



Agenda Date: 2/14/24
Agenda Item: 9A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE APPLICATION FOR)	ORDER PERTAINING TO
ZERO EMISSION CERTIFICATES OF SALEM 1)	THE ANNUAL REVENUE
NUCLEAR POWER PLANT)	REVIEW FOR THE STUB
)	PERIOD AND INITIAL
)	ELIGIBILITY PERIOD
IN THE MATTER OF THE APPLICATION FOR)	
ZERO EMISSION CERTIFICATES OF SALEM 2)	DOCKET NO. EO18121338
NUCLEAR POWER PLANT)	
)	
IN THE MATTER OF THE APPLICATION FOR)	DOCKET NO. EO18121339
ZERO EMISSION CERTIFICATES OF HOPE)	
CREEK NUCLEAR POWER PLANT)	DOCKET NO. EO18121337

Parties of Record:

Brian O. Lipman, Esq, Director, New Jersey Division of Rate Counsel
Aaron Karp, Esq., Associate Counsel – Regulatory, PSEG Services Corporation on behalf of PSEG Nuclear, LLC
Jeffrey W. Mayes, Esq., General Counsel, Monitoring Analytics, LLC
Carrie H. Allen, Esq., Constellation Energy Generation, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers Board Staff’s (“Staff”) findings pertaining to the annual revenue review of nuclear power plants (“Units”) selected to receive Zero Emission Certificates (“ZECs”) during the period April 18, 2019 through May 31, 2019 (“Stub Period”), and the first ZEC eligibility period, June 1, 2019 through May 31, 2022 (“Initial Eligibility Period”).

BACKGROUND / PROCEDURAL HISTORY

On May 23, 2018, Governor Phil Murphy signed L. 2018, c. 16, N.J.S.A. 48:3-87.3 to -87.7 (“Act”), into law. The Act requires the Board to create a program and mechanism for the issuance of ZECs (“ZEC Program”). Under the ZEC Program, the Board receives and reviews applications from nuclear generating facilities, determines Unit eligibility, and, if approved by the Board, awards ZECs to the Units.

A ZEC represents the fuel diversity, air quality, and other environmental attributes of one megawatt-hour (“MWh”) of electricity generated by a Unit selected by the Board to participate in the ZEC Program. As mandated by the Act, every three (3) years the Board conducts a proceeding to certify which, if any, Units are eligible to participate in the ZEC Program and receive ZECs in accordance with the Act. The Board subsequently requires New Jersey’s four (4) investor-owned electric distribution companies (“EDCs”) and one municipal utility, Butler Electric Company (“Butler”), to purchase ZECs from the selected Unit(s).¹

By Order dated April 18, 2019, the Board awarded ZECs to the Salem 1 Nuclear Generating Plant (“Salem 1”), Salem 2 Nuclear Generating Plant (“Salem 2”), and Hope Creek Nuclear Generating Plant (“Hope Creek”) (collectively, “Selected Units”) for the Stub Period and the Initial Eligibility Period.² By the April 2019 Order, the Board also directed Staff to provide the Board with recommendations regarding the ZEC Program’s continued and forward implementation (“Forward Requirements”). One Forward Requirement provided in N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3) requires the Board to ensure that a Selected Unit does not receive a “double-payment” for its fuel diversity, resilience, air quality, or other environmental attributes by receiving funding awards related to those attributes from a source other than the ZEC Program.

On July 30, 2019, Public Service Enterprise Group (“PSEG”) submitted revenue data on behalf of PSEG Nuclear, LLC (“PSEG Nuclear”) to the Board for Energy Year 2019 regarding the Stub Period and information detailing the amount of MWh generated by the Selected Units, employment information, and the amount of money held in ZEC accounts. The data also included information on the MWh of electricity distributed by the EDCs and Butler, ZEC Price and Monthly Purchase Detail calculations, and MWh generation details for the Selected Units from January 2017 to June 2018. Additionally, this information contained personnel affidavits and certifications from PSEG and PSEG Nuclear.

