

RECEIVED
CASE MANAGEMENT

MAY 31 2019

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BOARD OF PUBLIC UTILITIES
TRENTON, NJ



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. BOX 003
TRENTON, NEW JERSEY 08625

FORWARD
CASE MANAGEMENT

STEFANIE A. BRAND

2019 JUN -3 A 11:02

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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MAY 31 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

May 29, 2019

Via Electronic Mail and US Regular Mail

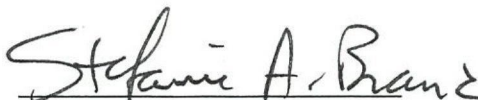
TO : Parties on the Attached Service List

RE : 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 and Application for Zero Emission Certificates of Salem 1, Salem 2 and Hope Creek Nuclear Power Plants, BPU Docket Nos. EO18080899, EO18121338, EO18121339, EO18121337
Appellate Docket No. A-003939-18

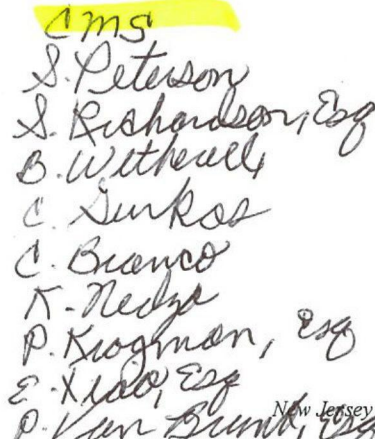
Please see enclosed copy of an amended Case Information Statement filed by the Appellant, the Division of Rate Counsel in the above-referenced matter.

Thank you for your attention to this matter.

Very truly yours,


Stefanie A. Brand
Director, Division of Rate Counsel

SAB/dl
c: Service List



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CERTIFICATION OF SERVICE


I, Debora Layugan., Paralegal at the New Jersey Division of Rate Counsel, certify as follows:

I certify that I have, on May 29, 2019, caused copies of the amended Case Information Statement upon all parties on the attached service list via regular mail.

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

Respectfully submitted,

STEFANIE A. BRAND, DIRECTOR
DIVISION OF RATE COUNSEL

By: _____
Debora Layugan
Paralegal, Division of Rate Counsel

Dated: May 29, 2019

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CASE MANAGEMENT

MAY 31 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

I/M/O of the Implementation of L.
2018, C. 16 Regarding the
Establishment of a Zero Emission
Certificate Program for Eligible
Nuclear Plants and Applications of
Salem 1, Salem 2, Hope Creek Nuclear
Plants, (EO18080899, EO18121338,
EO18121339, EO18121337)
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New Jersey Judiciary
Superior Court - Appellate Division
Civil Case Information Statement

AMENDED FOR: We would like to amend to add issues to the case.

Title in Full

**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
AND
APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 1
NUCLEAR POWER PLANT
APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 2
NUCLEAR POWER PLANT
APPLICATION FOR ZERO EMISSION CERTIFICATES OF HOPE
CREEK NUCLEAR POWER PLANT**

Trial Court or Agency Docket Number

**EO18080899, EO18121338, EO18121339,
EO18121337**

• Attach additional sheets as necessary for any information below.

Appellant's Attorney * Email Address: **SBRAND@RPA.NJ.GOV**

☐ Plaintiff ☐ Defendant ☒ Other (Specify) **INTERVENOR**

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973-648-2500

Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:

By Order dated April 18, 2019, the Board of Public Utilities approved the applications of three nuclear plants' request for Zero Emission Certificates ("ZECs") which was contrary to the evidence in the record necessitating an increase in electric utility rates throughout the State.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (There may not be any claims against any party in the trial court or agency, either in this or a consolidated action, which have not been disposed. These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.)

☒ Yes ☐ No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2?

☐ Yes ☐ No ☒ N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Revised: 04/02/2016, CN 10501 (Appellate Civil CIS)

sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter is final and appealable as of right.

Were any claims dismissed without prejudice?

☐ Yes ☒ No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(g)) ☒ Yes ☐ No

Give a Brief Statement of the Facts and Procedural History:

This appeal arises from N.J.S.A. 48:3-87.3 et seq. signed into Law by Governor Phil Murphy on May 23, 2018. The Act directs the Respondent Board of Public Utilities ("BPU" or the "Respondent") to create a program and mechanism for the issuance of Zero Emission Certificates ("ZECs"). Under the Act, ZECs were purported to represent the fuel diversity, air quality, and environmental attributes of one megawatt-hour of electricity generated by an eligible nuclear power plant which has been selected by the BPU. The five electric utilities operating in the State, were ordered to buy ZECs pursuant to the Act and collect from their respective ratepayers of New Jersey \$0.004 for every kilowatt hour (kWh) sold which purports to represent the "emissions avoidance benefits" of the electricity generated by the nuclear plants. The Act mandates that the ZEC program continue for a little over three years with a possibility of extensions in three-year increments thereafter if certain criteria are met. The Act required that the BPU initiate the ZEC proceeding within 180 days with nuclear plants ranked and selected within 330 days from enactment.

