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March 8, 2019

Via Electronic Mail and Hand Delivery
Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor
Suite 314
Post Office Box 350
Trenton NJ 08625-0350

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

Dear Secretary Camacho-Welch:

Enclosed for filing please find an original and ten copies of the Division of Rate Counsel's Reply Comments in response to Public Service's comment letter dated February 14, 2019 in the above matter proceeding. Copies are being provided to the parties on the service list by electronic and USPS regular mail. We have also enclosed one additional copy of the materials transmitted. Please stamp and date the copy as "filed" and return to our courier.

PRELIMINARY STATEMENT

Despite clear direction from the Legislature that the Board of Public Utilities' ("BPU") conduct a fair and probing review of whether ZECs are necessary to avoid a shutdown of PSEG's (and Exelon's) three nuclear units, and despite the BPU's broad and overarching jurisdiction over the rates paid by New Jersey's electric customers, PSEG's response comments argue throughout that the decision has already been made. Effectively holding a gun to the regulator's head, the Company states without equivocation that if it does not get every penny it seeks, it will shut down all three of these units, regardless of how profitable they may be now or in the future. At the end of every reasonable path of inquiry into whether the ZECs are needed or justified, is the Company's assertion that the inquiry does not matter because the decision has already been made by its Board of Directors to shut down these units if the full ZEC amount is not paid for all three units.

The Company argues that its historical profits have "absolutely no bearing" on the issue before the BPU (*PSEG Response, p. 7*); that accounting and regulatory principles do not matter; that an analysis of the impact of awarding ZECs to one or two of the plants "would be a useless undertaking;" (*PSEG Response, p. 18*) and that the BPU lacks discretion to interpret the statute in any way that does not comport fully with PSEG's interpretation. PSEG would deprive the BPU of its authority and obligation to execute and interpret the statute and its authority and obligation to ensure that rates are just and reasonable. While it is true that the plants are no longer regulated and that under normal circumstances PSEG's Board of Directors would have the unilateral authority to make this decision based on their duty to shareholders, the fact is that PSEG has come to the Legislature and the Board with its hand out, seeking the establishment of

a rate to be charged to all ratepayers in this state to add to the profits these plants are making and will make in the future.

The BPU's duty here is to make sure that subsidies are only awarded if the Company makes a compelling case on need - which it has not for all the reasons stated in the Comments previously filed. However, the BPU must also decide who has the authority to determine what rates will be charged in this state; whether the deregulation of generation and the competitive structure established in EDECA is still viable; and, most importantly, whose obligation it is to protect the public interest – the Board of Public Utilities or the Board of Directors of PSEG.

The Legislature did not require the BPU to award ZECs. The Legislature left it to the BPU to conduct an inquiry to determine if ZECs were warranted and in the public interest. If the Board cedes its authority to PSEG's Board of Directors, then a lot more than the future of these plants is riding on this case. What's to keep other generators or utilities from seeking the same relief? What's to keep other Boards of Directors from seeking supplemental profits through rates in exchange for keeping their unregulated businesses open? Most importantly, who will be in charge of protecting ratepayer (rather than shareholder) interests?

The fact is that there is nothing in this Legislation that preempts all of the other statutes governing BPU's jurisdiction over how rates are developed and charged to ratepayers. The BPU's obligation to protect the public interest remains the same. The financial condition and history of these unregulated plants is relevant, as is the reasonableness of rates to be charged. The BPU has an obligation not to blindly accept PSEG's interpretation of the language of the statute, but to develop its own interpretation, consistent with all of the other Legislative mandates that guide its execution of the law. That PSEG's Board of Directors "has already decided" that they will close the plants if they do not get the full ZEC rates for all three units cannot be the

basis for the Board's exercise of its statutory duties. The Legislature was clear that the BPU has the "authority and ability" to make a determination regarding PSEG's applications and that authority and ability cannot be ceded to PSEG's Board of Directors.[1] See, *Rate Counsel Initial Comments*, p. 15, 53 (January 31, 2019).

ARGUMENT

I. PSEG's Proposed Strict Limits on the Board's Authority to Consider Evidence Relating to the Need for ZECs Are Contrary to the Language and History of the ZEC Statute and Ratepayers' Constitutionally Protected Rights.

