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January 25, 2024

Via Electronic Mail

Sherri L. Golden, Secretary
Board of Public Utilities
44 South Clinton Avenue, 1th Floor
P.O. Box 350
Trenton, NJ 08625-0350
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 Salem 1 Nuclear Power Plant
BPU Dkt. No. EO20080557**

**Application for Zero Emissions Certificates of Salem 2 Nuclear Power Plant
BPU Dkt. No. EO20080558**

**Application for Zero Emissions Certificates of Hope Creek Nuclear Power Plant
BPU Dkt. No. EO2008559**

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 the Notice issued by the Board of Public Utilities ("Board") in this matter on December 21, 2023. In accordance with the Notice, these comments are being filed electronically at 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") for the first energy year of the second eligibility period provided in the ZEC Law, i.e. Energy Year 2023 (June 1, 2022 through May 31, 2023). The Notice purports 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 Nuclear, LLC ("PSEG") and Constellation Energy Generation, LLC ("Constellation") covering Energy Year 2023 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 Energy Year 2023 of the Second Eligibility Period." The Notice provided approximately a month period for public comment on these preliminary findings.

Rate Counsel has obtained the confidential materials that PSEG and Constellation previously provided to the Board. Rate Counsel has reviewed these materials and offers the following comments to the Board.

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. Id. 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.” Id.

For Energy Year 2023, PSEG and Constellation made an annual filing of the information specified in the May 2020 Order: June 30, 2023 for Energy Year 2023. Rate Counsel has reviewed these materials, and has found no indication that PSEG or Constellation received any direct or indirect payments, other than ZECs, for the nuclear units’ fuel diversity, resilience, air quality or other environmental attributes.

In preparing these comments Rate Counsel notes that neither PSEG nor Constellation to date has copied Rate Counsel or any other parties except for the Board’s Staff when it submits 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 and Constellation should be directed to provide copies, including confidential information, of all such reports to Rate Counsel and the IMM to the above-referenced proceedings, at the same time the reports are provided to the Board and its Staff. Copies of any confidential portions of such reports should be provided to Rate Counsel and the IMM when both parties provide their respective annual filings to Board Staff.

Finally Rate Counsel notes that starting on January 1, 2024, the three nuclear plants will qualify for the nuclear production tax credit under the 2022 Inflation Reduction Act.¹ Under the Inflation Reduction Act, the three nuclear plants will be eligible to receive production tax credits of up to \$15 per megawatt-hour from 2024 through 2032. Under the ZEC law, the Board must account for such payments:

Notwithstanding paragraph (2) of this subsection, the number of ZECs purchased by each electric public utility from a selected nuclear power plant for an energy year shall be reduced by the number of ZECs equal in value to the dollar amount determined by the board in this paragraph, multiplied by the percentage of electricity distributed in the State by the electric public utility as compared to other electric public utilities in the State. To the extent that the board determines that a selected nuclear plant receives revenues for its fuel diversity, resilience, air quality, or other environmental attributes, the board shall immediately reduce the number of ZECs on a prospective basis consistent with the level of such revenues.

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

Rate Counsel recommends that the Board require PSEG and Constellation to provide, no later than May 15, 2024, illustrative calculations of the monetary value of the production tax credits the three nuclear plants will receive under the Federal nuclear production tax credit and how the New Jersey ZEC amount will be reduced in conjunction with the Federal nuclear production tax credit to the Board, Rate Counsel, and the IMM. This will allow the Board, Rate Counsel, and

¹ Department of Energy. *Inflation Reduction Act Keeps Momentum Building for Nuclear Power*. September 8, 2022. Available at: <https://www.energy.gov/ne/articles/inflation-reduction-act-keeps-momentum-building-nuclear-power>

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the IMM to review PSE&G's and Constellation's proposed methodology in advance of the filing of the annual reports required by N.J.S.A. 48:3-87.5(i)(3) for Energy Year 2024.

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

**In the Matter of the Application of
PSEG Nuclear, LLC and Exelon
Generation Company, LLC for the
Zero Emission Certificate (ZEC) 2
Program**

**Docket Nos. ER20080557,
ER20080558. ER20080559**

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