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September 21, 2020

Via Electronic Mail

Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For the Zero Emission Certificate Program - Salem Unit 1
Docket No. ER20080557**

**In the Matter of The Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For The Zero Emission Certificate Program - Salem Unit 2
Docket No. ER20080558**

**In the Matter of the Application of PSEG Nuclear, LLC For The Zero Emission Certificate Program – Hope Creek
Docket No. ER20080559**

Dear Secretary Camacho-Welch:

On behalf of the PJM Power Providers Group (“P3”) we submit for filing a Notice of Motion to Intervene as a Party in the above-referenced matters, along with an accompanying Letter Brief, Proposed Form of Order and Certification of Service in support of the Motion.

Thank you for your attention to this matter.

Respectfully submitted,

**DECOTIIS, FITZPATRICK, COLE
& GIBLIN, LLP**

By: s/ Alice Bergen
Alice M. Bergen

Encls.
AMB/ts

cc: BPU Service List (via e-mail only)

288246v1

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP

61 South Paramus Road, Suite 250

Paramus, New Jersey 07652

(201) 928-1100

Attorneys for PJM Power Providers Group (“P3”)

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

In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For the Zero Emission Certificate Program - Salem Unit 1

Docket No. ER20080557

In the Matter of The Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For The Zero Emission Certificate Program - Salem Unit 2

Docket No. ER20080558

In the Matter of the Application of PSEG Nuclear, LLC For The Zero Emission Certificate Program – Hope Creek

Docket No. ER20080559

**NOTICE OF MOTION TO
INTERVENE AS A PARTY**

TO: Honorable Joseph L. Fiordaliso, Commissioner
Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

and

ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that, pursuant to N.J.A.C. 1:1-16.1, et seq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, attorneys for the PJM Power Providers Group (“P3”) hereby

moves for an Order permitting P3 to intervene as a Party in the above-entitled proceedings with all the rights provided therefore, under all applicable rules, code and statutes, including, but not limited to, receive copies of all pleadings, papers, documents and exhibits and to introduce, submit and file direct testimony, pleadings, papers, documents and exhibits as appropriate, the right to participate in conferences, discovery, testimony and cross-examination, settlement, and to be heard on all issues before the Board;

PLEASE TAKE FURTHER NOTICE that, in support of its Motion, P3 shall rely upon the accompanying Letter Brief.

**DECOTIIS, FITZPATRICK, COLE
& GIBLIN, LLP**
Attorneys for the PJM Power Providers Group (“P3”)

By: s/ Alice Bergen
Alice M. Bergen

Dated: September 21, 2020

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP

61 South Paramus Road, Suite 250

Paramus, New Jersey 07652

(201) 928-1100

Attorneys for PJM Power Providers Group (“P3”)

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

In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For the Zero Emission Certificate Program - Salem Unit 1

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In the Matter of the Application of PSEG Nuclear, LLC For The Zero Emission Certificate Program – Hope Creek

Docket No. ER20080559

ORDER

This matter having been presented by DeCotiis, FitzPatrick, Cole & Giblin, LLP, attorneys for the PJM Power Providers Group (“P3”) on notice to the Board of Public Utilities (and the Honorable Joseph L. Fiordaliso) and the parties and persons set forth on the attached Service List, and having considered the motion and other documents on file in this matter, including the Letter Brief submitted in support of the motion, and other good cause appearing,

IT IS on this _____ day of _____, 2020,

ORDERED that the PJM Power Providers Group (“P3”) is hereby granted leave to intervene and fully participate in the above-entitled matters as a Party, and that it be placed on the

Service List for receipt of all documents, papers, discovery materials, exhibits, and notifications of all hearings, conferences, presentations and all other proceedings in this matter.

Hon. Joseph L. Fiordaliso,
Commissioner

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP

61 South Paramus Road, Suite 250

Paramus, New Jersey 07652

(201) 928-1100

Attorneys for PJM Power Providers Group (“P3”)

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

In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For the Zero Emission Certificate Program - Salem Unit 1

Docket No. ER20080557

In the Matter of The Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For The Zero Emission Certificate Program - Salem Unit 2

Docket No. ER20080558

In the Matter of the Application of PSEG Nuclear, LLC For The Zero Emission Certificate Program – Hope Creek

Docket No. ER20080559

CERTIFICATION OF SERVICE

I, Alice M. Bergen, an Attorney at Law of the State of New Jersey, hereby certifies as follows:

1) On September 21, 2020, I caused to be served via email a copy of the enclosed Notice of Motion to Intervene as a Party, the supporting Letter Brief on the Secretary to the New Jersey Board of Public Utilities; and

2) On the same date, I also caused to be served by electronic mail a copy of the enclosed Notice of Motion to Intervene, the supporting Letter Brief, on each party on the Service List.

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

**DECOTIIS, FITZPATRICK, COLE
& GIBLIN, LLP**
Attorneys for the PJM Power Providers Group (“P3”)

By: s/ Alice Bergen
Alice M. Bergen

Dated: September 21, 2020

ATTACHMENT A:

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC FOR THE ZERO
EMISSION CERTIFICATE PROGRAM – HOPE CREEK

DOCKET NO. ER20080559

NON DISCLOSURE AGREEMENT

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

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM – HOPE CREEK	DOCKET NO. ER20080559
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**AGREEMENT OF NON-DISCLOSURE OF INFORMATION
CLAIMED TO BE CONFIDENTIAL**

It is hereby AGREED, as of the 21st day of September, 2020, by and among PSEG Nuclear LLC ("**APPLICANT**"), the Staff of the New Jersey Board of Public Utilities ("Board Staff"), E-Cubed Policy Associates, LLC on Behalf of the PJM Power Providers Group and _____ (collectively, the "Parties"), who have agreed to execute this Agreement of Non-Disclosure of Information Claimed to be Confidential ("Agreement"), and to be bound thereby that:

WHEREAS, in connection with the above-captioned proceeding before the Board of Public Utilities ("Board"), and in which the Board has designated President Joseph L. Fiordaliso as the Presiding Commissioner to rule on all motions that arise during the pendency of final Board action as required under N.J.S.A. 48:3-87.3 to -87.7, **APPLICANT** and/or another party ("Producing Party") may be requested or required to provide documents, analyses and/or other data or information regarding the subject matter of this proceeding that the Producing Party may claim constitutes or contains confidential, proprietary or trade secret information, or which otherwise may be claimed by the Producing Party to be of a market-sensitive, competitive, confidential or proprietary nature (hereinafter sometimes referred to as "Confidential Information" or "Information Claimed to be Confidential"); and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the exchange of information while recognizing that under Board regulations at N.J.A.C. 14:1-12 et seq., a request

for confidential treatment shall be submitted to the Custodian who is to rule on requests made pursuant to the Open Public Records Act ("OPRA")⁵, N.J.S.A. 47:1A-1 et seq., unless such information is to be kept confidential pursuant to court or administrative order (including, but not limited to, an Order by the Presiding Commissioner sealing the record or a portion thereof pursuant to N.J.A.C. 1:1-14.1, and the parties acknowledge that an Order by the Presiding Commissioner to seal the record is subject to modification by the Board), and also recognizing that a request may be made to designate any such purportedly confidential information as public through the course of this administrative proceeding; and

WHEREAS, the Parties acknowledge that unfiled discovery materials are not subject to public access under OPRA; and

WHEREAS, the Parties acknowledge that, despite each Party's best efforts to conduct a thorough pre-production review of all documents and electronically stored information ("ESI"), some work product material and/or privileged material ("protected material") may be inadvertently disclosed to another Party during the course of this proceeding; and

WHEREAS, the undersigned Parties desire to establish a mechanism to avoid waiver of privilege or any other applicable protective evidentiary doctrine as a result of the inadvertent disclosure of protected material;

NOW, THEREFORE, the Parties hereto, intending to be legally bound thereby, DO HEREBY AGREE as follows:

1. The inadvertent disclosure of any document or ESI which is subject to a legitimate claim that the document or ESI should have been withheld from disclosure as protected material

⁵ Although OPRA and the Board Rules are referenced in this Agreement, N.J.S.A. 48:3-87.5(a) applies if there is any conflict between N.J.S.A. 48:3-87.5(a) and OPRA or the Board Rules regarding the disclosure of confidential information.

shall not waive any privilege or other applicable protective doctrine for that document or ESI or for the subject matter of the inadvertently disclosed document or ESI if the Producing Party, upon becoming aware of the disclosure, promptly requests its return and takes reasonable precautions to avoid such inadvertent disclosure.

