and in New Jersey's retail electric market, NRG has an interest in the outcome of the proceeding if ZECs are granted and thereby have an impact on competition and rates in the wholesale and retail electricity markets in the state. The Board **HEREBY FINDS** that the addition of NRG as a participant in this proceeding

is likely to add constructively to the case without causing undue delay or confusion. Accordingly, the Board **GRANTS** NRG participant status. In this proceeding, NRG shall be permitted to file a statement or brief, which may include filing comments on applications received.

P3 Motion to Intervene

The Board has reviewed P3's motion to intervene and Rate Counsel's letter in support of P3's motion. The Board acknowledges that the outcome of this proceeding will have direct economic consequences for P3 and its members based on impacts on competition and rates in wholesale electricity markets, if ZECs are issued. In addition, P3 may potentially contribute to the development of the record and scope of the proceeding and thereby aid the Board in understanding the issues. On the other hand, the Board must meet its statutory obligations in a timely manner. After weighing the issues carefully, the Board **FINDS** that P3 has not made a showing that its interest in this matter warrants granting its motion to intervene, given the statutory scheme with its numerous opportunities for public participation through public comments and public hearings, the explicit provision at N.J.S.A. 48:3-87.5(a) concerning confidential documents, and the need for prompt and expeditious administrative proceedings. In addition, while P3 could contribute to the Board's understanding of issues in this proceeding, the Board **FINDS** that disclosure of information deemed confidential could harm competition, given that P3 members are power providers. Therefore, the Board **HEREBY DENIES** the motion for intervention and **DENIES** disclosure to P3 of information marked "confidential" by applicants for ZECs.

However, pursuant to N.J.A.C. 1:1-16.5, the Board will treat this motion, in the alternative, as a motion to participate. Considered under this standard, P3's interest in the impact of ZEC charges on competition and fairness in the wholesale electricity market in the state may be deemed a significant interest, as contemplated by N.J.A.C. 1:1-16.6(a). The Board **HEREBY FINDS** that P3 may add constructively to this proceeding without causing undue delay or confusion. Accordingly the Board **GRANTS** P3 participant status. In this proceeding, P3 shall be permitted to file a statement or brief, which may include filing comments on applications received.

PSEG Companies Motion to Intervene

The Board has reviewed the PSEG Companies' motion to intervene, Rate Counsel's letter in response, and the PSEG Companies' reply brief. The Board considers the motion by PSE&G separately from the motion by PSEG Power and PSEG Nuclear for reasons described below.

PSE&G

The Board **FINDS** that PSE&G has not made a showing that its interest in this matter warrants granting its motion to intervene, given the statutory scheme with its numerous opportunities for public participation through public comments and public hearings, the explicit provision at

N.J.S.A. 48:3-87.5(a) concerning confidential documents, and the need for prompt and expeditious administrative proceedings. Therefore, the Board **HEREBY DENIES** the motion for intervention and **DENIES** disclosure of information marked "confidential" by applicants for ZECs to PSE&G.

However, pursuant to N.J.A.C. 1:1-16.5, the Board will treat this motion, in the alternative, as a motion to participate. Considered under this standard, PSE&G interest in implementation of the Act in a fair and reasonable manner, as well as its interest in expressing its views about the value of the Act to PSE&G customers may be deemed significant interests, as contemplated by N.J.A.C. 1:1-16.6(a). The Board **HEREBY FINDS** that PSE&G may add constructively to this proceeding without causing undue delay or confusion. Accordingly, the Board **GRANTS** PSE&G participant status. In this proceeding, PSE&G shall be permitted to file a statement or brief, which may include filing comments on applications received.

PSEG Power and PSEG Nuclear

The Board acknowledges that the outcome of this proceeding may have direct economic consequences for PSEG Power and PSEG Nuclear based on the Board's determinations of whether any nuclear power plants are eligible to receive ZECs and, if so, which nuclear power plants are selected to receive ZECs. The Board **FINDS**, however, that PSEG Power and PSEG Nuclear, as a member of the public, can and has availed itself of the numerous opportunities for public participation through public comments and public hearings. However, their stated intention to submit applications under the program precludes them from intervening as a party in this proceeding, particularly where their access to confidential information from competitors and other ZEC applicants could harm competition. Accordingly, the Board **HEREBY DENIES** the motion for intervention and **DENIES** disclosure to PSEG Power and PSEG Nuclear of information marked "confidential" by applicants for ZECs to PSEG Power and PSEG Nuclear.

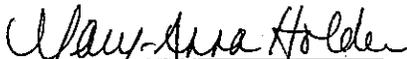
However, pursuant to N.J.A.C. 1:1-16.5, the Board will treat this motion, in the alternative, as a motion to participate. Considered under this standard, PSEG Power and PSEG Nuclear's interest in implementation of the Act in a fair and reasonable manner consistent with the goals of the New Jersey Legislature may be deemed a significant interest, as contemplated by N.J.A.C. 1:1-16.6(a). The Board **HEREBY FINDS** that PSEG Power and PSEG Nuclear may add constructively to this proceeding without causing undue delay or confusion. Accordingly, the Board **GRANTS** PSEG Power and PSEG Nuclear participant status. In this proceeding, PSEG Power and PSEG Nuclear shall be permitted to file a statement or brief, which may include filing comments on applications received.

This Order is effective on November 19, 2018.

DATED: 11/19/18

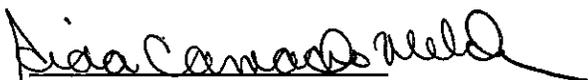
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AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the 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**

BPU DOCKET NO. EO180808996

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