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Board of Public Utilities
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)	<u>STATE ENERGY SERVICES</u>
)	
)	ORDER ON MOTIONS FOR
)	ADMISSION PRO HAC VICE
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u>)	DOCKET NO. EO18080899
2018, <u>c.</u> 16 REGARDING THE ESTABLISHMENT OF A)	
ZERO EMISSION CERTIFICATE PROGRAM FOR)	
ELIGIBLE NUCLEAR POWER PLANTS)	
)	
APPLICATION FOR ZERO EMISSIONS CERTIFICATES)	DOCKET NO. EO18121338
OF SALEM 1 NUCLEAR POWER PLANT)	
)	
APPLICATION FOR ZERO EMISSIONS CERTIFICATES)	DOCKET NO. EO18121339
OF SALEM 2 NUCLEAR POWER PLANT)	

BY PRESIDENT JOSEPH L. FIORDALISO:

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 implement a Zero Emission Certificate (“ZEC”) program within specified timelines. N.J.S.A. 48:3-87.3 to -87.5. Under the Act, the Board may approve certain eligible nuclear energy generators to receive ZECs, which New Jersey’s electric distribution companies (“EDCs”) would be required to purchase. N.J.S.A. 48:3-87.5(b); N.J.S.A. 48:3-87.5(1). The Act provides that the Board shall order the full recovery of EDCs’ costs associated with the purchased ZECs through a non-bypassable charge imposed on each EDC’s retail distribution customers. N.J.S.A. 48:3-87.5 (j) (1).

The Act identifies the basic steps for the Board to establish a ZEC program, including program logistics, funding, costs, application, eligibility requirements, selection process, and the timeframes for meeting several requirements of the Act. N.J.S.A. 48:3-87.5. By November 19, 2018, within 180 days of the Act’s enactment, the Board was required, after notice, the

opportunity for comment, and public hearing, to issue an order establishing a ZEC program for selected nuclear power plants. N.J.S.A. 48:3-87.5(b).

The Act also directed each EDC to file with the Board within 150 days of the Act's enactment, by October 22, 2018, a tariff to recover from its retail distribution customers a charge of \$0.004 per kilowatt-hour. N.J.S.A. 48:3-87.5(j). The Act identifies this charge as the emissions avoidance benefits associated with the continued operation of a selected nuclear power plant. Ibid. Within 60 days of the filing of each EDC tariff, and after notice, opportunity for comment, and a public hearing, the Board was required to approve the appropriate tariffs. Ibid.

The Act requires the Board to determine whether to certify any applicant to receive ZECs no later than April 18, 2019, 330 days after the Act's enactment, after notice, opportunity for comment, and a public hearing. N.J.S.A. 48:3-87.5(d). The Board is under no obligation to certify any nuclear power plant as an eligible nuclear power plant. Ibid.

Under N.J.S.A. 48:3-87.5(a), a ZEC applicant "shall provide to the board any financial information requested by the board pertaining to the nuclear power plant." Also, N.J.S.A. 48:3-87.5(e)(1) through (e)(5) specifies the criteria for an applicant to be certified by the Board as an eligible nuclear power plant. Four of the five criteria (N.J.S.A. 48:3- 87.5(e)(1), (2), (4), and (5)) deal with information that is readily ascertainable and largely incontrovertible. N.J.S.A. 48:3-87.5(e)(3) requires the applicant to demonstrate that the environmental attributes of the nuclear power plant "are at risk of loss" because it "is projected to not fully cover its costs and risks," or not cover its costs, and that it "will cease operations within three years unless [it] experiences a material financial change." Ibid.

Because certain application information may be claimed to be confidential by the ZEC applicant, the Act provides:

The financial and other information required pursuant to this subsection may be submitted on a confidential basis and shall be treated and maintained as confidential by the board and shall not be subject to public disclosure, notwithstanding any law to the contrary, including the common law. 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.

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

PROCEDURAL HISTORY

Initiating Order

On August 29, 2018, the Board approved an Order¹ initiating the ZEC program. Specifically, the Board (i) directed Staff to facilitate the establishment of a ZEC application process and related

¹ 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 Initiating the Zero Emission Certificate Program, Designating Commissioner, and Setting Manner of Service and Bar Date, dated August 29, 2018.

activities under the Act, and take all necessary steps required under the Act, including scheduling public hearings, establishing a comment process, and preparing for consideration by the Board a completed application process by November 19, 2018; (ii) directed the EDCs to file tariffs in compliance with the Act by October 22, 2018, for approval by the Board; (iii) designated the undersigned as Presiding Commissioner, who is authorized to rule on all motions that arise during the pendency of final Board action as required by the Act and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues; and (iv) directed that any entities seeking to intervene or participate in the tariff proceeding file the appropriate motion with the Board by October 23, 2018.