2. Except in the event that the receiving party or parties disputes the claim, any documents or ESI which the Producing Party deems to contain inadvertently disclosed protected material shall be, upon written request, promptly returned to the Producing Party or destroyed at the Producing Party's option. This includes all copies, electronic or otherwise, of any such documents or ESI. In the event that the Producing Party requests destruction, the receiving party shall provide written confirmation of compliance within thirty (30) days of such written request. In the event that the receiving party disputes the Producing Party's claim as to the protected nature of the inadvertently disclosed material, a single set of copies may be sequestered and retained by and under the control of the receiving party until such time as the Producing Party has received final determination of the issue by the Board of Public Utilities or the Presiding Commissioner, provided that the Board has not modified or rejected an order by the Presiding Commissioner.

3. Any such protected material inadvertently disclosed by the Producing Party to the receiving party pursuant to this Agreement shall be and remain the property of the Producing Party.

4. Any Information Claimed to be Confidential that the Producing Party produces to any of the other Parties in connection with the above-captioned proceeding and pursuant to the terms of this Agreement shall be specifically identified and marked by the Producing Party as Confidential Information when provided hereunder. If only portions of a document are claimed to be confidential, the producing party shall specifically identify which portions of that document are claimed to be confidential. Additionally, any such Information Claimed to be Confidential shall be

provided in the form and manner prescribed by the Board's regulations at N.J.A.C. 14:1-12 et seq., unless such information is to be kept confidential pursuant to court or administrative order. However, nothing in this Agreement shall require the Producing Party to file a request with the Board's Custodian of Records for a confidentiality determination under N.J.A.C. 14:1-12 et seq. with respect to any Information Claimed to be Confidential that is provided in discovery and not filed with the Board.

5. With respect to documents identified and marked as Confidential Information, if the Producing Party's intention is that not all of the information contained therein should be given protected status, the Producing Party shall indicate which portions of such documents contain the Confidential Information in accordance with the Board's regulations at N.J.A.C. 14:1-12.2 and 12.3. Additionally, the Producing Party shall provide to all signatories of this Agreement full and complete copies of both the proposed public version and the proposed confidential version of any information for which confidential status is sought.

6. With respect to all Information Claimed to be Confidential, it is further agreed that:

- (a) Access to the documents designated as Confidential Information, and to the information contained therein, shall be limited to the Party signatories to this Agreement and their identified attorneys, employees, and consultants whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding.
- (b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than their identified employees and any identified experts and consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and is not expected to testify,

or is called to testify in this proceeding. All consultants or experts of any Party to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Acknowledgement of Agreement attached hereto as "Attachment I," which executed Acknowledgement of Agreement shall be forthwith provided to counsel for the Producing Party, with copies to counsel for Board Staff and Rate Counsel.

- (c) No other disclosure of Information Claimed to be Confidential shall be made to any person or entity except with the express written consent of the Producing Party or their counsel, or upon further determination by the Custodian, or order of the Board, the Government Records Council or of any court of competent jurisdiction that may review this matter.

7. The undersigned Parties have executed this Agreement for the exchange of Information Claimed to be Confidential only to the extent that it does not contradict or in any way restrict any applicable Agency Custodian, the Government Records Council, the Presiding Commissioner, the Board, or any court of competent jurisdiction from conducting appropriate analysis and making a determination as to the confidential nature of said information, where a request is made pursuant to OPRA, N.J.S.A. 47:1A-1 et seq. Absent a determination by any applicable Custodian, Government Records Council, the Presiding Commissioner, the Board, or any court of competent jurisdiction that a document is to be made public, the treatment of the documents exchanged during the course of this proceeding and any subsequent appeals is to be governed by the terms of this Agreement.

8. In the absence of a decision by the Custodian, Government Records Council, the Presiding Commissioner, or any court of competent jurisdiction, the acceptance by the

undersigned Parties of information which the Producing Party has identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Likewise, the affidavit submitted pursuant to N.J.A.C. 14:1-12.8 shall not alone be presumed to constitute adequate proof that the Producing Party is entitled to a protective order for any of the information provided hereunder.

9. In the event that any Party seeks to use the Information Claimed to be Confidential in the course of any hearings or as part of the record of this proceeding, the Parties shall seek a determination by the trier of fact as to whether the portion of the record containing the Information Claimed to be Confidential should be placed under seal. Furthermore, if any Party wishes to challenge the Producing Party's designation of the material as Confidential Information, such Party shall provide reasonable notice to all other Parties of such challenge and the Producing Party may make a motion seeking a protective order. In the event of such challenge to the designation of material as Confidential Information, the Producing Party, as the provider of the Information Claimed to be Confidential, shall have the burden of proving that the material is entitled to protected status. However, all Parties shall continue to treat the material as Confidential Information in accordance with the terms of this Agreement, pending resolution of the dispute as to its status by the trier of fact.

10. Confidential Information that is placed on the record of this proceeding under seal pursuant to a protective order issued by the Board, the Presiding Commissioner, provided that the Board has not modified or rejected an order by the Presiding Commissioner, or any court of competent jurisdiction shall remain with the Board under seal after the conclusion of this proceeding. If such Confidential Information is provided to appellate courts for the purposes of an appeal from this proceeding, such information shall be provided, and shall continue to remain, under seal.

11. This Agreement shall not:

- (a) Operate as an admission for any purpose that any document or information produced pursuant to this Agreement is admissible or inadmissible in any proceeding;
- (b) Prejudice in any way the right of the Parties, at any time, on notice given in accordance with the rules of the Board, to seek appropriate relief in the exercise of discretion by the Board for violation of any provision of this Agreement.

12. Within forty-five (45) days of the final Board Order resolving the above-referenced proceeding, all documents, materials and other information designated as "Confidential Information," regardless of format, shall be destroyed or returned to counsel for the Producing Party. In the event that such Board Order is appealed, the documents and materials designated as "Confidential Information" shall be returned to counsel for the Producing Party or destroyed within forty-five (45) days of the conclusion of the appeal. Notwithstanding the above return requirement, Board Staff and Rate Counsel may maintain in their files copies of all pleadings, briefs, transcripts, discovery and other documents, materials and information designated as "Confidential Information," regardless of format, exchanged or otherwise produced during these proceedings, provided that all such information and/or materials that contain Information Claimed to be Confidential shall remain subject to the terms of this Agreement. The Producing Party may request consultants who received Confidential Information who have not returned such material to counsel for the Producing Party as required above to certify in writing to counsel for the Producing Party that the terms of this Agreement have been met upon resolution of the proceeding.

13. The execution of this Agreement shall not prejudice the rights of any Party to seek relief from discovery under any applicable law providing relief from discovery.

14. The Parties agree that one original of this Agreement shall be created for each of the signatory parties for the convenience of all. The signature pages of each original shall be executed by the recipient and transmitted to counsel of record for **APPLICANT**, who shall send a copy of the fully executed document to all counsel of record. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all Parties.