By Order dated May 20, 2020 (“May 2020 Order”), the Board finalized the Forward Requirements including, but not limited to, the annual revenue review whereby the Board directed ZEC recipients to file financial documents and certifications pertaining to payments, credits, and revenues received by the Units’ owners for generation in the prior energy year.³ The Board accordingly required Staff to identify any funds found to be duplicative and recommend to the Board, after submitting its preliminary findings for public comment, whether an equivalent number of ZECs,

¹ The EDCs are Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company.

² In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337, Order dated April 18, 2019, (“April 2019 Order”).

³ In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337, Order dated May 20, 2020 (“May 2020 Order”).

representing the real costs received in duplicate, should be subtracted from the prior energy year payment obligation to the Unit owners.

In response to the May 2020 Order, PSEG and Constellation Energy Corporation (“Constellation”) annually submitted confidential materials on behalf of PSEG Nuclear for Energy Years 2020, 2021, and 2022.⁴ Staff utilized the confidential materials to conduct the required Annual Revenue Review pursuant to the Act, specifically N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3). The confidential materials included the Annual Revenue Review, Estimated Hedge Profit and Loss Proportion, PJM Power Hedges, MWh generation details, Selected Nuclear Plants Generation Losses, ZEC Price and Monthly Purchase Details, and employment information. PSEG and Constellation also submitted actual confidential information covering the periods of June 2018 through May 2020, June 2020 through May 2021, and June 2021 through May 2022, including the MWh of electricity distributed by the EDCs and Butler and generated by the Selected Nuclear Plants, ZEC Price and Monthly Purchase Details, and personnel affidavits and certifications.

On November 18 and 22, 2022, PSEG and Constellation provided Staff additional confidential information that clarified and supplemented the original data submissions. This additional information comprised Confidential Revenue and Ownership data, PJM Market Revenues, PJM Generator LMP Charge Summaries, PJM Generator Portfolio Credit Summaries, PJM RPM Auction Credits, PJM Billing, Settlements & Credits, PSEG NJ Manufacturing Credit work papers, and personnel affidavits and certifications.

PROCESS

Staff reviewed and analyzed the Selected Nuclear Plants’ certified data and documentation pursuant to the Act and the May 2020 Order. Staff found 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.⁵

Additionally, Staff posted a public notice on June 22, 2023 seeking comments on the above preliminary findings and reviewed all received (“Notice”).⁶ The Board timely received written comments from the New Jersey Division of Rate Counsel (“Rate Counsel”), PJM Power Providers (“P3”), jointly from Public Service Electric and Gas Company (“PSE&G”) and Atlantic City Electric Company (“ACE”), and jointly from PSEG Nuclear and Constellation. Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor (“IMM”), filed comments one (1) day after the deadline. The comments are summarized below.

⁴ Constellation comprises the company formerly known as Exelon Generation which participated in the Stub Period and Initial Eligibility Period.

⁵ See N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3).

⁶ https://nj.gov/bpu/pdf/publicnotice/Notice_RequestforComment_ZEC_Double_Payment.pdf

Rate Counsel

In its comments, Rate Counsel asserted that the process contemplated in the Notice is a violation of the Act, the Board's Orders, and the due process rights of Rate Counsel and the other parties to the proceedings. Rate Counsel Comments at 3. Rate Counsel urged the Board to take steps to remedy the purported deficient process. Ibid.

Rate Counsel proffered that the parties to these dockets, including those granted intervenor status with authorization to receive confidential information, did not receive the materials submitted by the nuclear power plants, or notice of the submittals. Id. at 3, 5. As a result, Rate Counsel claimed that Staff failed to comply with the Board's directive to present preliminary findings in the December following each Energy Year. Id. at 5. Rate Counsel further noted that the results of the annual review were not available when the Board conducted the eligibility review for the second ZEC eligibility period in 2020 and 2021. Ibid.

