

**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**

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**POST-HEARING BRIEF ON BEHALF OF PJM POWER PROVIDERS GROUP (“P3”)**

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## **PRELIMINARY STATEMENT**

“God does not play dice.”

-Albert Einstein

Yet again, the Board of Public Utilities (“BPU” or the “Board”) finds itself in a spot of being held for ransom by a profitable company who owns three profitable nuclear power plants and who is demanding hundreds of millions of dollars in ratepayer subsidies lest it shutter these facilities. Enough is enough. The Board needs to end this game of regulatory chicken and simply say no more. The Board has an opportunity to send a message that it will not be put in this position ever again. It should send such a message loudly and clearly.

The Board has been presented with a parade of data from a profit-motivated company incentivized to overestimate costs and underestimate revenues, from consumers/competitors with the opposite motivation and from an independent market monitor that is motivated to preserve the benefits of competitive markets for consumers. The Board needs to rise above this discussion and recognize the proceeding for what it is - an attempt by a company to convince the Board into acquiescing to a windfall for the company. The Board does not need to play that game. The Board is only obligated to provide a process.<sup>1</sup> It is not obligated to consent to the demands of the company.

There is ample evidence in the record to reject PSEG’s request. As detailed by the PJM Market Monitor, Rate Counsel and Board Staff, Salem and Hope Creek are viable going concerns without the ratepayer handout. Surely, PSEG would rather have the subsidy – what profit-

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<sup>1</sup> “There has been a lot of discussion about -- that this is an automatic hand-out to the utility. That is not true. This Bill creates a process for the BPU to review the finances of the utility to make sure that it can function and stay operational ... And with that, we drafted a Bill that doesn’t guarantee anything but a review.” Senator Stephen Sweeney, December 20, 2017, <https://www.njleg.state.nj.us/legislativepub/pubhear/senatu12202017.pdf> - pp. 2 and 3.

motivated company would not? Surely, PSEG would rather ratepayers compensate them for downside risks that may never be realized while keeping the benefit of any upside rewards. It is a great deal if you can get it. PSEG can hardly be faulted for trying, but they can and should receive a message in return that the Board is not going to be a rubber stamp.

The Board should not be distracted by the numerous red herrings that have been presented in this case. This is not a case about reliability – the plants are not going to close and even if they did, PJM has ample reserve margins to absorb the lost capacity. This not a case about added transmission costs – again, the plants are not going to close and even if they did, consumers might be able to avoid the \$266.5 million in upgrades being installed to support the ability of these plants to export power to Maryland and Delaware.<sup>2</sup> This is not a case about emissions – the plants are not going to close and even if they did, there is no guarantee which units would replace those megawatts. Simply stated, this is a case about a company that is not content about its current profit margin on unregulated facilities and is seeking through the regulatory process to increase its take.

If PSEG desires to exit the generation business because it is not generating the returns it desires, then it should follow the lead of numerous other utility companies in PJM like Exelon, FirstEnergy, and PPL and do so. There is ample evidence throughout the PJM footprint of nuclear facilities under non-utility ownership that are viable going concerns. Yet PSEG is not even willing to discuss this option. Instead, PSEG prefers to take a stance of “give us the money or we will shut down” when any prudent owner of assets with value would seek to sell those assets and at least realize some economic benefit. At the evidentiary hearing, PSEG said that all options are

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<sup>2</sup> See <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/ferc-approves-cost-allocations-for-artificial-island-other-pjm-wires-projects-57633551>

on the table<sup>3</sup> while leading the Board to believe that there are only two options on the table – close the plants or give us the money. There is a third way that has worked so successfully in Ohio that the nuclear plant owners in that state are not objecting to a repeal of a \$1.3 billion subsidy for two single unit reactors.<sup>4</sup>

P3 respectfully submits that this is not a question of rolling the dice, but rather a question of standing up for your consumers in the face of an extremely aggressive demand from a utility. The law requires the Board to provide a process and nothing more. The Board has provided that process and the evidence points to a single conclusion - deny the request and send a message to PSEG that if the nuclear plants are too risky or not profitable enough for them, they should seek out new owners like many other utilities have done before them.

### **BACKGROUND FACTS AND PROCEDURAL HISTORY**

P3 refers to the Board’s Orders, dated September 29, 2020, in Docket Nos. ER20080557, ER20080558 and ER20080559, for a full recitation of the background facts and procedural history in these matters. P3 submits the following additional background facts and procedural history relevant to this brief. P3 filed comments on July 20, 2020, issuing comments on the Draft Application for the second eligibility 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

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3 March 8, 2021 Evidentiary Hearing, Cregg Cross-Examination at Transcript p. 14, lines 20-25, and page 15, line 1. When asked if PSE&G would consider a sale or a spin off of these plants in order to promote efficiency and retain clean energy benefits of the three facilities, Mr. Cregg responded “I think that we would consider any kind of a transaction, we wouldn’t be opposed to any kind of transaction in that regard.”