In its February 14, 2019 letter, PSEG argues that there are strict limits on the Board's authority to evaluate the need for ZECs. According to PSEG, the Board must accept PSEG's methodology for evaluating the economic viability of the plants, whether or not that methodology is reasonable or fair to ratepayers. *PSEG Response, p. 8-9.* PSEG argues that the BPU may not consider the fairness of requiring ratepayers to subsidize nuclear operators that have already made hundreds of millions of dollars from these plants, and it may not question the reasonableness of PSEG's claim that all three units will close unless all three receive ZECs. *PSEG Response, pp. 6-7, 17.* According to PSEG, such analysis is prohibited by the ZEC statute. This is not an accurate depiction of the Board's authority under existing law. The severely constrained analysis suggested by PSEG would improperly limit the Board's authority to make the required determinations under the ZEC law, and would violate the legally protected rights of New Jersey's electric utility customers to just and reasonable rates.

Under the ZEC statute, an applicant for ZECs is required to:

> demonstrate to the satisfaction of the board, through the financial and other confidential information submitted to the board pursuant to subsection a. of this section, and any other information required by the board, ... that the nuclear

[1] The nuclear units are owned by Applicants PSEG Nuclear LLC ("PSEG" or the "Company") and Exelon Generation Company LLC ("Exelon"). It is the Board of Directors of Public Service Enterprise Group Inc. that has the authority to close the nuclear units.

> power plant's fuel diversity, air quality, and other environmental attributes are at risk of loss because the nuclear power plant is projected to not fully cover its costs and risks, or alternatively is projected to not cover its costs including its risk-adjusted cost of capital, and that the nuclear power plant will cease operations within three years unless the nuclear power plant experiences a material financial change;....

N.J.S.A. 48:3-87.5(e)(3). This provision requires ZEC applicants to submit certain information, but does not dictate how the Board should use the information in making its findings regarding the need for ZECs. The statue does not limit the Board's role in determining whether, as a matter of arithmetic, the revenues from the plants will exceed the claimed "cost and risks." As specifically stated in the statutory language, the Board must determine whether a plant's "fuel diversity, air quality and other environmental attributes are at risk of loss," due to its financial condition, and whether the plant "will cease operation within three years" unless the plant receives ZECs or experiences another material financial change. Id. While the Board must consider the information submitted by PSEG, the ZEC statute does not specify how the Board is to consider the information, or restrict the Board from considering other, relevant, evidence.

As the expert agency charged with implementing the ZEC statute, the Board must make its own independent determination of whether ZECs are necessary. As the New Jersey Supreme Court has held, "[f]act-finding is a basic requirement imposed on agencies that act in a quasi-judicial capacity...." In re Issuance of Permit by Dep't of Envtl. Prot., 120 N.J. 164, 172 (1990). This requirement is fundamental:

> An agency must engage in fact-finding to the extent required by statute or regulation, and provide notice of those facts to all interested parties. This requirement is "far from a technicality and is a matter of substance."

Id. at 173, quoting New Jersey Bell Tel. Co. v. Communications Workers of Am., 5 N.J. 354, 375 (1950). PSEG's narrow view of the Board's authority would violate this fundamental principle of administrative law.

The ZEC statute's sponsors affirmed that it was not intended to dictate a particular result. As explained repeatedly by one of the bill's primary sponsors, Senate President Sweeney, the bill was intended to create a "process" in which information would be submitted and the Board would have the "authority and ability" to make determinations. See, *Rate Counsel Initial Comments*, p. 15, 53 (Jan. 31, 2019). The legislative history, in addition to the statutory language, supports the Board's authority to conduct its own evaluation to determine the need for ZECs.

While ratemaking has been characterized as a legislative function, this is not inconsistent with the Board's authority to exercise sound discretion in discharging its responsibilities under the ZEC statute. Indeed, Petition of Public Service Elec. and Gas Co., 304 N.J. Super. 247 (1997), cited at page 41, footnote 77 of PSEG's comments, recognized the broad scope of the Board's discretion to exercise its ratemaking authority under N.J.S.A. Title 48:

> Our Supreme Court has observed that "rate making is a legislative and not a judicial function, and that the Board of Public Utility Commissioners, to which the Legislature has delegated its rate making power, is vested with broad discretion in the exercise of that authority."

4 N.J. Super. at 264, quoting Petition of Pub. Serv. Coordinated Transp., 5 N.J. 196 (1950) (emphasis added). The determinations under the ZEC statute are delegated to the agency with the authority and expertise to determine utility rates. There is nothing in either the statute or its legislative history to suggest that this delegation was subject to the severe constraints on the Board's authority that are being suggested by PSEG.