Rate Counsel also contended that Staff's preliminary findings contained no actual findings, only a conclusory statement that Staff reviewed the documentation received from the nuclear plants and found no evidence of any double-payment. Ibid. According to Rate Counsel, the process contemplated by the Notice will not provide an adequate foundation for the determination the Board is required to make. Id. at 6. Additionally, Rate Counsel claimed that the opportunity for comment provided in the Notice does not comport with due process.

Accordingly, Rate Counsel suggested that Staff be directed to make the Unit owners' complete submissions available to the two (2) intervenors granted access to confidential information: Rate Counsel and the IMM. Rate Counsel proffered that Staff should be directed to prepare detailed reports of its preliminary findings for public comment and allow a minimum of 60 days for comments. Id. at 7. Additionally, Rate Counsel recommended that the Board take steps to comply with the Act and the May 2020 Order for the current ZEC eligibility period, which covers Energy Years 2023, 2024, and 2025. Ibid.

P3

P3 expressed its opposition to any subsidies, ZECs in particular, that result in a distortion of the interstate power market. P3 Comments at 2. P3 noted that it provides PJM IMM data that shows surplus sufficient earnings and revenues for continued operations without additional ZEC subsidies. Id. at 3. P3 recommended the Board end ZEC payments. Id. at 6.

PSE&G and ACE

PSE&G and ACE noted that the retirement of New Jersey's nuclear power plants would adversely affect State's effort to reduce the production of greenhouse gases by electric power generation sources and expressed support of the ZEC Program and the preliminary findings of no duplicative payment received by the nuclear power plants. PSE&G and ACE Comments at 1-2.

PSEG Nuclear and Constellation

PSEG Nuclear and Constellation jointly agreed with Staff's preliminary findings that no Unit received duplicative payments. PSEG Nuclear and Constellation Comments at 2.

IMM

The IMM questioned Staff's preliminary findings based on its analysis of PJM nuclear plants, asserting that nuclear power plants received payments greater than their avoidable costs. IMM Comments at 2. The IMM additionally requested access to confidential financial data submitted by the nuclear power plants, as well as time to evaluate the information. Id. at 3.

DISCUSSION AND FINDINGS

The Board reviewed and considered all comments received in this matter in making its decision. With regard to Rate Counsel's concerns, the Board acknowledges that, while Staff received and reviewed required data annually, it did not generate the annual revenue review reports timely for the Stub Period and Energy Years 2020, 2021, and 2022 of the Initial Eligibility Period. Several commenters indicated that, as of the comment deadline, they had not received the annual data from the Units receiving ZECs. All intervenors subsequently, and prior to submitting final comments, received the requested data from the Units.

P3 noted their opposition to any subsidies that interfere with competitive, regional, federally regulated wholesale energy markets or providing market support for only select resources. The Board emphasizes that the Act specifically directs the Board to recognize the significance of nuclear power to New Jersey's energy needs and environmental goals through the ZEC Program but does not direct the Board to favor nuclear power over other resources or otherwise interfere with federal action regarding the Units.

The IMM raised concerns that it is not possible to evaluate Staff's revenue review analysis without having access to the information upon which it was based and argued it should receive access to the confidential information and time to conduct its own analysis. As noted above, the IMM subsequently received the requested data. The Board additionally notes that the IMM's comments on the eligibility of nuclear plants to receive ZECs and the importance of testing against their avoidable costs are not applicable to the annual revenue review for double-payments, and notes that the Board previously found the Units eligible to receive ZECs in its April 2019 Order.

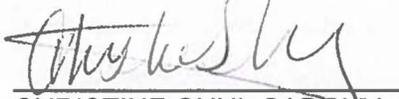
Because the nuclear plants provided the requested confidential data to intervenors that signed the requisite nondisclosure agreements, the intervenors updated their comments to include their review of the relevant data. Further comments submitted by these intervenors noted that there exists no evidence that the Units received double-payments for fuel diversity, resilience, air quality, or other environmental attributes during the Stub Period and the Initial Eligibility Period.