IN WITNESS THEREOF, the undersigned Parties do HEREBY AGREE to the form and execution of this Agreement.

PSEG NUCLEAR, LLC

By: _____

GURBIR S. GREWAL
ATTORNEY GENERAL
OF NEW JERSEY
Attorney for the Staff of the
Board of Public Utilities

Name: Paul M. Sotkiewicz, Ph.D.,
Title: President
Company: E-Cubed Policy Associates, LLC
On Behalf of The PJM Power Providers Group

By: _____

Deputy Attorney General

By:  _____

DATED: September 21, 2020

ATTACHMENT I

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

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM – HOPE CREEK	DOCKET NO. ER20080559
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ACKNOWLEDGMENT OF AGREEMENT

The undersigned is an attorney, employee, or consultant, or expert for a party or an intervenor who, under N.J.S.A. 48:3-87.5(a), has received, or is expected to receive, Confidential Information provided by **APPLICANT** or by another party (Producing Party) ^{Type text here} which has been identified and marked by the Producing Party as "Confidential Information." The undersigned acknowledges receipt of the Agreement of Non-Disclosure of Information Claimed to be Confidential and agrees to be bound by the terms of the Agreement.

Dated: September 21, 2020

By:  _____

(Name, Title and Affiliation)

Paul M. Sotkiewicz, Ph.D.
President
E-Cubed Policy Associates, LLC
On Behalf of The PJM Power Providers Group

ATTACHMENT A:

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC AND EXELON
GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM -
SALEM UNIT 1

DOCKET NO. ER20080557

NON DISCLOSURE AGREEMENT

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

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC AND EXELON GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 1	DOCKET NO. ER20080557
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**AGREEMENT OF NON-DISCLOSURE OF INFORMATION
CLAIMED TO BE CONFIDENTIAL**

It is hereby AGREED, as of the 21st day of Septmeber, 2020, by and among PSEG Nuclear LLC and Exelon Generation Company, LLC (collectively, "**APPLICANT**"), the Staff of the New Jersey Board of Public Utilities ("Board Staff"), and E-Cubed Policy Associates, LLC On Behalf of the PJM Power Providers Group (collectively, the "Parties"), who have agreed to execute this Agreement of Non-Disclosure of Information Claimed to be Confidential ("Agreement"), and to be bound thereby that:

WHEREAS, in connection with the above-captioned proceeding before the Board of Public Utilities ("Board"), and in which the Board has designated President Joseph L. Fiordaliso as the Presiding Commissioner to rule on all motions that arise during the pendency of final Board action as required under N.J.S.A. 48:3-87.3 to -87.7, **APPLICANT** and/or another party ("Producing Party") may be requested or required to provide documents, analyses and/or other data or information regarding the subject matter of this proceeding that the Producing Party may claim constitutes or contains confidential, proprietary or trade secret information, or which otherwise may be claimed by the Producing Party to be of a market-sensitive, competitive, confidential or proprietary nature (hereinafter sometimes referred to as "Confidential Information" or "Information Claimed to be Confidential"); and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the exchange of information while recognizing that under Board regulations at N.J.A.C. 14:1-12 et seq., a request

for confidential treatment shall be submitted to the Custodian who is to rule on requests made pursuant to the Open Public Records Act ("OPRA")⁵, N.J.S.A. 47:1A-1 et seq., unless such information is to be kept confidential pursuant to court or administrative order (including, but not limited to, an Order by the Presiding Commissioner sealing the record or a portion thereof pursuant to N.J.A.C. 1:1-14.1, and the parties acknowledge that an Order by the Presiding Commissioner to seal the record is subject to modification by the Board), and also recognizing that a request may be made to designate any such purportedly confidential information as public through the course of this administrative proceeding; and

WHEREAS, the Parties acknowledge that unfiled discovery materials are not subject to public access under OPRA; and

WHEREAS, the Parties acknowledge that, despite each Party's best efforts to conduct a thorough pre-production review of all documents and electronically stored information ("ESI"), some work product material and/or privileged material ("protected material") may be inadvertently disclosed to another Party during the course of this proceeding; and

WHEREAS, the undersigned Parties desire to establish a mechanism to avoid waiver of privilege or any other applicable protective evidentiary doctrine as a result of the inadvertent disclosure of protected material;

NOW, THEREFORE, the Parties hereto, intending to be legally bound thereby, DO HEREBY AGREE as follows:

1. The inadvertent disclosure of any document or ESI which is subject to a legitimate claim that the document or ESI should have been withheld from disclosure as protected material

⁵ Although OPRA and the Board Rules are referenced in this Agreement, N.J.S.A. 48:3-87.5(a) applies if there is any conflict between N.J.S.A. 48:3-87.5(a) and OPRA or the Board Rules regarding the disclosure of confidential information.

shall not waive any privilege or other applicable protective doctrine for that document or ESI or for the subject matter of the inadvertently disclosed document or ESI if the Producing Party, upon becoming aware of the disclosure, promptly requests its return and takes reasonable precautions to avoid such inadvertent disclosure.

2. Except in the event that the receiving party or parties disputes the claim, any documents or ESI which the Producing Party deems to contain inadvertently disclosed protected material shall be, upon written request, promptly returned to the Producing Party or destroyed at the Producing Party's option. This includes all copies, electronic or otherwise, of any such documents or ESI. In the event that the Producing Party requests destruction, the receiving party shall provide written confirmation of compliance within thirty (30) days of such written request. In the event that the receiving party disputes the Producing Party's claim as to the protected nature of the inadvertently disclosed material, a single set of copies may be sequestered and retained by and under the control of the receiving party until such time as the Producing Party has received final determination of the issue by the Board of Public Utilities or the Presiding Commissioner, provided that the Board has not modified or rejected an order by the Presiding Commissioner.

3. Any such protected material inadvertently disclosed by the Producing Party to the receiving party pursuant to this Agreement shall be and remain the property of the Producing Party.

4. Any Information Claimed to be Confidential that the Producing Party produces to any of the other Parties in connection with the above-captioned proceeding and pursuant to the terms of this Agreement shall be specifically identified and marked by the Producing Party as Confidential Information when provided hereunder. If only portions of a document are claimed to be confidential, the producing party shall specifically identify which portions of that document are claimed to be confidential. Additionally, any such Information Claimed to be Confidential shall be

provided in the form and manner prescribed by the Board's regulations at N.J.A.C. 14:1-12 et seq., unless such information is to be kept confidential pursuant to court or administrative order. However, nothing in this Agreement shall require the Producing Party to file a request with the Board's Custodian of Records for a confidentiality determination under N.J.A.C. 14:1-12 et seq. with respect to any Information Claimed to be Confidential that is provided in discovery and not filed with the Board.

5. With respect to documents identified and marked as Confidential Information, if the Producing Party's intention is that not all of the information contained therein should be given protected status, the Producing Party shall indicate which portions of such documents contain the Confidential Information in accordance with the Board's regulations at N.J.A.C. 14:1-12.2 and 12.3. Additionally, the Producing Party shall provide to all signatories of this Agreement full and complete copies of both the proposed public version and the proposed confidential version of any information for which confidential status is sought.

6. With respect to all Information Claimed to be Confidential, it is further agreed that:

- (a) Access to the documents designated as Confidential Information, and to the information contained therein, shall be limited to the Party signatories to this Agreement and their identified attorneys, employees, and consultants whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding.
- (b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than their identified employees and any identified experts and consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and is not expected to testify,

or is called to testify in this proceeding. All consultants or experts of any Party to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Acknowledgement of Agreement attached hereto as "Attachment I," which executed Acknowledgement of Agreement shall be forthwith provided to counsel for the Producing Party, with copies to counsel for Board Staff and Rate Counsel.