In addition, the Board's evaluation of the ZEC applications must be informed by the fundamental legal principles that govern the setting of utility rates. As the New Jersey Supreme Court has held:

> The system of rate regulation and the fixing of rates thereunder are related to constitutional principles which no legislative or judicial body may overlook. For if the rate for the service supplied be unreasonably low it is confiscatory of the utility's right of property, and if unjustly and unreasonably high (bottomed as it is on the exercise of the police power of the state), it cannot be permitted to inflict extortionate and arbitrary charges upon the public.

In re Proposed Increased Intrastate Industrial Sand Rates, 66 N.J. 12, 23-24 (1974). It makes no difference that the courts have characterized ratemaking as "legislative" in nature. The legislature's authority to set rates is not unlimited. Utility rates, even those set directly by the legislature, "must be reasonable, and to that end must be subject to judicial review." State v. Trenton, 97 N.J.L. 241, 247 (E&A 1922), citing Railroad Commission Cases, 116 U.S. 307 (1886) and Smyth *v.* Ames, 169 U.S. 466 (1898). Thus, the legal principles quoted above apply "even where the rate or limitation on the rate is established by the Legislature itself." Industrial Sand Rates, supra, 66 N.J. at 24. Accordingly, the Board may not award ZECs if doing so would result in unreasonable rates.

Carrying out the Board's obligations as described above requires consideration of evidence beyond the four corners of PSEG's purported financial analysis. Under the statutory language quoted above, the Board must find not only that a plant will close in three years, but also that the threat of closure is "because [it] is projected to not fully cover its costs and risks ...." N.J.S.A. 48:3-87.5(e)(3) (emphasis added). In other words, the Board must consider whether the threat of closure is due to economic necessity. An extortionate threat of closure based on a corporate decision to seek additional revenues for a plant that is profitable, but not deemed profitable enough, does not meet the statutory standard.

As detailed in Rate Counsel's earlier comments and supporting certifications, PSEG is able to "demonstrate" a lack of economic viability only by overstating costs, understating revenues, and departing from accepted accounting practices and economic analysis, such as the

principle that capital expenditures are recovered over their useful lives, and the principle that only actual, avoidable costs should be considered in assessing the cost savings that will result from closing the plants. *Rate Counsel Initial Comments, p. 19-49; Crane Certification; Fagan and Chang Certification, p. 2-3, 19-31.* Rate Counsel has presented expert evidence that, when the plants' financial performance is properly analyzed, all are economically viable. This evidence is relevant to the Board's evaluation of whether there is an actual economic need for ZECs.

PSEG's argument that the Board is required to treat capital expenditures as current expenses should be rejected for this reason. PSEG bases this argument on the filing requirements contained in N.J.S.A. 48:3-87.5(a) which provides for the submission of cost projections that include fuel and non-fuel capital expenditures. However, N.J.S.A. 48:3-87.5(e)(3), which states the standard for the Board's determination of whether to grant ZECs, does not require the Board to include 100 percent of all capital expenditures as costs to be recovered in the same year as the expenditures were made.

Rate Counsel notes that, contrary to the argument at pages 16-19 of PSEG's responsive comments, Rate Counsel is not relying solely on traditional ratemaking principles for its opposition to PSEG's proposed "flow through" treatment of capital expenditures. As detailed in Rate Counsel's earlier submission, PSEG's methodology is unreasonable because it violates basic accounting principles, because it improperly transfers risks from unregulated entities to captive utility ratepayers, and because it creates inter-generational inequities. *Rate Counsel Initial Comments, p, 22-24; Crane Certification, p, 12-15.*

Rate Counsel maintains that the Board's broad discretion to consider the reasonableness of PSEG's request for ratepayer-funded subsidies allows it to consider traditional ratemaking principles, along with other factors. Rate Counsel has made it clear that this is not a rate

proceeding involving a regulated utility, and "the Board should not attempt to utilize a rate base/rate of return approach" in determining whether subsidies should be granted to these unregulated entities. *Crane Certification, p. 5.* An unregulated entity with no obligation to serve the public does not have the same rights to an assured source of revenues as a regulated utility. However, traditional ratemaking principles provide a useful benchmark for assessing the reasonableness of the requested subsidies.

