



## State of New Jersey

### DIVISION OF RATE COUNSEL

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*Governor*

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*Lt. Governor*

BRIAN O. LIPMAN  
*Director*

November 22, 2023

#### **Via Electronic Mail**

Sherri L. Golden, Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 1<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

**Re: I/M/O the Implementation of L. 2018, C. 16 Regarding the Establishment of  
a Zero Emission Certificate Program for Eligible Nuclear Power Plant  
BPU Dkt. No. EO18080899**

**Application for Zero Emissions Certificates of Hope Creek  
Nuclear Power Plant  
BPU Dkt. No. EO18121337**

**Application for Zero Emissions Certificates of Salem 1 Nuclear  
Power Plant  
BPU Dkt. No. EO18121338**

**Application for Zero Emissions Certificates of Salem 2 Nuclear  
Power Plant  
BPU Dkt. No. EO18121339**

Dear Secretary Golden:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel as an additional response to Notice issued by the Board of Public Utilities ("Board") in this matter on June 22, 2023. In accordance with the Notice, these comments are being filed electronically at [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov).

**Please acknowledge receipt of these comments.**

## **INTRODUCTION**

In the above-referenced Notice, the Board's Staff sought comments regarding its revenue review of the nuclear power plants selected to receive Zero Emissions Certificates ("ZECs") pursuant to L. 2018, c.16, N.J.S.A. 48:3-87.3 to -87.7 (the "ZEC Law") during the first eligibility period provided in the ZEC Law, April 18, 2019 through May 21, 2022. In the Notice, Staff refers to the period from April 18 through the end of Energy Year 2019, May 31, 2019, as the "Stub Period," and the subsequent three Energy Years, from June 1, 2019 through May 31, 2022, as the "Initial Eligibility Period." The Notice purported to be in compliance with N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3), which require the Board to make an annual determination to assure that a selected nuclear plant does not receive double payment for its fuel diversity, resilience, air quality or other environmental attributes, and with the provisions in the Board's May 20, 2020 Order in above referenced dockets (the "May 2020 Order") that specified the procedure for conducting such reviews, which was to include the filing of financial data with the Board, the development by Staff of preliminary findings, and an opportunity for public comment on the preliminary findings.

The Notice stated that Staff had reviewed confidential materials provided by Public Service Enterprise Group ("PSEG"), on behalf of its subsidiary PSEG Nuclear, covering the Stub Period and Energy Years 2020, 2021, and 2022, and had made "preliminary findings" that there was "no evidence of double-payment, direct or indirect payments, or credits related to the resilience, air quality, or other environmental attributes associated with electricity generated or sold by Salem 1, Salem 2, or Hope Creek during the Stub Period or the Initial Eligibility Period." The Notice provided a two-week period for public comment on these preliminary findings.

Rate Counsel provided a response to the Notice on July 5, 2023. In that response, Rate Counsel noted that Rate Counsel had not been provided with access to the confidential materials that were provided to Staff, and that the Notice provided no supporting detail for Staff's conclusion that there was no evidence of double payment. Accordingly, Rate Counsel was unable to provide meaningful input to the Board. The PJM Independent Market Monitor ("IMM") also filed comments noting that it also had not been provided with the confidential materials submitted to the Board and reviewed by its Staff.

Since that time, subject to an existing Non-Disclosure Agreement, PSEG has provided Rate Counsel with the confidential materials previously provided to the Board. Rate Counsel has reviewed these materials and offers the following comments for the Board's consideration.

### **RATE COUNSEL COMMENTS**

Under the ZEC Law, nuclear plants selected to receive ZECs are required to:

certify annually that the nuclear power plant does not receive any direct or indirect payment or credit under a law, rule, regulation, order, tariff, or other action of this State or any other state, or a federal law, rule, regulation, order, tariff, or other action, or a regional compact, despite its reasonable best efforts to obtain any such payment or credit, for its fuel diversity, resilience, air quality or other environmental attributes that will eliminate the need for the nuclear power plant to retire, except for any payment or credit received under the provisions of this act; ....