- (c) No other disclosure of Information Claimed to be Confidential shall be made to any person or entity except with the express written consent of the Producing Party or their counsel, or upon further determination by the Custodian, or order of the Board, the Government Records Council or of any court of competent jurisdiction that may review this matter.

7. The undersigned Parties have executed this Agreement for the exchange of Information Claimed to be Confidential only to the extent that it does not contradict or in any way restrict any applicable Agency Custodian, the Government Records Council, the Presiding Commissioner, the Board, or any court of competent jurisdiction from conducting appropriate analysis and making a determination as to the confidential nature of said information, where a request is made pursuant to OPRA, N.J.S.A. 47:1A-1 et seq. Absent a determination by any applicable Custodian, Government Records Council, the Presiding Commissioner, the Board, or any court of competent jurisdiction that a document is to be made public, the treatment of the documents exchanged during the course of this proceeding and any subsequent appeals is to be governed by the terms of this Agreement.

8. In the absence of a decision by the Custodian, Government Records Council, the Presiding Commissioner, or any court of competent jurisdiction, the acceptance by the

undersigned Parties of information which the Producing Party has identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Likewise, the affidavit submitted pursuant to N.J.A.C. 14:1-12.8 shall not alone be presumed to constitute adequate proof that the Producing Party is entitled to a protective order for any of the information provided hereunder.

9. In the event that any Party seeks to use the Information Claimed to be Confidential in the course of any hearings or as part of the record of this proceeding, the Parties shall seek a determination by the trier of fact as to whether the portion of the record containing the Information Claimed to be Confidential should be placed under seal. Furthermore, if any Party wishes to challenge the Producing Party's designation of the material as Confidential Information, such Party shall provide reasonable notice to all other Parties of such challenge and the Producing Party may make a motion seeking a protective order. In the event of such challenge to the designation of material as Confidential Information, the Producing Party, as the provider of the Information Claimed to be Confidential, shall have the burden of proving that the material is entitled to protected status. However, all Parties shall continue to treat the material as Confidential Information in accordance with the terms of this Agreement, pending resolution of the dispute as to its status by the trier of fact.

10. Confidential Information that is placed on the record of this proceeding under seal pursuant to a protective order issued by the Board, the Presiding Commissioner, provided that the Board has not modified or rejected an order by the Presiding Commissioner, or any court of competent jurisdiction shall remain with the Board under seal after the conclusion of this proceeding. If such Confidential Information is provided to appellate courts for the purposes of an appeal from this proceeding, such information shall be provided, and shall continue to remain, under seal.

11. This Agreement shall not:

- (a) Operate as an admission for any purpose that any document or information produced pursuant to this Agreement is admissible or inadmissible in any proceeding;
- (b) Prejudice in any way the right of the Parties, at any time, on notice given in accordance with the rules of the Board, to seek appropriate relief in the exercise of discretion by the Board for violation of any provision of this Agreement.

12. Within forty-five (45) days of the final Board Order resolving the above-referenced proceeding, all documents, materials and other information designated as "Confidential Information," regardless of format, shall be destroyed or returned to counsel for the Producing Party. In the event that such Board Order is appealed, the documents and materials designated as "Confidential Information" shall be returned to counsel for the Producing Party or destroyed within forty-five (45) days of the conclusion of the appeal. Notwithstanding the above return requirement, Board Staff and Rate Counsel may maintain in their files copies of all pleadings, briefs, transcripts, discovery and other documents, materials and information designated as "Confidential Information," regardless of format, exchanged or otherwise produced during these proceedings, provided that all such information and/or materials that contain Information Claimed to be Confidential shall remain subject to the terms of this Agreement. The Producing Party may request consultants who received Confidential Information who have not returned such material to counsel for the Producing Party as required above to certify in writing to counsel for the Producing Party that the terms of this Agreement have been met upon resolution of the proceeding.

13. The execution of this Agreement shall not prejudice the rights of any Party to seek relief from discovery under any applicable law providing relief from discovery.

14. The Parties agree that one original of this Agreement shall be created for each of the signatory parties for the convenience of all. The signature pages of each original shall be executed by the recipient and transmitted to counsel of record for **APPLICANT**, who shall send a copy of the fully executed document to all counsel of record. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all Parties.

IN WITNESS THEREOF, the undersigned Parties do HEREBY AGREE to the form and execution of this Agreement.

PSEG NUCLEAR, LLC

EXELON GENERATION, LLC

By: _____

By: _____

**GURBIR S. GREWAL
ATTORNEY GENERAL
OF NEW JERSEY
Attorney for the Staff of the
Board of Public Utilities**

Name: Paul M. Sotkiewicz, Ph.D.
Title: President
Company: E-Cubed Policy Associates, LLC
On Behalf of the PJM Power Providers Group



By: _____

By: _____

Deputy Attorney General

DATED: September 21, 2020

ATTACHMENT I

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

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR LLC AND EXELON GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 1	DOCKET NO. ER20080557
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ACKNOWLEDGMENT OF AGREEMENT

The undersigned is an attorney, employee, or consultant, or expert for a party or an intervenor who, under N.J.S.A. 48:3-87.5(a), has received, or is expected to receive, Confidential Information provided by **APPLICANT** or by another party (Producing Party) which has been identified and marked by the Producing Party as "Confidential Information." The undersigned acknowledges receipt of the Agreement of Non-Disclosure of Information Claimed to be Confidential and agrees to be bound by the terms of the Agreement.

Dated: Septemeber 21, 2020

By:  _____

(Name, Title and Affiliation)

Paul M. Sotkiewicz, Ph.D.
President
E-Cubed Policy Associates, LLC
On Behalf of the PJM Power Providers Group

ATTACHMENT A:

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC AND EXELON
GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM -
SALEM UNIT 2

DOCKET NO. ER20080558

NON DISCLOSURE AGREEMENT

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

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC AND EXELON GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 2	DOCKET NO. ER20080558
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**AGREEMENT OF NON-DISCLOSURE OF INFORMATION
CLAIMED TO BE CONFIDENTIAL**

It is hereby AGREED, as of the 21st day of September, 2020, by and among PSEG Nuclear LLC and Exelon Generation Company, LLC (collectively, "**APPLICANT**"), the Staff of the New Jersey Board of Public Utilities ("Board Staff"), and E-Cubed Policy Associates, LLC On Behalf of The PJM Power Providers Group (collectively, the "Parties"), who have agreed to execute this Agreement of Non-Disclosure of Information Claimed to be Confidential ("Agreement"), and to be bound thereby that:

WHEREAS, in connection with the above-captioned proceeding before the Board of Public Utilities ("Board"), and in which the Board has designated President Joseph L. Fiordaliso as the Presiding Commissioner to rule on all motions that arise during the pendency of final Board action as required under N.J.S.A. 48:3-87.3 to -87.7, **APPLICANT** and/or another party ("Producing Party") may be requested or required to provide documents, analyses and/or other data or information regarding the subject matter of this proceeding that the Producing Party may claim constitutes or contains confidential, proprietary or trade secret information, or which otherwise may be claimed by the Producing Party to be of a market-sensitive, competitive, confidential or proprietary nature (hereinafter sometimes referred to as "Confidential Information" or "Information Claimed to be Confidential"); and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the exchange of information while recognizing that under Board regulations at N.J.A.C. 14:1-12 et seq., a request

for confidential treatment shall be submitted to the Custodian who is to rule on requests made pursuant to the Open Public Records Act ("OPRA")⁵, N.J.S.A. 47:1A-1 et seq., unless such information is to be kept confidential pursuant to court or administrative order (including, but not limited to, an Order by the Presiding Commissioner sealing the record or a portion thereof pursuant to N.J.A.C. 1:1-14.1, and the parties acknowledge that an Order by the Presiding Commissioner to seal the record is subject to modification by the Board), and also recognizing that a request may be made to designate any such purportedly confidential information as public through the course of this administrative proceeding; and