The historical background detailed in Rate Counsel's January 31, 2019 comments is also relevant. As explained in Rate Counsel's earlier comments, Salem 1, Salem 2 and Hope Creek have always been subject to operational and market risks; this is the reason why the plants were assigned values below their book values at the time of their transfer from the utility. Yet, it was only after the expiration of ratepayers' obligation to pay stranded costs that PSEG Power sought additional revenues in the form of ZECs. The timing of PSEG's efforts to secure passage of the ZEC statute suggests that the threat of nuclear plant closures may be more related to a desire to replace an expiring revenue stream rather than to genuine economic need. There is nothing in the ZEC statute that prohibits the Board from considering this evidence, along with other evidence that the plants are economically viable, in its evaluation of whether ZECs are needed.

The history of the plants is also relevant to the Board's determination of whether it is just and reasonable to require ratepayers to pay for ZECs. As discussed in Rate Counsel's earlier comments, at the same time ratepayers were being charged hundreds of millions of dollars for "stranded costs," PSEG was earning enormous profits on its nuclear plants. *Rate Counsel Initial Comments, p. 7-9; Crane Certification, p. 11.* More recently, PSEG Power has received substantial tax benefits as a result of its ownership of the plants. *Rate Counsel Initial Comments, p. 33-35; Crane Certification, p. 21-23.* The relevance of these facts is clear. The Board must

consider whether it is just and reasonable for ratepayers who have already paid hundreds of millions of dollars in stranded costs to be required to fund additional subsidies.

PSEG now contends that the requested subsidy must be deemed reasonable because the "rate is not a function of the financial condition of the nuclear plants that receive the payments... but rather is a function of the social cost of carbon that customers are paying to avoid the degradation of the air they breathe." *PSEG Response, p.42.* However, in the December 19, 2018 application letter, PSEG makes no claim about the social cost of carbon, nor does PSEG make any claim about the $0.004/kWh ZEC rate. In both the December application and the February 2019 response letter, PSEG has failed to provide any quantification for the "social cost of carbon." The Company merely concludes that the "ZEC Act itself demonstrates the reasonableness of the $0.004/kWh rate." How it does so is left unsaid.

The social cost of carbon is the monetized damages associated with an incremental increase in carbon emissions in a given year. While it may be true that the $0.004 per kilowatt-hour rate set by the Legislature in the statute purports to "reflect the emissions avoidance benefits associated with the continued operation of selected nuclear power plants," N.J.S.A. 48:3-87.4, there is nothing in the Act that quantifies the emissions avoidance benefit nor does the Act attempt in any way to "demonstrate[] the reasonableness of the $0.004/kWh rate." Indeed, the statute was written before any proceedings occurred to review any factual information and before any plants were selected. Thus, there is no evidence that the $0.004/kWh rate was set based on a factual analysis establishing "emissions avoidance benefits."

In fact, the original version of the bill described the certificates, then called "Nuclear Diversity Certificates," as representing the "environmental and fuel diversity attributes of one

mega-watthour of electricity" generated by a nuclear plant.[2] When the bill was reintroduced in the 2018-2019 legislative session, the certificates became known as "Zero Emission Certificates" purportedly representing the "emissions avoidance benefits" of keeping the nuclear plants open. However, even though the certificates were representing the value of different things under different versions of the bill, the $0.004 /kWh rate remained the same. This is further evidence that the rate was not based on any particular valuation of "fuel diversity," "environmental attributes," or "emissions avoidance benefits" and accordingly should not be deemed "reasonable" as such.

Finally, in evaluating the need for and the reasonableness of ZECs, the Board must evaluate the credibility of PSEG's claim that all three plants will be shuttered unless all three receive ZECs. As explained in Rate Counsel's earlier comments, PSEG has not modeled the closure of one or two plants. This makes it impossible for the Board to determine whether all three plants, or only one or two of them, will close unless all three receive ZECs. *Rate Counsel Initial Comments, p. 29-30; Fagan and Chang Certification, p. 33-34.* The results of such an analysis could substantially affect the level of benefits that would result from the requested subsidies, and accordingly would be relevant to the issue of whether it is reasonable to require ratepayers to subsidize all three plants. If one or two plants would remain in operation without any subsidies, this diminishes the justification for requiring ratepayer subsidies for all three.