Public Hearings and Comments

By Public Notice ("Notice") dated September 11, 2018, the Board solicited comments from the public and stakeholders on the ZEC program and application process. The Notice sought comments on seventeen questions related to the implementation process for the ZEC program. Also, the Notice invited members of the public to attend and present their views on the implementation and application process at three public hearings to be held on October 4, 2018 in Hackensack; October 10, 2018 in Atlantic City; and October 11, 2018 in New Brunswick. The public hearings proceeded as scheduled and were well attended, with twelve to twenty participants per hearing. Numerous members of the public and stakeholders provided oral and written comments.

November 19, 2018 Orders

On November 19, 2018, the Board issued seven orders (i) establishing a method and application process for determination of the eligibility and selection of nuclear power plants and a mechanism for the EDCs to purchase ZECs from selected nuclear power plants; (ii) ruling on the motions to intervene and/or participate and/or for receipt of confidential information; and (iii) addressing each EDC's ZEC recovery charge tariff filing. The Board did not establish any trial-type adjudicative proceeding for any determination required under the Act.

Six entities filed motions regarding the ZEC program. The New Jersey Division of Rate Counsel ("Rate Counsel") moved for access to confidential information, and five motions were filed to intervene or participate in the proceedings by the New Jersey Large Energy Users Coalition ("NJLEUC"); PJM Independent Market Monitor ("IMM"); NRG Energy, Inc. ("NRG"); PJM Power Providers Group ("P3"); and Public Service Electric and Gas Company ("PSE&G"), PSEG Power LLC, and PSEG Nuclear LLC (collectively, "PSEG Companies").

The Board acknowledged the movants' particular interest in the outcome of the ZEC application proceeding and their potential to contribute to the Board's understanding of the issues in the proceeding. But, in light of the ZEC Act's unique statutory scheme, the Board granted only Rate Counsel and the IMM intervenor status and the right to receive confidential information. The Board granted P3 and the other movants participant status, which precluded them from access to confidential information. The Board found that participant status was warranted, given (i) the Act's various opportunities for public participation through public comments and public hearings; (ii) overall concerns regarding the disclosure and treatment of confidential information; and (iii) the Act's requirement of expeditious Board action.

The Board approved, with the Attorney General's approval subject to N.J.S.A. 48:3-87.5(a), disclosure of confidential information to Rate Counsel and the IMM, conditioned upon execution of the standard non-disclosure agreement ("NDA") used in public utility cases filed with the

Board. In reaching its determination, the Board noted Rate Counsel's statutory role in advocating for utility ratepayers and found that disclosure of confidential information to Rate Counsel would not harm competition. The Board made similar findings under N.J.S.A. 48:3-87.5(a) with respect to the IMM, based upon the IMM's active engagement to preserve competition in PJM wholesale electricity markets.

The Board approved a comprehensive ZEC application form and opened the ZEC application filing window from November 19 to December 19, 2018. The Board also posted responses to questions regarding the ZEC application received after issuance of the November 19, 2018 Orders and the ZEC application at www.state.nj.us/bpu/agenda/zec.html. The Board stated that it would provide access to all applications timely filed, without confidential information, on its website as the Board received them. The Board also stated that persons or entities seeking access to confidential ZEC application information were required to submit such requests to the Board by December 31, 2018. The Board authorized the Presiding Commissioner to issue a decision on all such requests by January 15, 2019, in accordance with N.J.S.A. 48:3-87.5(a). The Board noted that, if additional information on applications is requested, such requests should be made to Staff for review and a determination of need. The Board set January 31, 2019 as the deadline for comments on applications.

December 17, 2018 Prehearing Order

Through an order issued on December 17, 2018, I directed applicants to serve the application and supporting documents in the following manner:

1. When serving the Board, Rate Counsel, and the IMM with the nonredacted version of the application, all applicants were required to submit the NDA (posted on the Board's website) under Docket No. EO1808099, signed on behalf of the applicant. Execution of the NDAs was required to be completed and submitted to the Board on or before December 19, 2018.
2. If the NDA was not fully executed by December 19, 2018, the applicant was required to serve the redacted, public version of the application on the Board, Division of Law, parties, and participants electronically – that is, via email or, if email is not feasible, in an electronic storage medium, such as a data disk, portable hard drive, or flash drive via overnight delivery – with three copies to the Board, four copies to Rate Counsel, and two copies to the IMM. Applicants were also required to serve one electronic copy each to NJLEUC, NRG, and P3. Promptly thereafter, and in order to facilitate efficiency and storage management, applicants were required to provide one double-sided hard copy of the application each to the Board, Division of Law, Rate Counsel, and the IMM.²
3. If the NDA was fully executed by or before December 19, 2018, or once the NDA was fully executed, the applicant was required to serve the full application, including all information provided on a confidential basis, on the Board, Division of Law, Rate Counsel, and the IMM, electronically, as described above. Promptly thereafter, and in order to facilitate efficiency and storage management, the applicant was required to

² After the December 17, 2018 Order was served by email, Staff clarified in an email to the service list that all applicants were required to serve two electronic copies and one hard copy of each application on the Division of Law. Also, any applicant that had printed its application prior to December 17, 2018 single-sided was permitted to submit that application on single-sided paper.