4 See <https://www.cleveland.com/open/2021/03/ohio-senate-votes-to-repeal-nuclear-subsidies-in-house-bill-6.html> As of March 25, 2021, the Ohio General Assembly passed H.B. 128 which repeals many parts of House Bill 6, including nuclear subsidies, and awaits the Ohio Governor’s expected signature.

Period”). In its Order, the Board referenced the Comments submitted by P3. See Board’s August 12, 2020 Order, Agenda Item 9A, Docket No. EO18080899.

The Board also designated President Joseph L. Fiordaliso as Presiding Commissioner, and authorized him 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 ER20080559.

On September 29, 2020, the Board granted P3’s motion to intervene in these matters as a Party, but it was not granted access to confidential information. On or about October 1, 2020, PSEG Nuclear LLC submitted its application on behalf of Hope Creek; PSEG Nuclear LLC and Exelon Generation Company, LLC submitted their application on behalf of the Salem I; and PSEG Nuclear LLC and Exelon Generation Company, LLC submitted their application on behalf of the Salem 2 nuclear generating plant for the receipt of Zero Emission Certificates.

On February 12, 2021, P3 submitted written cross-examination questions on the direct testimony submitted by Daniel Cregg, the Executive Vice President and Chief Financial Officer for PSEG as well as upon the direct testimony of Carl Fricker, the Vice President - Power

Operations Support for PSEG Power, LLC, and finally, upon Levitan & Associates, Inc. On March 1, 2021, Cregg, Fricker and Levitan and Associates submitted written replies to the cross-examination questions submitted by P3. Thereafter, a Prehearing Conference was conducted on March 2, 2021, and an Evidentiary Hearing was conducted on March 8, 2021. During the Evidentiary Hearing, P3 examined PSEG witness Daniel Cregg as well as Seth Parker, in connection with the Levitan Report.

## **ARGUMENT**

### **I. INTRODUCTION**

P3 agrees with the New Jersey Division of Rate Counsel and the PJM Independent Market Monitor (“IMM”) that PSEG failed to demonstrate its need for the ZECs. Although P3 is not privy to confidential information, the publicly available information paints a picture of plants that do not need a subsidy to remain economically viable. A plain reading of the public version of the IMM’s January 29, 2021 Analysis, as well as the Rate Counsel testimony, shows that PSEG’s request for ZECs should be denied.

PSEG claims that its total costs and risks exceed its projected revenues in each of the energy years of 2022/2023 through 2024/2025.<sup>5</sup> PSEG, an applicant along with Exelon, for ZECs for the second eligibility period, therefore claims the financial need for the ZECs and requests the full amount permitted by law. Brazenly, PSEG even goes so far as to say they require more than the amount permitted by law, almost double, to meet their revenue expectations for the plants.<sup>6</sup> Again,

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<sup>5</sup> Direct Testimony of Daniel Cregg, Executive Vice President and Chief Financial Officer of PSEG, January 29, 2021 (“Cregg Testimony”), at p. 2 of 30.

<sup>6</sup> Evidentiary Hearing, Cregg Cross-Examination at Transcript p. 23, lines 23-25. When responding to a question asked by Commissioner Chivukula, on page 22, lines 17 and 18: “Going forward, let’s say you get the ZEC, and you get \$10 instead of the \$18 you’re looking for, would there be any losses?” and later stating he was perplexed why a plant would run at a loss, Mr. Cregg responded in part “make no mistake, the \$10 ZEC that can be granted by virtue of

although P3 does not have access to confidential information, the IMM and Rate Counsel both have access to confidential information of the applicants, both separately explain and confirm the various ways in which costs and risks claimed by the applicants are overstated and revenues claimed are understated.

The IMM’s analysis of the Salem Units and Hope Creek found that PSEG “understates forward energy revenues, understates capacity revenues, overstates costs and overstates risks.”<sup>7</sup> As the IMM points out, “PSEG asserts that their need for subsidy is higher than is supported by actual costs and revenues.”<sup>8</sup> Rate Counsel concludes that the applicants have failed to establish that they are entitled to ZECs under the eligibility requirements.<sup>9</sup>

## **II. APPLICANTS’ COSTS AND RISKS ARE OVERSTATED**

### **A. OVERSTATED COSTS**

Rate Counsel’s expert testimony of Andrea Crane studied the projected costs claimed by the applicants, and found the costs were overstated in several respects.<sup>10</sup> The applicants had overstated their costs in several areas, as further explained below, including that they used a cash-flow approach to cost of recovery of all capital investment, inappropriately included millions of

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this process, still falls short of where we think things should be for the longer term.” The IMM also asked a question in reference to the \$18 requested by PSEG, at p. 83, lines 18 through 13.