The Board initiated a proceeding by Order dated August 29, 2018. By Order dated November 19, 2018, in addition to the BPU Staff, Rate Counsel and the PJM Market Monitor, Monitoring Analytics, LLC ("PJM Market Monitor") were permitted to access confidential information filed by the ZEC applicants. Several other interested parties were permitted to participate without access to confidential information. On December 18, 2018 a total of three plants, Salem 1 and 2 nuclear plants owned by PSEG Nuclear LLC and Exelon Generation Company LLC and Hope Creek owned by PSEG Nuclear LLC applied for ZECs. By its December 18, 2018 Order, the BPU approved the selection of Levitan & Associates, Inc. ("Levitan") to serve as BPU Staff's consultants. Comments were filed by interested parties on January 31, 2019 including Rate Counsel and PJM Market Monitor. After reviewing the applications submitted, BPU Staff and its consultant Levitan found that the applicants had failed to satisfy the criteria in the statute because they did not demonstrate that the nuclear plants' attributes were at risk of loss because they were not projected to cover their costs and risks. Contrary to the findings of BPU Staff, BPU Staff Consultant Levitan, PJM Market Monitor and Rate Counsel, that Salem 1, Salem 2 and Hope Creek did not meet the requirements set forth in the Act, the Respondent BPU awarded ZECs by Order dated April 18, 2019.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to R. 2:5-2(a)(6). (Appellant or cross-appellant only.):

1. The BPU's decision to award the ZECs was arbitrary and capricious and not supported by the record before it.
2. The BPU's decision to award the ZECs was inconsistent with the statutory criteria.
3. The rate of \$0.004 per kWh is not just and reasonable and the setting of that rate was arbitrary and capricious.
4. There is no evidence in the record to support a finding that the \$0.004 per kWh rate represents the "emissions avoidance benefits" of the output of the nuclear plants.

5. The process utilized by the BPU and its decision to award ZECs to Applicants violated the parties' due process rights.

6. The BPU's denial of intervention to interested parties was arbitrary, capricious and unreasonable and violated due process rights by denying the parties a meaningful role in the proceeding and to defend their property rights.

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? 04/18/2019 ☒ Yes ☐ No
2. Did the trial judge issue written findings or an opinion? If so, on what date? 04/18/2019 ☒ Yes ☐ No
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ Yes ☒ No ☐ Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of Your Inquiry:

1. Is there any appeal now pending or about to be brought before this court which:

- (A) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☒ No
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☐ Yes ☒ No

If the answer to the question above is Yes, state:

Case Title

Trial Court Docket#

Party Name

2. Was there any prior appeal involving this case or controversy?

☐ Yes ☒ No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.)

Appellate Division Docket Number

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference.

☐ Yes ☒ No

Explain your answer:

This appeal arises out of a proceeding before the Board of Public Utilities that produced rates that are not just and reasonable as required pursuant to NJSA 48:2-21. These are issues that cannot be easily resolved by the Civil Appeals Settlement Program.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

NEW JERSEY DIVISION OF RATE COUNSEL

Name of Appellant or Respondent

STEFANIE A BRAND, Esq.

Name of Counsel of Record
(or your name if not represented by counsel)

<p>05/29/2019 Date</p>	<p>s/ STEFANIE A BRAND, Esq. Signature of Counsel of Record (or your signature if not represented by counsel)</p>
<p>032331986 Bar #</p>	<p>SBRAND@RPA.NJ.GOV Email Address</p>



**New Jersey Judiciary
Superior Court - Appellate Division
CIVIL Case Information Statement**

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Before Appellate Division,
Superior Court of New Jersey
DOCKET NO. A-003939-18

STATE AGENCY

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
AND
APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 1 NUCLEAR POWER
PLANT
APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 2 NUCLEAR POWER
PLANT
APPLICATION FOR ZERO EMISSION CERTIFICATES OF HOPE CREEK NUCLEAR
POWER PLANT

PROOF OF SERVICE

I hereby certify that an original of the following documents, **PROOF OF SERVICE,**
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I certify that the forgoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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Dated: 05/29/2019

By: S/ STEFANIE A BRAND, Esq.