- provide one double-sided hard copy of the application each to the Board, Division of Law, Rate Counsel, and the IMM.
4. Applicants were required to submit spreadsheets in an Excel or comparable format.

December 18, 2018 Order

In its December 18, 2018 Order, the Board approved the selection of Levitan & Associates, Inc. to serve as a consultant to Staff and directed Staff to execute a contract for services related to the ZEC program as described in the RFQ and scope of work.

Also, the Board directed all applicants to submit an application fee of \$250,000 to accompany each application, in compliance with N.J.S.A. 48:3-87.5(e)(5), which required each applicant to submit an application fee to the Board in an amount to be determined by the Board, not to exceed \$250,000, to be used to defray the costs incurred by the Board to administer the ZEC program.

ZEC Applications

On December 19, 2018, the Board received applications from PSEG Nuclear LLC for ZECs for Hope Creek (Docket No. EO18121337), Salem 1 (Docket No. EO18121338), and Salem 2 (Docket No. EO18121339), all located in Lower Alloways Township, Camden County, New Jersey; application fees of \$250,000 for each application; supplemental information submissions from Exelon Generation Company, LLC ("Exelon") in support of the Salem 1 and Salem 2 applications; and a fully executed Non-Disclosure Agreement by the Board, Rate Counsel, and the IMM in connection with the underlying proceeding (Docket No. EO18080899).

The Board has provided access to the redacted versions of the applications on its website. As indicated in the November 19, 2018 Order, comments on applications are due to the Board by January 31, 2019.

Motions for Admission Pro Hac Vice

By motion dated December 19, 2018, Exelon, via Naju R. Lathia, Counsel to Exelon, moved for the admission pro hac vice of Jeanne J. Dworetzky, Esq., in connection with the Salem 1 and Salem 2 applications. Ms. Lathia states that Ms. Dworetzky is a member in good standing of the bars of the Commonwealth of Pennsylvania and the District of Columbia, has significant experience representing the interests of energy companies, and is a specialist in the complex field of law involved in this proceeding. The motion included a sworn affidavit by Ms. Dworetzky, in which she represents that she is associated in this matter with Ms. Lathia as New Jersey counsel of record, Exelon has requested her representation in this matter as an attorney for Exelon, and she has considerable experience representing Exelon in various proceedings before the Federal Energy Regulatory Commission and state public service commissions. She represents that she has paid the fees required by R. 1:20-1(b) and 1:28B-1(e), and she agrees to abide by the other requirements for admission pro hac vice.

By motions dated January 22, 2019, Exelon, via Naju R. Lathia, Counsel to Exelon, moved for the admission pro hac vice of James B. Blackburn IV, Esq. and Florence K.S. Davis, Esq., in connection with the Salem 1 and Salem 2 applications. Ms. Lathia states that Ms. Davis is a member in good standing of the bars of Maryland and Connecticut and Mr. Blackburn is a member in good standing of the bars of New York and the District of Columbia. Mrs. Lathia also

states that Ms. Davis and Mr. Blackburn have significant experience representing the interests of energy companies and have specific experience in the complex field of law involved in this proceeding. The motions included sworn affidavits by Ms. Davis and Mr. Blackburn, in which they represent that they are associated in this matter with Ms. Lathia as New Jersey counsel of record, that Exelon has requested their representation in this matter as attorneys for Exelon, and that they have considerable experience representing Exelon and other energy and utility companies in various proceedings before state public service commissions. Ms. Davis and Mr. Blackburn represent that if their applications to appear pro hac vice are granted, they will submit the fees required by R. 1:28-2(a) and 1:28B-1(e) and agree to abide by the other requirements for admission pro hac vice.

DISCUSSION AND FINDINGS

Following the November 19, 2018 Order, the Board did not receive additional requests from persons or entities seeking access to confidential ZEC application information, which were required to be submitted by December 31, 2018.

Exelon's Motions for Admission Pro Hac Vice

In this proceeding, Exelon is submitting supplemental information to the Board in support of PSEG's Salem 1 and Salem 2 applications due to its status as a co-owner of those nuclear generating plants. I have therefore reviewed Exelon's motions for admission pro hac vice and the supporting affidavits of Ms. Dworetzky, Ms. Davis, and Mr. Blackburn. I **FIND** that they have satisfied the conditions for admission pro hac vice. Therefore, Ms. Dworetzky, Ms. Davis, and Mr. Blackburn are **HEREBY ADMITTED** to practice before the Board pro hac vice in this matter, provided that they shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of their participation in this matter;
- (3) Notify the Board immediately of any matter affecting their standing at the bar of any other jurisdiction; and
- (4) Have all pleadings, briefs, and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

This ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED:

2/7/19



JOSEPH L. FIORDALISO
PRESIDENT

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; Application for Zero Emissions Certificates of Salem 1 Nuclear Power Plant; Application for Zero Emissions Certificates of Salem 2 Nuclear Power Plant

Docket Nos. EO18080899, EO18121338, & EO18121339

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