<sup>7</sup> The Independent Market Monitor for PJM, *Analysis of NJ Zero Emissions Certificate (ZEC) Applications*, Public Version, January 29, 2021, (“IMM January 29, 2021 Analysis”), at p. 5.

<sup>8</sup> IMM January 29, 2021, Analysis at p. 19.

<sup>9</sup> *Remarks of Stefanie A. Brand, Director, Division of Rate Counsel*, In the Matter of the Application of PSEG Nuclear and Exelon Generation for Zero Emission Certificates for Salem 1, Salem 2 and Hope Creek Nuclear Power Generating Plants, February 1, 2021, (Rate Counsel Remarks February 1, 2021), a pg. 2.

<sup>10</sup> Rate Counsel Remarks, February 1, 2021, at p. 2; see also Testimony of Andrea C. Crane on Behalf of the New Jersey Division of Rate Counsel, January 29, 2021 (“Crane Testimony”)



dollars of Spent Fuel charges, inflated the variable portion of support service and overhead costs, and ignored tax benefits that impacted their bottom line.<sup>11</sup>

### **1. Cash-flow Approach**

As Rate Counsel points out, one way that the costs of the applicants are overstated is that they applied a cash-flow approach to recovery of all capital investment, which assumes immediate recovery of the applicants' significant capital costs, resulting in the applicants being relieved from risks associated with incremental plant investment.<sup>12</sup> Rate Counsel notes this treatment is contrary to both common practice and basic accounting principles.<sup>13</sup> P3 members understand well the point made by Rate Counsel that in a deregulated market, businesses are not assured of capital recovery within one year, rather the opposite occurs with deregulated businesses making investments with the expectations that these investments, if recovered at all, will be recovered over a multi-year period.<sup>14</sup>

### **2. Spent Fuel Charges**

In addition, Rate Counsel found that PSEG included “**millions of dollars** for Spent Fuel costs that are not actually being incurred by the nuclear operators.”<sup>15</sup> Although for almost 7 years, since May 2014, Spent Fuel charge has not been paid or accrued by nuclear operators, yet the applicants included Spent Fuel charges in the operating costs calculated for each nuclear unit.<sup>16</sup> Rate Counsel expert Andrea Crane referred to these costs as “phantom Spent Fuel costs that are not actually being incurred.”<sup>17</sup> In Crane's response to PSEG's cross-examination question, Ms.

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11 Rate Counsel Remarks, February 1, 2021, at pp. 2-4.

12 Rate Counsel Remarks, February 1, 2021, at p. 3.

13 Rate Counsel Remarks, February 1, 2021, at p. 3.

14 Rate Counsel Remarks, February 1, 2021, at p. 3.

15 Rate Counsel Remarks, February 1, 2021, at p. 3, *emphasis added*.

16 Rate Counsel Remarks, February 1, 2021, at p. 3-4.

17 Crane Testimony at p. 33.

Crane further states that “the spent fuel charges have not been incurred by the Company since 2014, and have not been reflected on PSEG’s financial statements nor placed into a trust or other segregated fund.”<sup>18</sup>

### **3. Inflated Variable Portion of Support Service and Overhead Costs**

Further, Rate Counsel’s consultant found that PSEG’s estimate of the variable portion of support service and overhead costs were inflated with the applicants ignoring hedging revenues associated with the three units.<sup>19</sup>

### **4. Ignored Tax Benefits**

Additionally, Rate Counsel’s consultant found that the applicants ignored tax benefits that would impact their bottom line including a reduction in corporate tax rate from 35% to 21%.<sup>20</sup>

### **B. SPECULATIVE AND INAPPROPRIATE MARKET AND OPERATIONAL RISKS**

Disturbingly, Rate Counsel found that the financial analyses provided by the applicants include “**significant** costs associated with operational and market risks that are **speculative and inappropriate** to charge to regulated ratepayers in New Jersey.”<sup>21</sup> Rate Counsel noted that the methodologies proposed by the applicants “inflate the costs of operating.”<sup>22</sup>

Rate Counsel points out the operational and market risks cited by the applicants as costs further distort the financial situation presented by the applicants. Rate Counsel noted the very concerning findings that these “costs” make up a “**very significant portion** of the overall shortfalls

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18 Division of Rate Counsel Responses to Cross-Examination Questions [of PSEG], March 1, 2021, Question ZEC 2-Crane-XQ-0002 (a).

