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April 15, 2026

**Via Electronic Mail**

Sherri L. Lewis, Secretary  
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[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

**Re: 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  
Docket No. EO18080899**

**In the Matter of the Application of PSEG Nuclear, LLC and Exelon  
Generation Company, LLC for the Zero Emission Certificate Program –  
Salem Unit 1  
Docket No. ER20080557**

**In the Matter of the Application of PSEG Nuclear, LLC and Exelon  
Generation Company, LLC for the Zero Emission Certificate Program –  
Salem Unit 2  
Docket No. ER20080558**

**In the Matter of the Application of PSEG Nuclear, LLC for the Zero  
Emission Certificate Program – Hope Creek  
Docket No. ER20080559**

Dear Secretary Lewis:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) in response to Notice Requests for Comments issued by the Board of Public Utilities (“Board”) in this matter on March 23, 2026, and re-issued on April 10, 2026 in response to initial March 23, 2026 Notice not being served on Rate Counsel

and the Parties of Record of the initial March 23, 2026 Notice. In accordance with the April 10, 2026 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, Board Staff sought comments regarding its proposed refund process for the two 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 Energy Year 2025 (“EY25”) of the second ZEC eligibility period (“ZEC 2 Period”), June 1, 2022 through May 31, 2025. Under N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:3-87.5(i)(3), the Board is required 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. The provisions in the Board’s May 20, 2020 Order in above referenced dockets (the “May 2020 Order”) 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 prior to Staff presenting those findings to the Board.

The Notice stated that Staff had reviewed the data submitted by Public Service Enterprise Group Nuclear, LLC (“PSEG” or “PSEG Nuclear”) and Constellation Energy Generation, LLC (“Constellation Energy”) on behalf of their Units for EY25, June 1, 2024 to May 31, 2025. Staff noted that the data supplied by PSEG and Constellation Energy included, but was not limited to, the MWh quantity generated by the Selected Units, employment information, the amount of money held in the ZEC accounts, and information on the MWh of electricity distributed by the electric

distribution companies (“EDCs”) and Butler Electric Company’s (“Butler”) Price and Monthly Purchase Detail calculations along with personnel affidavits and certifications from PSEG Services Corporation, PSEG Nuclear, and Constellation Energy.

Staff stated it utilized the confidential materials to conduct the required Annual Revenue Review pursuant to the ZEC Act, N.J.S.A. 48:3-87.5(e)(4) and N.J.S.A. 48:387.5(i)(3). Staff stated that confidential materials submitted 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.

On March 23, 2026, the Board indicated that Board Staff found that the calendar year 2024 (January 1, 2024 through December 31, 2024) federal Production Tax Credit (“PTC”) constitutes a double-payment, related to the resilience, air quality, or other environmental attributes associated with electricity generated or sold by the Selected Units during calendar year 2024 within the ZEC 2 Period.<sup>1</sup> Board Staff made the following recommendations:<sup>2</sup>

- Staff will determine the Base Value of double payment based upon the smaller of a) the as-filed PTC for each owner or partial owner of a Selected Unit for CY24, or b) the value of ZECs received by the Selected Units owners in CY24.
- Staff will determine the Refund Value for CY24 by adding interest at the annual interest rate determined by the Board for customer deposits during the same period using the Board

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<sup>1</sup> Board Staff, Staff Straw Proposal, BPU Dkt. Nos. EO18080899, EO18121337, EO18121338, EO18121339. March 23, 2026

<sup>2</sup> Id., at 3-4.

approved simple interest rate for customer deposits for CY24 of 5.06%. Therefore, the Refund Value for CY24 will be the Base Value plus 5.06% of the Base Value.

