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DIVISION OF STATE ENERGY SERVICES

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

ORDER APPROVING A ZERO EMISSION CERTIFICATE RECOVERY CHARGE TARIFF )

IN THE MATTER OF THE APPLICATION OF BUTLER ELECTRIC UTILITY FOR APPROVAL TO IMPLEMENT A ZERO EMISSION CERTIFICATE ("ZEC") CHARGE AND TARIFF PAGE(S) RELATED THERETO IN SUPPORT OF THE ZEC PROGRAM AUTHORIZED BY N.J.S.A. 48:3-87.3 ET SEQ. AND A BOARD ORDER INITIATING THE ZEC PROGRAM, DATED AUGUST 29, 2018 )

DOCKET NO. EO18080899 )

DOCKET NO. EO18091018 )

**Parties of Record:**

**Robert H. Oostdyk, Jr., Esq.,** Murphy McKeon, P.C. for Butler Electric Utility  
**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel

BY THE BOARD:

**BACKGROUND**

On May 23, 2018, Governor Phil Murphy signed into law L. 2018, c. 16 (C.48:3-87.3 to 87.7) ("Act"). The Act requires the New Jersey Board of Public Utilities ("Board") to create a program and mechanism for the issuance of Zero Emission Certificates ("ZECs"), each of which represents the fuel diversity, air quality, and other environmental attributes of one megawatt-hour of electricity generated by an eligible nuclear power plant selected by the Board to participate in the program. Under the program, certain eligible nuclear energy generators in the PJM Interconnection, LLC ("PJM") footprint may be approved to provide ZECs for the State's energy supply, which in turn will be purchased by New Jersey's four (4) investor-owned electric distribution companies, i.e., Atlantic City Electric ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and municipal electric distribution company Butler Electric Utility ("Butler") (collectively, "EDCs"). The Act identifies the steps required to establish this program, including program

logistics, funding, costs, application, eligibility requirements, selection process, and timelines associated with each aspect of the legislation.

The Act requires that the Board complete a proceeding within 180 days after the date of enactment of the Act, i.e., by November 19, 2018, to allow for the commencement of a ZEC program. In the proceeding, the Board shall – after notice, the opportunity for comment, and public hearings – issue an order establishing a ZEC program for selected nuclear power plants. The Board's Order must include but need not be limited to: (i) a method and application process for determination of the eligibility and selection of nuclear power plants; and (ii) establishment of a mechanism for each EDC to purchase ZECs from selected nuclear power plants and a mechanism for the Board to effectuate the provisions of N.J.S.A. 48:3-87.5(i). See N.J.S.A. 48:3-87.5(b).

The Act also requires that the Board complete a proceeding to certify applicant nuclear power plants as eligible for the program and to establish a rank-ordered list of the nuclear power plants eligible to be selected to receive ZECs. This proceeding must be completed no later than 330 days after the date of enactment of the Act, i.e., April 18, 2019, after notice, the opportunity for comment, and public hearing. See N.J.S.A. 48:3-87.5(d).

In addition, within 150 days after the date of enactment of the Act, i.e., by October 22, 2018, the Act required each EDC to file with the Board a proposed tariff to recover from its retail distribution customers a charge in the amount of \$0.004 per kilowatt-hour ("kWh") excluding Sales and Use Tax ("SUT"), which, according to the Act, reflects the emissions avoidance benefits associated with the continued operation of selected nuclear power plants. The Act provides that the Board shall approve the appropriate tariff after notice, the opportunity for comment, and public hearings, within 60 days after the EDCs' tariffs are filed. See N.J.S.A. 48:3-87.5(j).

By Order dated August 29, 2018<sup>1</sup>, the Board directed the EDCs to file tariffs in compliance with the Act by October 22, 2018 for approval by the Board.<sup>2</sup> On October 9, 2018, Butler Electric Utility ("Butler" or "Company") submitted its request for Board approval for Butler to recover from its retail distribution customers a non-bypassable, irrevocable charge in the amount of \$0.004 per kilowatt-hour ("ZEC charge"). The request included a proposed tariff sheet and a notice of filing and public hearings scheduling two (2) public hearings. Butler held one public hearing in its territory, Borough of Butler, on Tuesday, October 30, 2018 at 4:00 P.M. and 6:00 P.M. No members of the public attended the hearing, and no written comments were received.