19 Rate Counsel Remarks, February 1, 2021, at p. 4.

20 Rate Counsel Remarks, February 1, 2021, at p. 4.

21 Rate Counsel Remarks, February 1, 2021, at p. 2-3, *emphasis added*.

22 Rate Counsel Remarks, February 1, 2021, at p. 3.

being claimed . . . and **comprise almost the entire subsidy** amount being requested.”<sup>23</sup> Therefore, “a significant portion of the [applicants’] **overall claim for subsidies relates not to objective and verifiable cost estimates, but to speculative risks.**”<sup>24</sup> As Rate Counsel explains, the operational risk adjustment is “one-sided and inflated.”<sup>25</sup> Further, Rate Counsel states, and P3 agrees, that ratepayers should not be the guarantors of last resort “for all possible contingent risks related to operating revenues.”<sup>26</sup> With the deregulation that occurred approximately 20 years ago, ratepayers already paid hundreds of millions of dollars in stranded costs to the nuclear facilities owners. As the Rate Counsel points out, New Jersey’s experience with stranded cost payments highlights the importance of taking “upside” risks into account, yet similar to the treatment of operational risk, PSEG only assumed that market risk would increase its costs, and no recognition that conditions in the energy market during this second eligibility period may rather result in higher than anticipated revenues for the generating units.<sup>27</sup> When PSEG asked cross-examination questions regarding this, and whether PSEG should be responsible for all the items required by the U.S. Nuclear Regulatory Commission (“NRC”) in response to specific incidents, Rate Counsel replied aptly, “[n]o, although Ms. Crane assumes that PSEG and the other nuclear operators have input into certain decisions made by the NRC. In addition, PSEG was compensated for stranded costs at the time of deregulation. Since that time, PSEG, as a deregulated entity, is supposed to be taking some risks. However, PSEG also reaps the benefits when market prices are high or other factors result in earnings that are higher than those enjoyed by regulated entities. New Jersey ratepayers

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23 Rate Counsel Remarks, February 1, 2021, at p. 5, *emphasis added*.

24 Rate Counsel Remarks, February 1, 2021, at p. 5., *emphasis added*; see also Crane Testimony at p. 21.

25 Rate Counsel Remarks, February 1, 2021, at p. 6.

26 Rate Counsel Remarks, February 1, 2021, at p. 6.

27 Rate Counsel Remarks, February 1, 2021, at pp. 6-7.

should not be the insurer of last resort for deregulated nuclear units that have retained healthy profits in prior years.”<sup>28</sup>

Further, the IMM points out that “PSEG incorrectly defines risk when it calculates what it refers to as the cost of risk. PSEG requests that the BPU ignore the full distribution of possible outcomes and pay PSEG a nonrefundable subsidy based solely on the worst possible outcome out of the full range of possible outcomes. PSEG requests that customers hold it harmless from reductions in revenues and increases in costs. But PSEG does not propose to hold customers harmless from increases in revenues and reductions in costs.”<sup>29</sup>

The IMM notes that regarding risk addsers “the PSEG request incorrectly defines risk. PSEG requests guarantees rather than payment for risk.”<sup>30</sup> The IMM points out, and P3 members are very familiar with the concept that “sophisticated companies like PSEG routinely manage risk. PSEG manages the operation of the nuclear plants. It is reasonable to assign risk management for the nuclear units to PSEG rather than to customers. That is how markets work. That is how a reasonable regulatory framework works.”<sup>31</sup> P3 agrees with the IMM, as this is what P3 member companies do in their businesses as generation providers in restructured markets. When PSEG asked the following cross-examination question of Rate Counsel expert Andrea Crane, “When the risk of an equipment failure materializes, will it impose an actual cost on a nuclear operator,” Crane’s reply was that she “agrees that equipment failures will generally increase costs. However,

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28 Division of Rate Counsel Reponses to Cross-Examination Questions [of PSEG], March 1, 2021, Question ZEC 2-Crane-XQ2 (a).

29 IMM January 29, 2021, Analysis at pp. 19-20.

30 IMM January 29, 2021, Analysis at p. 21.

31 IMM January 29, 2021, Analysis, at p. 21.

a robust capital and operating budgeting process should already take some level of such risk into account.”<sup>32</sup>

The ZEC statute does not foreclose the Board from determining that the risks faced by PSEG are not something that merit direct financial compensation. P3 agrees with the IMM, “PSEG has the capability to manage the risks of price fluctuations and does manage that risk. There is no reason for customers to provide further guarantees that if PSEG risk management is not effective, customers will make up any shortfalls, and if PSEG risk management is effective, customers will pay as if it were not and PSEG will receive a windfall.”<sup>33</sup> The statute allows the Board this flexibility and the Board should use it.

Regarding the operational risk adder, the IMM finds that the PSEG proposed operational risk adder is not a cost, but is an “unsupported request to require customers to pay an additional subsidy to cover an asserted and unquantified possibility that costs will be greater than PSEG’s estimates while not providing customers any benefit if costs are lower and not recognizing the role of management in controlling costs and not providing incentives for management to continue to reduce costs.”<sup>34</sup>

Regarding the market risk adder, the IMM finds that “the cost of market risk, as defined by PSEG, is not a cost. The value that PSEG calculated is simply the difference between the lowest certain percentile of the distribution of market revenues and the expected value of revenues that the units would receive based on actual prices in the forward energy market. . . . PSEG ignores the fact that risk is a distribution of outcomes and includes the potential for higher revenues.”<sup>35</sup>

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32 Division of Rate Counsel Responses to Cross-Examination Questions [of PSEG], March 1, 2021, Question ZEC 2-Crane-XQ-000111 (b).