WHEREAS, the Parties acknowledge that unfiled discovery materials are not subject to public access under OPRA; and

WHEREAS, the Parties acknowledge that, despite each Party's best efforts to conduct a thorough pre-production review of all documents and electronically stored information ("ESI"), some work product material and/or privileged material ("protected material") may be inadvertently disclosed to another Party during the course of this proceeding; and

WHEREAS, the undersigned Parties desire to establish a mechanism to avoid waiver of privilege or any other applicable protective evidentiary doctrine as a result of the inadvertent disclosure of protected material;

NOW, THEREFORE, the Parties hereto, intending to be legally bound thereby, DO HEREBY AGREE as follows:

1. The inadvertent disclosure of any document or ESI which is subject to a legitimate claim that the document or ESI should have been withheld from disclosure as protected material

⁵ Although OPRA and the Board Rules are referenced in this Agreement, N.J.S.A. 48:3-87.5(a) applies if there is any conflict between N.J.S.A. 48:3-87.5(a) and OPRA or the Board Rules regarding the disclosure of confidential information.

shall not waive any privilege or other applicable protective doctrine for that document or ESI or for the subject matter of the inadvertently disclosed document or ESI if the Producing Party, upon becoming aware of the disclosure, promptly requests its return and takes reasonable precautions to avoid such inadvertent disclosure.

2. Except in the event that the receiving party or parties disputes the claim, any documents or ESI which the Producing Party deems to contain inadvertently disclosed protected material shall be, upon written request, promptly returned to the Producing Party or destroyed at the Producing Party's option. This includes all copies, electronic or otherwise, of any such documents or ESI. In the event that the Producing Party requests destruction, the receiving party shall provide written confirmation of compliance within thirty (30) days of such written request. In the event that the receiving party disputes the Producing Party's claim as to the protected nature of the inadvertently disclosed material, a single set of copies may be sequestered and retained by and under the control of the receiving party until such time as the Producing Party has received final determination of the issue by the Board of Public Utilities or the Presiding Commissioner, provided that the Board has not modified or rejected an order by the Presiding Commissioner.

3. Any such protected material inadvertently disclosed by the Producing Party to the receiving party pursuant to this Agreement shall be and remain the property of the Producing Party.

4. Any Information Claimed to be Confidential that the Producing Party produces to any of the other Parties in connection with the above-captioned proceeding and pursuant to the terms of this Agreement shall be specifically identified and marked by the Producing Party as Confidential Information when provided hereunder. If only portions of a document are claimed to be confidential, the producing party shall specifically identify which portions of that document are claimed to be confidential. Additionally, any such Information Claimed to be Confidential shall be

provided in the form and manner prescribed by the Board's regulations at N.J.A.C. 14:1-12 et seq., unless such information is to be kept confidential pursuant to court or administrative order. However, nothing in this Agreement shall require the Producing Party to file a request with the Board's Custodian of Records for a confidentiality determination under N.J.A.C. 14:1-12 et seq. with respect to any Information Claimed to be Confidential that is provided in discovery and not filed with the Board.

5. With respect to documents identified and marked as Confidential Information, if the Producing Party's intention is that not all of the information contained therein should be given protected status, the Producing Party shall indicate which portions of such documents contain the Confidential Information in accordance with the Board's regulations at N.J.A.C. 14:1-12.2 and 12.3. Additionally, the Producing Party shall provide to all signatories of this Agreement full and complete copies of both the proposed public version and the proposed confidential version of any information for which confidential status is sought.

6. With respect to all Information Claimed to be Confidential, it is further agreed that:

- (a) Access to the documents designated as Confidential Information, and to the information contained therein, shall be limited to the Party signatories to this Agreement and their identified attorneys, employees, and consultants whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding.
- (b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than their identified employees and any identified experts and consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and is not expected to testify,

or is called to testify in this proceeding. All consultants or experts of any Party to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Acknowledgement of Agreement attached hereto as "Attachment I," which executed Acknowledgement of Agreement shall be forthwith provided to counsel for the Producing Party, with copies to counsel for Board Staff and Rate Counsel.

- (c) No other disclosure of Information Claimed to be Confidential shall be made to any person or entity except with the express written consent of the Producing Party or their counsel, or upon further determination by the Custodian, or order of the Board, the Government Records Council or of any court of competent jurisdiction that may review this matter.

7. The undersigned Parties have executed this Agreement for the exchange of Information Claimed to be Confidential only to the extent that it does not contradict or in any way restrict any applicable Agency Custodian, the Government Records Council, the Presiding Commissioner, the Board, or any court of competent jurisdiction from conducting appropriate analysis and making a determination as to the confidential nature of said information, where a request is made pursuant to OPRA, N.J.S.A. 47:1A-1 et seq. Absent a determination by any applicable Custodian, Government Records Council, the Presiding Commissioner, the Board, or any court of competent jurisdiction that a document is to be made public, the treatment of the documents exchanged during the course of this proceeding and any subsequent appeals is to be governed by the terms of this Agreement.

PM. Sotkiewicz, Ph.D., President

8. In the absence of a decision by the Custodian, Government Records Council, the Presiding Commissioner, or any court of competent jurisdiction, the acceptance by the

undersigned Parties of information which the Producing Party has identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Likewise, the affidavit submitted pursuant to N.J.A.C. 14:1-12.8 shall not alone be presumed to constitute adequate proof that the Producing Party is entitled to a protective order for any of the information provided hereunder.

9. In the event that any Party seeks to use the Information Claimed to be Confidential in the course of any hearings or as part of the record of this proceeding, the Parties shall seek a determination by the trier of fact as to whether the portion of the record containing the Information Claimed to be Confidential should be placed under seal. Furthermore, if any Party wishes to challenge the Producing Party's designation of the material as Confidential Information, such Party shall provide reasonable notice to all other Parties of such challenge and the Producing Party may make a motion seeking a protective order. In the event of such challenge to the designation of material as Confidential Information, the Producing Party, as the provider of the Information Claimed to be Confidential, shall have the burden of proving that the material is entitled to protected status. However, all Parties shall continue to treat the material as Confidential Information in accordance with the terms of this Agreement, pending resolution of the dispute as to its status by the trier of fact.

10. Confidential Information that is placed on the record of this proceeding under seal pursuant to a protective order issued by the Board, the Presiding Commissioner, provided that the Board has not modified or rejected an order by the Presiding Commissioner, or any court of competent jurisdiction shall remain with the Board under seal after the conclusion of this proceeding. If such Confidential Information is provided to appellate courts for the purposes of an appeal from this proceeding, such information shall be provided, and shall continue to remain, under seal.

11. This Agreement shall not:

- (a) Operate as an admission for any purpose that any document or information produced pursuant to this Agreement is admissible or inadmissible in any proceeding;
- (b) Prejudice in any way the right of the Parties, at any time, on notice given in accordance with the rules of the Board, to seek appropriate relief in the exercise of discretion by the Board for violation of any provision of this Agreement.