After filing its initial tariff on October 9, 2018, Board Staff ("Staff") advised all EDCs to submit modified and uniform tariffs by November 19, 2018, consistent with discussions held among the EDCs, the New Jersey Division of Rate Counsel ("Rate Counsel"), and Staff. All EDCs were directed to update the proposed tariffs to include language regarding the commencement of the collection of interest and the disposition of the interest collected in accordance with the Act. On November 19, 2018, Butler filed its revised proposed tariff.

#### Motion to Intervene

By letter dated October 19, 2018, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("IMM") for PJM, filed a motion to intervene in the underlying Board established ZEC

<sup>1</sup> I/M/O 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 (August 29, 2018).

<sup>2</sup> The Order also directed any party interested in intervening or participating in the tariff portion of the proceeding to make the appropriate filing by October 23, 2018.

proceeding, and in the individually proposed tariff filings made by the EDCs.<sup>3</sup> The IMM states that it is an organization created to objectively monitor the competitiveness of PJM markets and that PJM's Open Access Transmission Tariff requires the IMM to monitor compliance with PJM market rules, actual or potential design flaws in PJM market rules, structural problems in the PJM market that may inhibit a robust and competitive market, and the potential for a market participant to exercise market power or violate any PJM rules.<sup>4</sup> The IMM asserted that, as this proceeding involves review of the establishment of a ZEC program and approval of an associated charge for eligible nuclear power plants operating in PJM competitive markets, it implicates matters within the IMM's purview.<sup>5</sup> The IMM also asserted that, if approved, this proposal could have a substantial impact on competition in the competitive wholesale electric markets administered by PJM, which may in turn have a substantial impact on competition and rates in the retail markets subject to the Board's jurisdiction.<sup>6</sup> Further, the IMM stated that its interest in the outcome of this proceeding is in protecting the public interest in PJM markets regulated through competition, that the IMM has a substantial interest in these proceedings because it has the exclusive duty to perform the market monitoring function for PJM in accordance with the duties required by the PJM tariff, and that no other party can adequately represent the IMM's interests.<sup>7</sup>

Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Nuclear LLC ("PSEG Companies") submitted a brief dated October 29, 2018 in opposition to the IMM's motion to intervene, arguing that the IMM failed to satisfy the statutory criteria requiring it to demonstrate that it is "essential" to aid the Board in making the determinations required under the Act and asserting that the IMM failed to satisfy the regulatory criteria for intervention.<sup>8</sup>

## DISCUSSION AND FINDINGS

The Act contemplates that certain parties may be deemed by the Board as essential in aiding the Board to make determinations concerning the award of ZECs. Specifically, N.J.S.A. 48:3-87.5(a) provides:

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.

The Board both acknowledges and supports the IMM's mandate. The Board, individually and as a member of the Organization of PJM States, Inc. ("OPSI"), has repeatedly supported the IMM's ability to independently engage in proceedings before the FERC.<sup>9</sup> The Board and OPSI have recognized that

<sup>3</sup> Motion to Intervene of the Independent Market Monitor for PJM (October 19, 2018) ("IMM's Motion"). In that same filing, the IMM moves for Admission of Counsel pro hac vice.

<sup>4</sup> IMM's Motion at 2.

<sup>5</sup> Ibid.

<sup>6</sup> Id. at 2-3.

<sup>7</sup> Id. at 3.

<sup>8</sup> Public Service Electric and Gas Company's PSEG Power LLC's and PSEG Nuclear LLC's Brief in Opposition to Motion to Intervene of the Independent Market Monitor of PJM (October 29, 2018).