33 IMM January 29, 2021, Analysis at p. 22.

34 IMM January 29, 2021, Analysis at p. 24.

35 IMM January 29, 2021, p. 26.

The IMM states that the market risk adder is not a cost, but is a “request to require customers to pay an additional subsidy to cover the [confidential] percent possibility that revenues will be significantly lower than PSEG’s estimates while not providing customers any benefit if revenues are higher.”<sup>36</sup>

Lastly, as P3 raised in the cross-examination questions of testimony of PSEG witness Carl Fricker, PSEG is not taking into account any positive upside regulatory risks, that increase competitors’ capital or running costs and lead to retirements that helps lead to higher prices in energy and capacity markets.<sup>37</sup> Further, P3 pointed out in the cross-examination of PSEG testimonies of Daniel Cregg, the operational risks do not show up in PSEG financial statements.<sup>38</sup> Also, when P3 asked in the cross examination of PSEG expert Daniel Cregg whether market risk accounted for upside risk as well, PSEG responded that the “possibility of having potential outcomes be more favorable than projected does not change the definition of ‘risk’, which is indisputably related to unfavorable potential outcomes, both in common usage and throughout the ZEC Act.”<sup>39</sup> In a classic “head’s I win, tails you lose” proposition, PSEG is effectively saying pay me for everything that may go wrong while letting me keep anything that may go right.

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36 IMM January 29, 2021, p. 26.

37 Cross Examination Questions on Direct Testimony of Carl Fricker on Behalf of the PJM Power Providers Group (P3), Question 2, February 26, 2021.

38 PSEG Nuclear, LLC, Response to Discovery Request of PJM Power Providers, March 1, 2021, to the Cross-Examination Questions on Direct Testimony of Daniel Cregg on Behalf of P3, p. 25 of 52; see also pp. 40 of 52.

39 PSEG Nuclear, LLC, Response to Discovery Request, March 1, 2021, to the Cross-Examination Questions on Direct Testimony of Daniel Cregg on Behalf of P3, p. 47 of 52.

### **III. APPLICANTS' REVENUES ARE UNDERSTATED**

#### **1. Understated Future Energy Revenues and Capacity Revenues**

As the Board heard multiple times at the evidentiary hearing, markets are cyclical. In 2019 and 2020, energy market prices were the lowest in PJM history because of mild weather and historically low commodity prices. Already in 2021, we have seen more dramatic weather, higher fuel costs and certainly the first quarter of 2021 will experience higher electricity prices than the first quarter of 2020. Fortunately, generation owners can manage these market fluctuations with hedging tools and other means.

Similarly, on the capacity side, the lack of a capacity auction since May of 2018 again makes it difficult to predict future capacity prices. A year from now, after PJM has conducted two auctions the Board might be in a better spot to evaluate future capacity prices, but that is of little help to the Board now.

While P3 is limited in its ability to critique PSEG's projected capacity assumptions due to the confidential nature of that information, P3 points to the IMM's January 29, 2021 Analysis that shows, based on the identified level of generation output and forward prices, energy market revenues and capacity market revenues, there is an increase in PSEG's forecast revenues for all units.<sup>40</sup> The IMM, who has access to the most relevant historical data and future projections, is in a very effective position to evaluate the questions raised related to future revenues.

Similarly, Rate Counsel's expert testimony of Maximilian Chang also studied the projected energy and capacity revenues of the applicants, and found that the projected revenues were

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<sup>40</sup> IMM January 29, 2021 Analysis, pp. 18-19.

understated.<sup>41</sup> Rate Counsel stated that the methodologies proposed by the applicants understate the revenues for the three nuclear units.<sup>42</sup> Mr. Chang found that “PSEG revenue projections for the next five years show improved prospects relative to recent history.”<sup>43</sup>

Importantly, as the IMM points out, since the review of the first application for ZECs, several Federal Energy Regulatory Commission (“FERC”) decisions have been issued. As the IMM states, “FERC has made at least four significant decisions that affect PJM energy and capacity markets. FERC approved three changes that **increase energy market offers and prices:** changes to the definition of operation and maintenance expenses that can be included in energy market offers; implementing fast start pricing; and implementing changes to reserve pricing. FERC also approved changes to the detailed rules governing MOPR.”<sup>44</sup> While some of these changes may be reflected in the forward price curves, the upward pressure on energy prices attributable to recent regulatory changes may not be realized until the reforms are actually implemented.