12. Within forty-five (45) days of the final Board Order resolving the above-referenced proceeding, all documents, materials and other information designated as "Confidential Information," regardless of format, shall be destroyed or returned to counsel for the Producing Party. In the event that such Board Order is appealed, the documents and materials designated as "Confidential Information" shall be returned to counsel for the Producing Party or destroyed within forty-five (45) days of the conclusion of the appeal. Notwithstanding the above return requirement, Board Staff and Rate Counsel may maintain in their files copies of all pleadings, briefs, transcripts, discovery and other documents, materials and information designated as "Confidential Information," regardless of format, exchanged or otherwise produced during these proceedings, provided that all such information and/or materials that contain Information Claimed to be Confidential shall remain subject to the terms of this Agreement. The Producing Party may request consultants who received Confidential Information who have not returned such material to counsel for the Producing Party as required above to certify in writing to counsel for the Producing Party that the terms of this Agreement have been met upon resolution of the proceeding.

13. The execution of this Agreement shall not prejudice the rights of any Party to seek relief from discovery under any applicable law providing relief from discovery.

14. The Parties agree that one original of this Agreement shall be created for each of the signatory parties for the convenience of all. The signature pages of each original shall be executed by the recipient and transmitted to counsel of record for **APPLICANT**, who shall send a copy of the fully executed document to all counsel of record. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all Parties.

IN WITNESS THEREOF, the undersigned Parties do HEREBY AGREE to the form and execution of this Agreement.

PSEG NUCLEAR, LLC

EXELON GENERATION, LLC

By: _____

By: _____

**GURBIR S. GREWAL
ATTORNEY GENERAL
OF NEW JERSEY
Attorney for the Staff of the
Board of Public Utilities**

Name: Paul M. Sotkiewicz, Ph.D.
Title: President
Company: E-Cubed Policy Associates, LLC
On Behalf of The PJM Power Providers Group

By: _____

By:  _____

Deputy Attorney General

DATED: September 21, 2020

ATTACHMENT I

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

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR LLC AND EXELON GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM - SALEM UNIT 2	DOCKET NO. ER20080558
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ACKNOWLEDGMENT OF AGREEMENT

The undersigned is an attorney, employee, or consultant, or expert for a party or an intervenor who, under N.J.S.A. 48:3-87.5(a), has received, or is expected to receive, Confidential Information provided by **APPLICANT** or by another party (Producing Party) which has been identified and marked by the Producing Party as "Confidential Information." The undersigned acknowledges receipt of the Agreement of Non-Disclosure of Information Claimed to be Confidential and agrees to be bound by the terms of the Agreement.

Dated: September 21, 2020

By:  _____

(Name, Title and Affiliation)

Paul M. Sotkiewicz, Ph.D.
President
E-Cubed Policy Associates, LLC
On Behalf of The PJM Power Providers Group

SERVICE LIST

IN THE MATTER OF THE APPLICATION OF PSEG NUCLEAR, LLC AND EXELON
GENERATION COMPANY, LLC FOR THE ZERO EMISSION CERTIFICATE PROGRAM -
SALEM UNIT 1
DOCKET NO. ER20080557

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Attorneys for PJM Power Providers Group (“P3”)

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

In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For the Zero Emission Certificate Program - Salem Unit 1

Docket No. ER20080557

In the Matter of the Application of PSEG Nuclear, LLC and Exelon Generation Company, LLC For The Zero Emission Certificate Program - Salem Unit 2

Docket No. ER20080558

In the Matter of the Application of PSEG Nuclear, LLC For The Zero Emission Certificate Program – Hope Creek

Docket No. ER20080559

I, Glen Thomas, of full age, do hereby certify as follows:

1. I am the President of the PJM Power Providers Group (“P3”), which moves to intervene in these matters as a Party. I am familiar with the facts and circumstances concerning these matters and I make this Certification in support of and on behalf of P3’s Motion to Intervene.

2. P3 is a non-profit organization made up of power providers whose mission it is to promote properly designed and well-functioning competitive wholesale electricity markets in the 13-state region and the District of Columbia served by PJM Interconnection. Combined, P3

members own over 67,000 megawatts of generation assets in PJM, produce enough power to supply over 50 million homes. P3 works with state and federal policymakers and other stakeholders, including PJM and the Organization of PJM States, to advance the group's mission.

3. As a non-profit organization dedicated to promoting properly designed and well-functioning markets in the PJM footprint, which includes New Jersey, P3 has a unique interest in this proceeding that cannot be represented by any other party. P3 members have a variety of business perspectives in the PJM markets. P3 members own generation in the form of nuclear, natural gas, coal, wind, solar and biomass facilities. P3 members also provide demand response/energy efficiency and serve load as competitive retail providers in states throughout the PJM footprint. Despite these varied interests in the PJM market, P3 is united in its belief that consumers benefit when competitive markets operate as intended.

4. P3 has been actively involved in the development of New Jersey energy policy and has commented in prior proceedings before the Board of Public Utilities ("BPU" or the "Board"). Among other things, P3 testified multiple times before the New Jersey Senate and Assembly in opposition to the Long-Term Capacity Pilot Program legislation. Following passage of the legislation, P3 actively participated in the proceedings before the BPU that eventually led to the creation of the SOCA contracts.¹ During that proceeding, P3 supported PSEG's position that, "[w]ell designed competitive markets in which nonsubsidized developers can respond to price signals is overarching goal that the PSEG Companies support....."².

5. P3 also has actively participated in the development of the 2011 Energy Master Plan and is participating in the development of the 2019 Plan. During both EMP processes, P3

¹ <https://nj.gov/bpu/pdf/energy/P3%20Hearing%20Comments.pdf> and also <https://www.nj.gov/bpu/about/divisions/energy/capacity.html>

² <https://www.nj.gov/bpu/pdf/energy/PSEG%20Reply%20Comments.pdf> at 5.

consistently supported the position that New Jersey’s homes and businesses benefit when the market is allowed to directly respond to consumer demands within the context of a properly structured market. Specifically, in its comments on the 2019 EMP, P3 encouraged New Jersey to pursue environmental goals through market-based mechanisms.³

6. On or about May 15, 2019, the Division of Rate Counsel filed an appeal with the Appellate Division from the Board’s Order of April 18, 2019 in Docket No. EO18080899. P3 is also currently a party to this appeal, and notes that nothing contained herein shall constitute a waiver of any issue regarding the P3 appeal of the underlying April 18, 2019 decision.

7. P3 has remained actively engaged throughout this process. P3 participated and filed comments on July 20, 2020, issuing comments on the Draft Application for the second edibility period. On August 12, 2020, the Board established the application process for the second eligibility period (June 1, 2022 – May 31, 2025) and ordered that the application period be open and remain open until October 1, 2020 (“Second ZEC Eligibility Period”). In its Order, the Board referenced the Comments submitted by P3. See Board’s August 12, 2020 Order, Docket No. Agenda Item 9A, Docket No. EO18080899.

8. Additionally, P3 has been actively involved in the Board’s review of PSEG’s and Exelon’s FRR/MOPR proposal. On May 20, 2020, P3 filed extensive comments and on June 24, 2020 and July 23, 2020 filed reply comments regarding the BPU's Investigation of Resource Adequacy. In addition, just last Friday, September 18, 2020, I, on behalf of P3, participated on a panel as part of the BPU’s Technical Conference reviewing resource adequacy alternatives. In its initial filing, PSEG stated it would be willing to give up its nuclear subsidy if it were successful in obtaining its FRR proposal. (See PSEG Comments in Investigation of Resource

³ <https://www.p3powergroup.com/siteFiles/News/1C191E2E539B94FE805F945B2743C21A.pdf>

Adequacy Alternatives, BPU Docket No. EO20030203, dated May 20, 2020, and stating “[t]he ZEC program would be replaced by this new mechanism.”).

9. Although PSEG has since attempted to modify that astonishing statement in several outlets, it is clear PSEG sees a connection between FRR and any nuclear subsidies. Since P3 has taken an active stakeholder role in the FRR proceeding, its intervention in these proceedings as a party is necessary to ensure a completeness of its procedural standing to advocate for, lend its expertise to, and protect its interests in the proper functioning of the PJM markets.