- The Refund Value will be refunded to the EDCs and Butler via electronic funds transfer (“EFT”) based upon a proration equal to the percent of total retail sales for each EDC and Butler for CY24. The EFT from Selected Unit owners to the EDCs and Butler shall be on or before May 31, 2026.
- Beginning June 1, 2026, the EDCs and Butler will refund retail customers through a ZEC Reconciliation Charge Rate as part of the existing ZEC Recovery Charge (“ZECRC”). The refund to retail customers shall be evenly distributed, on a kilowatt-hour basis, over the following twelve months.
- The EDCs and Butler shall track any over/under balances in their ZEC refund accounts and submit a reconciliation filing by July 1, 2027.

Rate Counsel has reviewed the Notice provided to it on April 10, 2026, and materials submitted by PSEG and Constellation Energy 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,<sup>3</sup> ....

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.

If the Board determines that a double payment has been received, the statute states the Board shall 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.<sup>4</sup> 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.”<sup>5</sup>

Rate Counsel notes that PSEG provided confidential filings to the Board on February 27, 2026 that indicated that both PSEG and Constellation’s calendar year 2024 federal production tax

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<sup>3</sup> N.J.S.A. 48:3-87.5(i)(3).

<sup>4</sup> Id.

<sup>5</sup> Id.

credits exceed the calendar year 2024 ZECs.<sup>6</sup> Further, PSEG provided a table showing its estimates for the calendar year 2024 ZEC collections to be \$290.37 million.<sup>7</sup>

Rate Counsel notes that Energy Year 2024, started on June 1, 2023 and ended on May 31, 2024. PSEG and Constellation started to receive the federal PTC on January 1, 2024 in the middle of Energy Year 2024. Energy Year 2025 started on June 1, 2024 and ended on May 31, 2025. Therefore, the Calendar Year 2024 federal PTCs are split between Energy Year 2024 and Energy Year 2025. Rate Counsel does not oppose the apportionment process of the value of the ZEC double payments so long as the full amount of the calendar year 2024 PTCs that offset the calendar year 2024 ZEC payments are refunded to ratepayers.

Rate Counsel also notes that PSEG commented that the federal Internal Revenue Service (“IRS”) has not finalized the definition of “gross receipts” to determine the value of the PTC and that the possibility exists that the estimates provided by PSEG may be changed.<sup>8</sup> Rate Counsel does not oppose the creation of a reasonable true-up mechanism process that Board Staff, Rate Counsel and all Parties of Record are provided the opportunity to review and comment on to enable PSEG to zero out the full value of the federal PTCs relative to ZEC payments made by ratepayers.

Rate Counsel notes that the federal PTCs for calendar year 2025 shall be within the last six months of Energy Year 2025 (12 months ending May 31, 2025). Rate Counsel also recommends that when PSEG and Constellation file their respective Calendar Year 2025 federal taxes, the

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<sup>6</sup> PSEG and Constellation. Joint Comments, BPU Dkt. Nos. EO18080899, EO18121337, EO18121338, EO18121339, March 31, 2026. p. 2.

<sup>7</sup> Ibid. at p. 3.

<sup>8</sup> Id.

Board review the updated refund information provided by PSEG and Constellation, and issue findings based upon its review, to ensure any and all required return of overpayment be made to ratepayers, and that the Board require PSEG and Constellation to serve notice on Rate Counsel and all parties of record of the filing.

Rate Counsel notes that in regard to the Board Staff's recommendations,

- Beginning June 1, 2026, the EDCs and Butler will refund retail customers through a ZEC Reconciliation Charge Rate as part of the existing ZEC Recovery Charge ("ZECRC"). The refund to retail customers shall be evenly distributed, on a kilowatt-hour basis, over the following twelve months, and .
- The EDCs and Butler shall track any over/under balances in their ZEC refund accounts and submit a reconciliation filing by July 1, 2027,

In January 2026 the Board issued four orders in response to the annual reconciliation filings of the ZECRC directing Public Service Electric and Gas Company ("PSE&G")<sup>9</sup>, Jersey Central Power and Light Company ("JCP&L")<sup>10</sup>, Atlantic City Electric Company ("ACE")<sup>11</sup> and Butler<sup>12</sup> to "eliminate its ZECRC, [also referred to as the Refund of Excess Collections Credit Rate ("RECCR')], tariff, including the RECCR for service rendered on and after February 1, 2026."