Overall, the Board has ample record evidence to conclude that PSEG is understating its future capacity and energy market revenues. It is understandable why PSEG would adopt such a posture given its desire to portray these facilities as unprofitable despite significant proof to the contrary. Again, the Board’s role as it relates to future revenues is to sift through the noise and derive a realistic assessment of what these plants are likely to earn in future years.

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41 Rate Counsel Remarks, February 1, 2021 at p. 2; see also Testimony of Maximillian Chang on Behalf of Rate Counsel, January 29, 2021 (“Chang Testimony”)

42 Rate Counsel Remarks, February 1, 2021, at p. 3.

43 Chang Testimony at p. 7 of 36.

44 IMM January 29, 2021 Analysis, at p. 3, *emphasis added*.



#### **IV. THE BPU SHOULD DENY PSEG AND EXELON'S REQUEST FOR ZECs**

PSEG and Exelon's<sup>45</sup> requests to approve the awarding of ZECs to Salem Units 1 and 2, and Hope Creek, without reducing the amount of the ZEC payment previously awarded, should be denied.

##### **1. The Units Are Profitable**

The expert testimony put forth by Ms. Crane and Mr. Chang demonstrate that the BPU should not renew the subsidies for these “profitable unregulated plants.”<sup>46</sup> Rate Counsel states that the consultants found that the applicants have not demonstrated that the financial prospects of Hope Creek, Salem 1, and Salem 2 are such that they will need to shut down over the next three years if subsidies are not awarded by the BPU.<sup>47</sup> Rate Counsel consultant, Andrea Crane, concluded that the applicants did not demonstrate that any of the three units would be shut down over the next three years if subsidies are not awarded by the BPU.<sup>48</sup> P3 agrees with Rate Counsel that when all the “significant factors are taken into account, the applicants have not demonstrated that their financial condition warrants an additional award of ZECs.”<sup>49</sup>

Similarly, the IMM concluded in its January 29, 2021 Analysis that the Hope Creek and Salem 2 units are expected to “more than cover their avoidable costs over the next three years.”<sup>50</sup> The IMM concludes that the Salem 1 unit is expected to face a de minimis shortfall of MWh over the next 3 years, yet finds that this does not justify a subsidy and the overpayment of

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45 Exelon letter, January 29, 2021, p. 1.

46 Rate Counsel Remarks, February 1, 2021, at p. 2.

47 Rate Counsel Remarks, February 1, 2021, at p. 2.

48 Crane Testimony, at p. 4, and p. 33.

49 Rate Counsel Remarks, February 1, 2021, at p. 7.

50 IMM January 29, 2021 Analysis, at p. 7.

ZECs in 2019/2020 more than covers the de minimis shortfall. Therefore, the IMM concludes that “no unit meets the standard for subsidy under the ZECs program.”<sup>51</sup>

The IMM also points out that there has only been one full year of ZEC payments in the first eligibility period, the three-year period including energy years 2019/2020, 2020/2021, and 2021/2022. The IMM noted that despite the fact that PJM energy market prices were “at an all time low as a result of the pandemic, ... The results from 2019/2020 show that PSEG and Exelon were **overpaid** a total of [confidential amount] million in the first year for the three units.”<sup>52</sup> The IMM recommends that PSEG and Exelon should be required to credit that [confidential amount] million overpayment against eligibility period 2, and concludes that as a result of the overpayment under eligibility period 1, the three nuclear units do not qualify for any ZEC subsidy in eligibility period 2.<sup>53</sup> The statute does not prohibit the Board from applying such a credit and the Board should avail itself of the flexibility to do so.

## **2. PSEG Would Ask for an Even Larger Subsidy if Permitted**

The IMM points out that PSEG’s request for subsidies are “significantly higher” than the maximum level of the potential ZECs subsidies for Hope Creek, Salem 1 and Salem 2.<sup>54</sup> The IMM makes the succinct point that if PSEG’s assertions about its need for subsidies under the standards set forth by the ZEC statute were correct, PSEG would be planning to retire or sell the units **regardless of the outcome of this ZEC proceeding**, because if PSEG actually needs more subsidies than what is permitted under the ZEC statute then the “PSEG numbers imply that the only logical decisions is to retire or sell the units.”<sup>55</sup>

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51 IMM January 29, 2021 Analysis, at p. 7.