<sup>9</sup> See, e.g., Joint Reply and Motion for Leave to Reply of the Pennsylvania Public Utility Commission, New Jersey Board of Public Utilities, and Delaware Public Service Commission, FERC Docket No. ER16-372 (Mar. 31, 2017) ("The Joint State Commissions have traditionally been supportive of a strong IMM role . . ."); see, e.g., Motion for Leave to Answer and Answer of the Organization of PJM States, Inc., FERC Docket No. ER16-372 (May 9, 2017) (providing background of OPSI's continued support of a strong and truly independent market monitor) ("OPSI Answer").

the IMM's role helps to ensure public confidence in the competitiveness and legitimacy of wholesale markets.<sup>10</sup> As referenced above, the FERC issued an order on June 29, 2018 that claims that "the integrity and effectiveness of the capacity market," a wholesale market administered by PJM, "have become untenably threatened by out-of-market payments provided or required by certain states for the purpose of supporting the entry or continued operation of preferred generation resources."<sup>11</sup>

Also, the Board acknowledges that the IMM is in a unique position to review the financial viability of nuclear power plants seeking ZECs based on its experience reviewing generators' costs in the PJM capacity markets as part of reviewing unit-specific competitive offers. However, this particular motion seeks involvement in the discrete issue of the creation of a tariff page, for inclusion in the tariff of each EDC, that essentially advises electric distribution customers of the amount they will be billed for the cost of the ZEC program, a number that has already been set by the Legislature. While we appreciate the IMM's expertise relevant to certain portions of the ZEC proceeding, that expertise would not aid the Board in its determination on the creation of a tariff order. Therefore, with respect to the tariff portion of this proceeding, the IMM's knowledge and expertise would not aid the Board in its decision and would not add measurably and constructively to the scope of this aspect of the proceeding. See N.J.A.C. 1:1-16.1(b) and N.J.A.C. 1:1-16.6.

Therefore, after weighing the issues carefully, the Board **HEREBY FINDS** that the tariff proceedings do not warrant the IMM's assistance and that the IMM will not add measurably and constructively to the scope of the individual EDC proposed tariff filings. The Board **HEREBY DENIES** the IMM's motion to intervene in the individual EDC tariff filings. As stated earlier, the Board addressed IMM's motion to intervene in the underlying Board established ZEC proceeding in the companion order, I/M/O 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, Order dated November 19, 2018.

The Board, having reviewed the tariff, as modified by Butler, **HEREBY ACCEPTS** Butler's modified tariff, which seeks to implement a non-bypassable, irrevocable charge in the amount of \$0.004 per kWh (excluding SUT). The tariff is not to be implemented unless and until the Board issues a final order authorizing the Company to implement the ZEC program.

The Company's costs will remain subject to audit by the Board. This Order shall not preclude or prohibit the Board from taking further action relating to any such audit.

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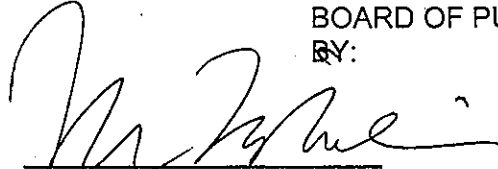
<sup>10</sup> OPSI Answer at 7-8.

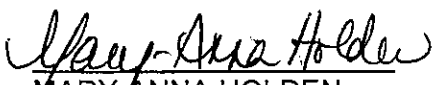
<sup>11</sup> June 29 Order at Paragraph 1.

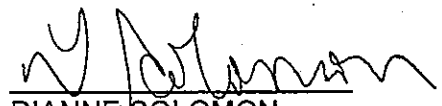
The effective date of this Order is November 29, 2018.

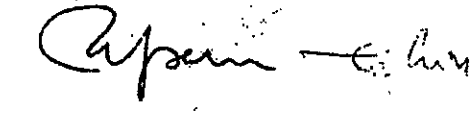
DATED:

BOARD OF PUBLIC UTILITIES  
BY:


  
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PRESIDENT

  
\_\_\_\_\_  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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COMMISSIONER

ATTEST:   
\_\_\_\_\_  
AIDA CAMACHO-WELCH  
SECRETARY

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

**In 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

**I/M/O the Application of Butler Electric Utility for Approval to Implement a Zero Emission Certificate ("ZEC") Charge and Tariff Page(s) Related Thereto in Support of the ZEC Program Authorized by N.J.S.A. 48:3-87.3 et seq. and a Board Order Initiating the ZEC Program, Dated August 29, 2018**

BPU Docket No. EO18091018

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