[N.J.S.A. 48:3-87.5(e)(4).]

The Board is charged with conducting reviews on an annual basis, to assure that, if such payment or credits are received, ratepayers will receive the benefit:

To ensure that a selected nuclear power plant shall not receive double-payment for its fuel diversity, resilience, air quality, or

other environmental attributes, the board shall annually determine the dollar amount received by the selected nuclear power plant in an energy year pursuant to a law, rule, regulation, order, tariff, or other action of this State or any other state, or a federal law, rule, regulation, order, tariff, or other action, or a regional compact referenced in paragraph (4) of subsection e. of this section.

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

If the Board determines that a double payment has been received, it is directed to reduce the amount of ZECs required to be purchased from the selected nuclear plant by an amount equal in value to the dollar amount determined by the Board. Ibid. Further, if the Board determines that a selected nuclear plant is receiving revenues for fuel diversity, resilience, air quality, or other environmental attributes, it must “immediately reduce the number of ZECs on a prospective basis consistent with the level of such revenues.” Ibid.

For the Initial Eligibility Period, PSEG Nuclear made three annual filings of the information specified in the May 2020 Order: (1) June 30, 2020 for the Stub Period and Energy Year 2020; (2) June 30, 2021 for Energy Year 2021; and (3) June 30, 2022 for Energy Year 2023. On October 19, 2023, Rate Counsel and the IMM were provided with the confidential materials previously submitted to the Board. Rate Counsel has reviewed these materials, and found no indication that PSEG Nuclear received any direct or indirect payments, other than ZECs, for the nuclear units’ fuel diversity, resilience, air quality or other environmental attributes.

However, Rate Counsel notes that the information reviewed by Rate Counsel is not complete. In each of PSEG’s transmittal letters to Board, the Company stated that the information submitted only related to PSEG Nuclear’s ownership interests in the nuclear units,

but did not include either information that PSEG Nuclear could not appropriately share with Exelon (now Constellation) or information related to Exelon's or Constellation's ownership interest in the Salem 1 and Salem 2 nuclear unit, that could not be shared with PSEG Nuclear. Each of PSEG's transmittal letters stated that information was being supplied separately by Exelon or Constellation. However, Rate Counsel has not been provided with any confidential information that may have been submitted to the Board by Exelon or Constellation. In addition, it not clear whether PSEG Nuclear has provided the Board or Rate Counsel with the information that could not be shared with Exelon. In order to facilitate future annual revenue reviews, both PSEG Nuclear and Constellation should be directed to provide Rate Counsel and the IMM with complete copies of their submissions to the Board.

In addition, as noted in Rate Counsel's July 5, 2023 comments, the Board should take steps to comply with the statute and the May 2020 Order for the current ZEC eligibility period, which covers energy years 2023, 2024, and 2025. Rate Counsel and the IMM have been provided with PSEG Nuclear's submission for Energy Year 2023. Any submissions from Constellation should be provided to Rate Counsel and the IMM immediately, so that the revenue review for energy year 2023 can be completed by February of 2024. Further, Staff should be directed to adhere to the timeline specified in the May 2020 Order for subsequent energy years.

Further, in preparing these comments Rate Counsel noted that PSEG Nuclear, to date, has not copied Rate Counsel or any other parties, except for the Board's Staff, when submitting various reports to the Board in relation to the nuclear units, including the annual certification, required under N.J.S.A. 48:3-87.5(b)(3), that it will continue to operate the units at full or near full capacity for the duration of the current ZEC eligibility period. PSEG Nuclear should be

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directed to provide copies of all such reports to Rate Counsel and all other parties to the above-referenced proceedings. Moreover, copies of any confidential portions of such reports should also be provided to Rate Counsel and IMM.

Respectfully submitted,

Brian O. Lipman, Esq.

Director, Division of Rate Counsel

By: */s/ Sarah H. Steindel*

Sarah H. Steindel, Esq.

Assistant Deputy Rate Counsel

c: Service List