52 IMM January 29, 2021 Analysis, at p. 5, *emphasis added*.

53 IMM January 29, 2021 Analysis, at p. 5.

54 IMM January 29, 2021 Analysis, at p. 5.

55 IMM January 29, 2021 Analysis, at p. 5, *emphasis added*.

Similarly, Rate Counsel consultant, Maximilian Chang found that even if the BPU grants the ZEC payments to the three units, PSEG may still shut down the plants.<sup>56</sup> In the language in the PSEG 10-Q filing for the quarter ending September 30, 2020, PSEG suggests that **even if all three units continue to receive ZEC payments**, “but the financial condition of the plants is materially adversely impacted by changes in commodity prices . . . PSEG Power will take all necessary steps to cease to operate all of these plants.”<sup>57</sup> Therefore, as Rate Counsel consultant Maximilian Chang observes, this statement suggests that New Jersey ratepayers could commit to pay a lot of money to the applicants without a firm commitment that the plants would continue to be in operation at the end of the ZEC eligibility period.<sup>58</sup> As the Chang testimony succinctly states, “if the Board were to approve a ZEC for a eligibility period and at the full \$10/MWh ZEC rate, then the Applicants will be able to collect approximately \$809.5 million from ratepayers. Combined with the amounts collected from ratepayers in the first ZEC eligibility period, the total amount in ZEC payments could be as much as [confidential amount] for the three plants.”<sup>59</sup>

Further confirming this concept, are the recent comments by Ralph Izzo on an earnings call that PSEG provided in its response to P3’s cross examination questions to Carl Fricker and Daniel Cregg. PSEG stated that “On an Earnings Webcast on February 26, 2021, Ralph Izzo, Chairman, President and Chief Executive Officer of PSEG stated that **‘the nuclear plants need more than \$10’** and “[i]n the absence of an extension of the current ZEC, we would not continue to operate the plants.’ Recognizing that \$10/MWh is the maximum permissible payment under the ZEC Act,

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56 Chang Testimony, at p. 3 of 36.

57 Chang Testimony, at p. 12 of 36, *citing* Public Service Enterprise Group Incorporated, Form 10Q for the Quarterly Period Ended September 30, 2020, page 79 (available at [https://s24.q4cdn.com/601515617/files/doc\\_financials/2020/q3/0883a31d-6c78-4a9e-928f-33e7b73a6455.pdf](https://s24.q4cdn.com/601515617/files/doc_financials/2020/q3/0883a31d-6c78-4a9e-928f-33e7b73a6455.pdf)).

58 Chang Testimony, at p. 12 of 36.

59 Chang Testimony, at p. 11 of 36.

Izzo also stated at the February 26, 2021 Earnings Webcast, ‘**the only reason why we would accept \$10 now is because that’s all the state can do.**’ As Izzo explained further, even the continuation of the current ZEC level ‘does not preclude the need for additional work after that and, at the risk of stating the obvious, if you don’t get the 10, then what confidence can you possibly have that the longer-term solution can be can be [sic] realized, and that’s why we would shut the units’ if the current ZEC charge is not extended.”<sup>60</sup> It is probably only a matter of time before PSEG focuses its efforts on additional subsidies beyond what is permitted by the currently.

### **3. Different Plant Owners Could Likely Provide All the Benefits Without the Subsidy**

In order to evaluate the ZEC request in context, it is important for the Board to be mindful of the experiences in other PJM states. PSEG likes to point the Board in the direction of nuclear facilities that have closed in states outside of PJM; however, to date only two nuclear facilities have ceased operations in PJM: Oyster Creek and Three Mile Island. The Board is familiar with the unique circumstances, separate from economics surrounding both facilities that led to the closures of those facilities.

In restructured states in PJM, the experience is different from other examples around the country. For example, in Ohio and Pennsylvania, FirstEnergy, which owned three nuclear stations, availed itself of the Chapter 11 restructuring process and separated its utility operations from its generation and retail supply business to form Energy Harbor which is now a free-standing company completely separated from its parent that owns utility companies. On February 27, 2020, Energy Harbor emerged from the restructuring process as a new Ohio-based company with 2,600

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60 PSEG Nuclear, LLC, Response to Discovery Request [of P3 on Carl Fricker], March 1, 2021, Response, p. 20 of 21, *emphasis added*; see also PSEG Nuclear, LLC, Response to Discovery Request [P3 on Daniel Cregg], March 1, 2021, Response, pp. 38 and 39 of 52, and pp. 49 and 50 of 52.

employees and an investment grade bond rating from Moody's and Standard and Poor's.<sup>61</sup> Several days later, Davis-Besse, a nuclear station without a capacity obligation in 2021 and 2022, entered a refueling outage indicating a continued commitment to the market despite the lack of a capacity payment.<sup>62</sup> Several days after that, Energy Harbor withdrew its deactivation notice of the Beaver Valley Nuclear station in Pennsylvania.<sup>63</sup>

In 2019, when FirstEnergy Solutions owned the Davis Besse and Perry nuclear stations, the utility owners insisted that the plants could not be run profitably without a subsidy. The Ohio General Assembly was presented with a parade of horrible consequences that would occur if the legislators did not pass House Bill 6 which contained a \$1.3 billion subsidy to FirstEnergy Solutions for its nuclear plants. FirstEnergy Solutions told the General Assembly that if they failed to provide a subsidy, Ohio would “create a generation portfolio dominated by one fuel source, eliminate any possibility of achieving environmental goals, eliminate thousands of highly skilled jobs, and represent a loss of economic vitality for many of our communities.”<sup>64</sup> The Nuclear Energy Institute added, “[a]llowing well-run nuclear plants to close doesn't help the communities that have grown up around them, it doesn't make electricity more affordable for consumers, it doesn't help provide jobs for Ohioans, and it doesn't support our energy security and national