10. The subsidization of any assets - particularly profitable ones such as Hope Creek and Salem - will have undeniable impacts of New Jersey’s wholesale and retail markets. As the PJM Independent Market Monitor has observed, “[s]ubsidies are an effort to reverse market outcomes with no commitment to a regulatory model and no attempt to mitigate negative impacts on competition.”⁴

11. This “negative impact on competition” directly impacts the properly-designed and well-functioning market that P3 members rely upon. Specifically, in a market based on competitive principles, the subsidization of certain resources creates winners and losers. Billions of dollars have been invested in the PJM market by P3 members and other market participants with the assumption and expectation of a level playing field among resources. Whenever resources that would otherwise be unprofitable are given a subsidy that makes them more cost competitive than unsubsidized resources -- the goal of the ZEC proceedings -- the playing field is undeniably slanted in the favor of the subsidized units and hurts competing power providers like

⁴ http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017/2017-som-pjm-sec1.pdf at 1

the members of P3. Providing subsidies to profitable units makes the problem worse and results in nothing but a windfall for the recipient.

12. For all of the reasons stated herein, P3 members are individual member power suppliers who compete with PSEG Power, PSEG Nuclear and Exelon, and who will be harmed by the market contortions created by the ZEC subsidy, must be permitted to intervene in these matters as a Party so that its specific interests as an association of power providers of nuclear, natural gas, coal, wind, solar and biomass facilities are appropriately represented and protected and it has the opportunity to be heard on significant issues that affect the viability and future of the association and its members, including the adequacy of the statutory predicate that a facility must establish to receive a subsidy and the amount of any subsidy (notwithstanding the assertion the Board has no authority to adjudicate the level of any ZEC subsidy even if it is needed or results in “unjust and unreasonable rates”).

13. P3 also seeks intervention and Party status to ensure that the issues related to the issuance of subsidies and their impact are fully and accurately addressed.

14. As set forth above, P3’s intervention will serve to assist the Board, as its members bring unique knowledge to these proceedings.

15. Accordingly, P3 requests permission to intervene in these matters as a Party, with the full rights and obligations of a Party, to participate in conferences, discovery, testimony and cross-examination, settlement, and to be heard on all issues before the Board. P3 understands that it must take the proceedings as it finds them.

16. All correspondence, filings, discovery, reports, and documentation generally regarding this matter should be sent to the following persons:

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

On behalf of the PJM Power Providers Group

By: *Glen Thomas*
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Dated: September 21, 2020

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September 21, 2020

Via Email

Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Application of PSEG Nuclear, LLC and Exelon
Generation Company, LLC For the Zero Emission Certificate Program -
Salem Unit 1
Docket No. ER20080557**

**In the Matter of the Application of PSEG Nuclear, LLC and Exelon
Generation Company, LLC For the Zero Emission
Certificate Program - Salem Unit 2
Docket No. ER20080558**

**In the Matter of the Application of PSEG Nuclear, LLC For the Zero
Emission Certificate Program – Hope Creek
Docket No. ER20080559**

Dear Secretary Camacho-Welch:

This law firm represents the PJM Power Providers Group (“P3”) in the above-referenced matters. Kindly accept this letter brief, in lieu of a more formal brief on behalf of P3, in support of its motion to intervene as a Party pursuant to N.J.A.C. 1:1-16.1 et seq. before the Board of

Public Utilities (“BPU” or the “Board”). For the reasons set forth below, the BPU should grant P3, full Party intervenor status in these proceeding with access to confidential information.

The PJM Power Providers Group (“P3”) is a non-profit organization whose members are independent electric power suppliers located in the PJM market who are competitors of these nuclear plants and would suffer competitive harm by the institution of the subsidies.¹ P3’s mission it is to promote properly designed and well-functioning competitive wholesale electricity markets in the 13-state region and the District of Columbia served by PJM Interconnection. Combined, P3 members own over 67,000 megawatts of generation assets in PJM, produce enough power to supply over 50 million homes. P3 works with state and federal policymakers and other stakeholders, including PJM and the Organization of PJM States, to advance the group’s mission.

The within proceedings involve reviews of the establishment of Zero Emission Certificate Programs and approval of associated charges for eligible nuclear power plants operating in the PJM competitive markets. As such, these matters directly implicate issues impacting P3. Accordingly, and for all of the reasons set forth below, as well as in the Certification attached hereto of Glen Thomas, P3’s President, intervention is vital in these matters since its members will be directly affected by the outcome of the proceedings. Additionally, no other party represents the interests of P3 and only by intervening as a party to these proceedings can P3 ensure that its members’ interests are represented as the BPU continues to consider these matters.

Finally, if granted status as a Party-Intervenor in these matters, P3 will enter into agreements to protect the confidential nature of information submitted by the parties. Attached

¹ The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

to this motion, are the executed Non-disclosure Agreements attached to the Board's Orders on behalf of P3.

A. Background Facts and Procedural History

These matters concern L. 2018, c. 16, (N.J.S.A. 48:3-87.3, et seq.), signed into law on May 23, 2018 by Governor Murphy. The Act, among other things, requires the Board to create a Zero Emission Certificates ("ZEC") program and determine which nuclear energy generators will be eligible to receive ZEC payments under the program. PSEG, and other potential applicants, which according to legislative testimony, are seeking a subsidy of about \$1.2 billion over four years.

On October 23, 2018, P3 moved to intervene as a Party in 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). On November 9, 2018, Rate Counsel submitted a brief in support of P3's full Party-Intervenor status. However, on November 19, 2018, the BPU granted P3 participant status only, limiting it to filing a brief as well as comments as to any applications received. P3 submitted Comments on ZEC Applications on January 31, 2019 and Reply Comments on March 19, 2019.

On April 18, 2019, the BPU Commissioners held a Board Agenda Meeting to discuss and act upon the ZEC applications filed on behalf of Salem 1, Salem 2 and Hope Creek, during which all 5 Commissioners made statements regarding their approach to the issues before them. Specifically, Commissioner Chivukula, in expressing his opposition to granting the ZECs noted that P3 had found that "the projected New Jersey nuclear units revenues exceed their going forward/avoidable costs." See Transcript, pg. 52, April 18, 2019.

Thereafter, On April 18, 2019, the Board determined that Salem 1, Salem 2, and Hope

Creek were eligible to receive ZECs (“First ZEC Eligibility Period”). On or about May 15, 2019, the Division of Rate Counsel filed an appeal with the Appellate Division from the Board’s Order of April 18, 2019.²

P3 has remained actively engaged throughout this process. P3 participated and filed comments on July 20, 2020, issuing comments on the Draft Application for the second edibility period. On August 12, 2020, the Board established the application process for the second eligibility period (June 1, 2022 – May 31, 2025) and ordered that the application period be open and remain open until October 1, 2020 (“Second ZEC Eligibility Period”). In its Order, the Board referenced the Comments submitted by P3. See Board’s August 12, 2020 Order, Docket No. Agenda Item 9A, Docket No. EO18080899.

The Board also designated President Joseph L. Fiordaliso as Presiding Commissioner, authorized to rule on all matters that arise during the proceeding, and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues, subject to ratification by the full Board in any final decision. See Board’s Order, dated September 15, 2020, Docket No. ER20080557.

On August 19, 2020, Exelon Generation Company, LLC (“Exelon Generation”) and PSEG Nuclear, LLC (“PSEG Nuclear”) submitted a Notice of Intent to File Applications for the Zero Emissions Certificate Program for Salem Unit 1 and Salem Unit 2. With respect to Hope Creek, on August 19, 2020, PSEG Nuclear, LLC (“PSEG Nuclear”) filed a Notice of Intent to File Applications in connection with the ZEC proceeding. PSEG Nuclear provided that it is the sole owner of the Hope Creek Plant. See Orders in Dockets ER20080557, ER20080558 and

² P3 is also currently a party to this appeal, and notes that nothing contained herein, shall constitute a waiver of any issue regarding the P3 appeal of the underlying April 18, 2019 decision.