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<sup>9</sup> I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Zero Emission Certificate Recovery Charge (2025), Docket No. ER25100550, Order dated January 14, 2025, (PSE&G 2025 ZECRC Order).

<sup>10</sup> I/M/O the Petition of Jersey Central Power and Light Company for the Approval of a Zero Emission Certificate Recovery Charge, Docket No. ER24120005 and In the Matter of the Petition of Jersey Central Power and Light Company for the Approval of a Zero Emission Certificate Recovery Charge, Docket No. ER25100556, Order dated January 28, 2026, (JCP&L 2024 and 2025 ZECRC Order).

<sup>11</sup> I/M/O Atlantic City Electric Company for the Approval of a Change to its Zero Emission Certificate Recovery Charge (2025), Docket No. ER25100553, Order dated January 14, 2025 (ACE 2025 ZECRC Order).

<sup>12</sup> I/M/O the Petition of Butler Electric for Approval of a Zero Emission Certificate of Recovery Charge, Docket No. ER25100551, Order dated January 14, 2026 (Butler 2025 ZECRC Order).

Rate Counsel also notes that Rockland Electric Company (“RECO”) also filed an annual reconciliation ZECRC filing on October 1, 2025,<sup>13</sup> and Rate Counsel filed comments with the Board on December 9, 2025. The Board has not issued an Order resolving this filing, therefore the RECO ZECRC tariff should not have been deleted.

Last, although Rate Counsel supports the return of ratepayer funds for the double-payment to the Selected Units, this incident underscores a more fundamental point – the ZEC subsidies were never warranted. A refund after the fact is no substitute for avoiding a charge in the first place. Had the Board heeded the factual findings of Rate Counsel, Board Staff, New Jersey Large Energy Users Coalition, and the PJM Independent Market Monitor, this outcome—and the burden it placed on ratepayers—could have been avoided entirely.

Nonetheless, Rate Counsel remains committed to advocating that the Board exercises greater prudence in its stewardship of ratepayer funds going forward to ensure New Jersey rates return to an affordable level.

## **RECOMMENDATIONS**

Based on the foregoing, Rate Counsel does not oppose Board Staff’s initial recommendation to utilize a refund mechanism that includes customer interest earned of 5.06%. Rate Counsel does not oppose the inclusion of true-up mechanism process for PSEG and Constellation should the IRS change the value of the PTC at some future date. Rate Counsel reserves the right to submit additional comments or supplemental filings as further information

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<sup>13</sup> I/M/O the Petition of Rockland Electric Company for Approval of a Zero Emission Certificate Recovery Charge, Docket No. ER25100552.

becomes available, particularly following the Companies' disclosure of their tax filings, which are essential for a complete and accurate evaluation of the issues at hand and PSEG and Constellation's development of a proposed refund and overpayment mechanism. Rate Counsel recommends that the Board direct the EDCs and Butler to reinstate the ZECRC tariff so that the proposed refund and overpayment mechanism can be monitored through the EDCs tariffs.

Rate Counsel recommends that the Board keep this docket open to allow for continued public and regulatory review. Rate Counsel recommends that the Board require PSEG and Constellation to provide updated materials and information to quantify the value of the PTCs for its three nuclear plants for calendar year 2025 when they file their corporate taxes. Rate Counsel recommends that the Board require PSEG's and Constellation's refund and overpayment filings be served upon Rate Counsel and all parties of record and looks forward to Board Staff's and Rate Counsel's review these filings to ensure that ratepayers receive a full refund of the ZEC overpayments.

Respectfully submitted,

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BRR/dl

c: Service List (*via electronic mail*)

**Zero Emission Certificate (ZEC)  
Program Annual Review Docket  
Nos. EO18080899, ER20080557,  
ER20080558, ER20080559**

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