After reviewing the record in this matter, including Staff's revenue review report (see Attachment A), and all written comments, the Board **HEREBY ADOPTS** Staff's ZEC revenue review finding that qualified nuclear power plants awarded ZECs in the Stub Period and the Initial Eligibility Period comprising Energy Years 2020, 2021 and 2022 received no double-payments for fuel diversity, resilience, air quality, or other environmental attributes by receiving funding awards related to those attributes from a source other than the ZEC Program.

This Order shall be effective on February 21, 2024.

DATED: February 14, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 1 NUCLEAR POWER PLANT
APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 2 NUCLEAR POWER PLANT
APPLICATION FOR ZERO EMISSION CERTIFICATES OF HOPE CREEK NUCLEAR POWER PLANT
DOCKET NOS. EO18121338, EO18121339, EO18121337

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ATTACHMENT A

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Governor Philip D. Murphy
Lt. Governor Sheila Y. Oliver

Board of Public Utilities



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President

Mary-Anna Holden
Dr. Zenon Christodoulou
Christine Guhl-Sadovy
Marian Abdou
Commissioners

NOTICE⁷

REQUEST FOR COMMENTS

**IN THE MATTER OF THE IMPLEMENTATION OF L. 2018, c. 16 REGARDING THE
ESTABLISHMENT OF A ZERO EMISSION CERTIFICATE PROGRAM FOR ELIGIBLE
NUCLEAR PLANTS**

Docket No. [EO18080899](#)

AND

**APPLICATION FOR ZERO EMISSION CERTIFICATES OF HOPE CREEK NUCLEAR
POWER PLANT**

Docket No. [EO18121337](#)

**APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 1 NUCLEAR POWER
PLANT**

Docket No. [EO18121338](#)

**APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 2 NUCLEAR POWER
PLANT**

Docket No. [EO18121339](#)

Staff of the New Jersey Board of Public Utilities (“Board”) invites all interested parties and

⁷ Not a paid legal advertisement.

members of the public to provide written comments regarding Board Staff's ("Staff") revenue review of nuclear power plants selected to receive Zero Emission Certificates ("ZECs") during the Stub Period (April 18, 2019 through May 31, 2019) and the Initial Eligibility Period (June 1, 2019 through May 31, 2022).

BACKGROUND AND PROCEDURAL HISTORY

On May 23, 2018, Governor Phil Murphy signed into law L. 2018, c. 16 (C.48:3-87.3 to -87.7) ("Act") requiring the Board to create a program and mechanism for the issuance of ZECs ("ZEC Program"). Under the ZEC Program, the Board receives and reviews applications from nuclear generating facilities, determines eligibility, and if approved by the Board, the nuclear power plant(s) receive ZECs in accordance with the Act.

On April 18, 2019, the Board awarded ZECs to Salem 1 Nuclear Generating Plant ("Salem 1"), Salem 2 Nuclear Generating Plant ("Salem 2"), and the Hope Creek Nuclear Generating Plant ("Hope Creek") (collectively, "Selected Nuclear Plants") for the Stub Period and the Initial Eligibility Period.⁸ In the April 2019 Order, the Board also directed Staff to provide the Board with recommendations regarding the ZEC Program's continued and forward implementation ("Forward Requirements"). One Forward Requirement provided in N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3) requires the Board to ensure that a selected nuclear plant does not receive double-payment for its fuel diversity, resilience, air quality, or other environmental attributes.

By Order dated May 20, 2020, the Board finalized the Forward Requirements including, but not limited to, the revenue review.⁹ As noted in the May 2020 Order, the Board directed ZEC recipients to file financial documents pertaining to payments, credits, and revenues received by the unit owners for generation in the prior energy year. The Board accordingly required Staff to identify any funds found to be duplicative, and recommend that an equivalent number of ZECs, representing the real costs received in duplicate, be subtracted from the prior energy year payment obligation to the unit owners. As further noted in the May 2020 Order, Staff must submit its preliminary findings for public comment before presenting its final findings to the Board for consideration

THE SELECTED NUCLEAR PLANTS' CERTIFIED DATA AND DOCUMENTS

On July 30, 2019, Public Service Enterprise Group ("PSEG") Service Corporation submitted data on behalf of PSEG Nuclear to the Board for Energy Year 2019. The data covered the Stub Period and included information on the megawatt hour ("MWh") quantity generated by the Selected

⁸ In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337, Order dated April 18, 2019, ("April 2019 Order").