ER20080559.

For all of the reasons set forth below, as well as those were set forth in the first ZEC proceeding, P3 should be granted full Party status with access to confidential information.

B. P3 Should Be Permitted To Intervene As A Party In These Proceedings.

In support of the instant application for intervention, P3 respectfully submits that all factors for intervention set forth in N.J.A.C. 1:1-16.1, weigh in favor of the granting P3's application to intervene in all proceedings convened by the Board arising out of, or in connection with the implementation of the Act. The standard for intervention in an administrative proceeding provides:

- (a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene. [N.J.A.C. 1:1-16.1(a)].

When evaluating a motion for intervention, the following factors should be considered: (1) the nature and extent of the movant's interests in the outcome of the case; (2) determination of whether the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case; (3) the prospect of confusion or undue delay arising from the movant's inclusion; and, (4) any other appropriate matters. N.J.A.C. 1:1-16.3; see also Atlantic Employers Ins. Co. v. Tots & Toddlers Pre-School Day Care Center, Inc., 239 N.J. Super. 276, 280 (App. Div.), certif. den. 122 N.J. 147 (1990) (noting courts apply a liberal construction to intervention rules); State by Bontempo v. Lanza, 39 N.J. 595, 599 (1963), cert. den. 375 U.S. 45 (1964) (same); R. 4:33-1 (intervention as of right must be granted when "the applicant claims an interest relating to the ... transaction which is the subject of the action and ... the disposition of the action may as a practical matter impair or impede the ability to protect that interest ...).

By Order dated November 19, 2018, in Docket No. EO18080899, Agenda Item 9B, the Board made the following findings in support of P3's motion for intervention:

- the BPU “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”; and that
- “P3 may potentially contribute to the development of the record and scope of the proceeding and thereby aid the Board in understanding the issues”; and finally that
- the Board also noted that “P3 may add constructively to this proceeding without causing undue delay or confusion.”

As the Board found that P3 met the all of the criteria for intervention in the original ZEC Docket, it should do so here as well. However, P3 should also be granted full Party intervenor status with access to confidential information.

Specifically, and as P3 demonstrated in the original ZEC docket, P3 is substantially, specifically and directly affected by these proceeding because, among other things, the award of ZEC subsidies will advantage one power generator to the detriment of competing power producers who are members of P3 and place them at a competitive disadvantage in the PJM market. (See Certification of Glen Thomas, (“Thomas Cert., ¶11)).

P3, whose members are power suppliers in the PJM market who compete with PSEG Power, PSEG Nuclear, and Exelon has an interest in its representational capacity in assisting the Board with determining whether a subsidy is harmful to the competitive interests of P3, P3 has a direct and material interest in assisting the Board in its determination of whether the broad statutory criteria have been met.

The subsidization of any assets, especially if they are profitable, will have undeniable negative impacts on New Jersey's wholesale and retail markets. (Thomas Cert., ¶10). The negative impact on competition directly impacts the properly designed and well-functioning

market that P3 members rely upon. (Thomas Cert., ¶11). Specifically, in a market based on competitive principles, the subsidization of certain resources creates winners and losers. Billions of dollars have been invested in the PJM market by P3 members and other market participants with the assumption and expectation of a level playing field among resources. Ibid. Whenever resources that would otherwise be unprofitable are given a financial subsidy that makes them more cost competitive than unsubsidized resources -- the goal of the ZEC proceedings -- the playing field is undeniably slanted in the favor of the subsidized units and hurts competing power providers like the members of P3. Ibid. Providing subsidies to profitable units only compounds the unfairness of the market. Ibid.

P3, whose members include power suppliers who compete with PSEG Power, PSEG Nuclear, and Exelon, and who will be harmed by the market contortions created by the ZEC subsidy, are entitled under the criteria to intervene in this matter as a Party so that its specific interests as an association of nuclear, natural gas, coal, wind, solar and biomass facilities that generate power are appropriately represented, protected and have the opportunity to be heard on the significant issues in this proceeding that will affect their economic interests, including the adequacy of the statutory predicate that a facility must establish to receive a subsidy and the amount of any subsidy (notwithstanding the assertion the Board has no authority to adjudicate the level of any ZEC subsidy even if it is not needed due to a facility's unprofitability or because the subsidy will result in "unjust and unreasonable rates." (Thomas Cert., ¶12). P3 will bring the sophisticated expertise of its members to the hearing to insure that the issues related to the issuance of subsidies and their impacts are fully and accurately addressed. (Thomas Cert., ¶13). P3's intervention will thus serve to assist and inform the Board, and also help the Board meet the

massive resources PSEG and Exelon bring to this proceeding in support of their subsidy application. (Thomas Cert., ¶14).

Moreover, P3's interest is sufficiently different from that of any party. P3 members are competitors of PSEG Power, PSEG Nuclear and Exelon. P3 members' interests are actual competitors of PSEG and Exelon. By bringing its real-world expertise to this matter, P3 will assist the board in formulating its decisions.

Additionally, P3 has been actively involved in the Board's review of PSEG's and Exelon's FRR/MOPR proposal. On May 20, 2020, P3 filed extensive comments and on June 24, 2020 and July 23, 2020 filed reply comments regarding the BPU's Investigation of Resource Adequacy. In addition, just last Friday, September 18, 2020, Glen Thomas on behalf of P3, participated on a panel as part of the BPU's Technical Conference reviewing resource adequacy alternatives. In its initial filing, PSEG stated it would be willing to give up its nuclear subsidy if it were successful in obtaining its FRR proposal. (See PSEG Comments in Investigation of Resource Adequacy Alternatives, BPU Docket No. EO20030203, dated May 20, 2020, and stating "[t]he ZEC program would be replaced by this new mechanism."). (Thomas Cert., ¶8)

Although PSEG has since attempted to modify that astonishing statement in several outlets, it is clear PSEG sees a connection between FRR and any nuclear subsidies. Since P3 has taken an active stakeholder role in the resource adequacy proceeding, its intervention in these proceedings as a party is necessary to ensure a completeness of its procedural standing to advocate for, lend its expertise to, and protect its interests in the proper functioning of the PJM markets. (Thomas Cert., ¶¶8, 9).

Finally, the Board in its previous Order, concluded that "disclosure of information deemed confidential could harm competition, given that P3 members are power providers" and thus found

that P3 was not entitled to access to information marked “confidential” by applicants. P3 was accordingly granted participant status only. P3 continues to assert that this ruling was in error, as it conflated the standard for full party intervention, which P3 clearly met, with the standard in the Act for access to confidential information. These are two separate and distinct standards and should not have been analyzed in conjunction to deny P3 full Party status. However, and notwithstanding the Board’s Order in the original ZEC Docket, P3 should now be granted access to confidential information.

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

Along with this motion, P3 has submitted the requested signed agreements to protect the confidential nature of information submitted by the parties. Thus, P3 also meets the statutory requirements for access to confidential information.

However, even if the Board determines P3 is not entitled to confidential information, it should grant P3 full Party intervenor status in these matters in order to allow it to fully and meaningfully participate in the proceedings as a Party, which includes but is not limited to the ability to receive copies of all pleadings, papers, documents and exhibits and to introduce, submit and file direct testimony, pleadings, papers, documents and exhibits as appropriate, the right to participate in conferences, discovery, testimony and cross-examination, settlement, and to be heard on all issues before the Board.