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61 See <https://energyharbor.com/en/about/news-and-information/firstenergy-solutions-successfully-completes-financial-restructu> and <https://energyharbor.com/en/about/news-and-information/energy-harbor-receives-investment-grade-rating-from-moody-s> and <https://energyharbor.com/en/about/news-and-information/Energy-Harbor-Receives-Investment-Grade-Rating-from-Standard-and-Poors>

62 See <https://energyharbor.com/en/about/news-and-information/davis-besse-nuclear-power-station-begins-refueling-outage>

63 See <https://energyharbor.com/en/about/news-and-information/energy-harbor-corp-rescinds-deactivation-notice-for-nuclear-gene>

64 <https://search>

[prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/133rd\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_h\\_sub\\_energy\\_generation\\_1/testimony/cmte\\_h\\_sub\\_energy\\_generation\\_1\\_2019-04-17-0900\\_437/davegriffing\\_firstenergysolutions\\_hb6pro.pdf](https://prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/133rd_ga/ready_for_publication/committee_docs/cmte_h_sub_energy_generation_1/testimony/cmte_h_sub_energy_generation_1_2019-04-17-0900_437/davegriffing_firstenergysolutions_hb6pro.pdf)

security.” Other proponents of the Ohio subsidies echoed similar themes of job loss, environmental damage; higher consumer prices, reduced reliability and community devastation if the subsidy was not awarded.

That was the Spring of 2019. In the Spring of 2021, a much different story is being told in Columbus, Ohio. Both nuclear stations, under new ownership, in Ohio are operational and preparing to participate in the upcoming capacity auctions. Both plants are owned by a credit-worthy company that is employing thousands of people in the local economy. Analysis reports show a decrease in operating expenses of over 20%.<sup>65</sup> And, most importantly, the \$1.3 billion subsidy that FirstEnergy fought so hard for and said was essential to the continued operation of the two single unit plants in Ohio, is on the cusp of being repealed without a single objection from Energy Harbor.<sup>66</sup>

A similar transfer of ownership occurred in Pennsylvania when PPL decided in 2015 to exit the generation business and created Talen Energy, a spinoff independent from the regulated utility. As part of the transaction, Talen assumed control of the Susquehanna Nuclear Station a dual unit nuclear facility in Berwick, Pennsylvania. Since Talen assumed operational control of the plant, the new owners have reduced operational expenses of the plant, dramatically improving its cost structure and shortened the annual maintenance outage time frame while improving performance during these periods. All while also improving safety and reliability. As reflected in quarterly earnings call presentations and during Talen’s 2019 Investor Day event, since 2016, the Susquehanna plant has reduced costs by more than 30%, moving from low second-quartile

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65 See Julien Dumoulin-Smith, BofA Utilities: EXC US: Highlighting the Utility Stand-Alone Opportunity: Upgrade to Buy, \$45 PO - BUY - United States, January 6, 2021.

66 As of March 25, 2021, the Ohio General Assembly passed H.B. 128 which repeals many parts of House Bill 6, including nuclear subsidies, and awaits the Ohio Governor’s expected signature.

industry ranking in costs to the top of the first-quartile. In addition, during the same time period, the plant has reduced the number of days to complete its annual maintenance outages by more than 40%, when compared to the prior 8 years, while setting record breaker to breaker runs at the units.

The Board should also be mindful of the recent decision by Exelon, a co-owner of the Salem station, that it intends to separate its utility operations from its generation/retail supply business.<sup>67</sup> While many details of the transaction remain unanswered, it appears likely that by this time next year PSEG will be the lone remaining company in a restructured state in PJM that still owns both utility operations and generation facilities.

The bottom line for the Board is that there is a path forward that is not a Hobson's Choice of either subsidize us or face the closure. Other operators in PJM facing similar challenges have revealed a path forward that keeps the nuclear plants operational without an out of market subsidy and the associated deleterious effects. While the Board certainly cannot order a restructuring, it can encourage it by taking the first step of denying the subsidy to stimulate PSEG's imagination as to options other than closure. The Salem and Hope Creek plants have value. A future owner will no doubt recognize that value and be willing to assume ownership of these facilities without the need for a subsidy. Ultimately, that is the outcome the Board should seek – the retention of these facilities supported by competitive market signals and without ratepayer guaranteed subsidies. That goal does not necessarily require PSEG to own these facilities – as we have seen in other places in PJM.

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<sup>67</sup> See <https://www.exeloncorp.com/newsroom/exelon-to-separate-its-utility-and-competitive-energy-businesses-into-two-industry-leading-companies>