⁹ In re the Matter of the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants, BPU Docket No. EO18080899; Application for Zero Emission Certificates of Salem 1 Nuclear Power Plant, BPU Docket No. EO18121338; Application for Zero Emission Certificates of Salem 2 Nuclear Power Plant, BPU Docket No. EO18121339; Application for Zero Emission Certificates of Hope Creek Nuclear Power Plant, BPU Docket No. EO18121337 (Order dated May 20, 2020 at Page 12) ("May 2020 Order").

Nuclear Plants, employment information, and the amount of money held in the ZEC accounts. The data also included information on the MWh of electricity distributed by the Electric Distribution Companies (“EDCs”), ZEC Price and Monthly Purchase Detail calculations, and MWh generation details for the Selected Nuclear Plants from January 2017 to June 2018. Additionally, this information contained personnel affidavits and certifications from PSEG and PSEG Nuclear.

In response to the May 2020 Order, PSEG annually submitted confidential materials on behalf of PSEG Nuclear for Energy Years 2020, 2021, and 2022. Staff utilized the confidential materials to conduct the required Annual Revenue Review pursuant to the Act, specifically N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3). The confidential materials included the Annual Revenue Review, Estimated Hedge Profit and Loss Proportion, PJM Power Hedges, MWh generation details, Selected Nuclear Plants Generation Losses, ZEC Price and Monthly Purchase Details, and employment information.

PSEG also submitted actual confidential information covering the periods of June 2018 through May 2020, June 2020 through May 2021, and June 2021 through May 2022, including the MWh of electricity distributed by the EDCs and generated by the Selected Nuclear Plants, ZEC Price and Monthly Purchase Details, and personnel affidavits and certifications.

Finally, on November 18 and 22, 2022, PSEG and Constellation Energy Corporation provided Staff additional confidential information that clarified and added to the original data submissions. This additional information comprised Confidential Revenue and Ownership data, PJM Market Revenues, PJM Generator LMP Charge Summaries, PJM Generator Portfolio Credit Summaries, PJM RPM Auction Credits, PJM Billing, Settlements & Credits, PSEG NJ Manufacturing Credit work papers, and personnel affidavits and certifications.

PRELIMINARY FINDINGS

Staff thoroughly reviewed and analyzed the Selected Nuclear Plants’ certified data and documentation submitted pursuant to the Act, and the May 2020 Order. Staff finds 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.¹⁰ Accordingly, Board Staff does not recommend any reduction to the payment obligation to the nuclear plant owners during the Stub Period or Initial Eligibility Period.

The deadline for comments on this matter is 5 p.m. on July 6, 2023.

Please submit comments directly to Docket No. EO18080899 listed above using the “Post Comments” button on the Board’s [Public Document Search](#) tool. Comments are considered “public documents” for purposes of the State’s Open Public Records Act. Only public documents should be submitted using the “Post Comments” button on the Board’s Public Document Search tool. Any confidential information should be submitted in accordance with the procedures set forth in N.J.A.C. 14:1-12.3. In addition to hard copy submissions, confidential information may also be filed electronically via the Board’s e-filing system or by email to the Secretary of the Board. Please include “Confidential Information” in the subject line of any email. Instructions for confidential e-filing are found on the Board’s webpage, <https://www.nj.gov/bpu/agenda/efiling>.

¹⁰ See N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3).

Emailed and/or written comments may also be submitted to:

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Dated: June 22, 2023

Sherri L. Golden

Sherri L. Golden
Secretary of the Board