PSEG's justifications for failing to include such an analysis in its ZEC applications should be rejected. The Company argues that modeling the closure of only one or two of the units would "expose PSEG to potential claims that it was seeking to exercise market power". *PSEG Response, p, 17.* However, PSEG does not explain why it would not be subject to similar

[2] https://www.njleg.state.nj.us/2016/Bills/S4000/3560_I1.HTM .

claims due to its threat to close all three plants, *i.e.*, PSEG could be subject to claims that all three plants were being closed in order to raise prices for PSEG's other electric generation facilities. PSEG's argument that it would be contrary to the ZEC statute for the Board to scrutinize the threat to retire all three plants rather than consider the closure of one or two, (*PSEG Response, p. 17-18*), is contrary to the stated purpose of the ZEC statute, which is to award subsidies only if they are necessary. N.J.S.A. 48:3-87.3 (b)(5). PSEG's argument is that such an analysis would be "pointless" because PSEG's Board of Directors has already decided to shutter all three plants unless all of them receive ZECs (*PSEG Response, p. 18*). This argument fails to recognize that the Board, not PSEG, is the trier of fact.

On a more basic level, the Board must recognize that Salem 1, Salem 2 and Hope Creek are deregulated, and ultimately the owners of these plants will have the final say, as they should, on whether one, two, or all of the plants should be retired. The ZEC statute was not intended to provide a guarantee that these plants will not be retired, only a process for nuclear plant owners to seek subsidies based on a demonstration of economic necessity. The Board, not PSEG, has the authority, and the obligation, to make an independent determination of whether a compelling case for subsidies has been made. For the reasons discussed above and in Rate Counsel's earlier comments and supporting certifications, Rate Counsel submits that a compelling case has not been made.

II. PSEG's Criticisms of Rate Counsel's Analysis Should Be Rejected.

A. Rate Counsel's Analysis of Energy Prices, as Corrected to Reflect Around-The-Clock Pricing, Continues to Demonstrate that PSEG Has Understated Revenues.

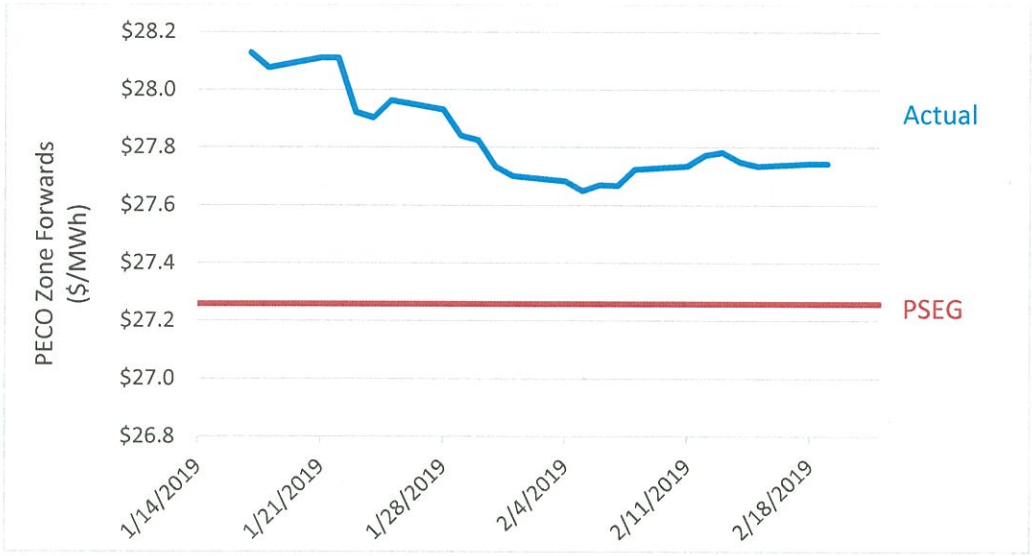
One of Messrs. Fagan and Chang's conclusions was that PSEG failed to provide energy revenue sensitivities to assess if ZECs are required. *Fagan and Chang Certification, p. 40.* To

illustrate the range of energy revenues, Messrs. Fagan and Chang highlighted different energy price forwards varying by time and location. PSEG's response comments do not dispute the differences in energy prices over time. Instead, PSEG criticizes Rate Counsel's analysis of PSEG's estimates of energy prices because they are based on peak rather than around-the-clock prices. Rate Counsel acknowledges that the PJM West futures shown in Figure 2 at page 22 of the Fagan and Chang Certification were based on on-peak prices from publicly available data from CME Group, rather than on proprietary around-the-clock prices from Intercontinental Commodities Exchange ("ICE"). Messrs. Fagan and Chang have not amended their Figure 2 since they do have access to data on PJM West off-peak prices to calculate an approximation of around-the-clock prices. Messrs. Fagan and Chang do note that PSEG's figure shows that prices have fluctuated from the static time point used in the Company's application, consistent with their concern that a static point may misstate realized energy revenues in the future.

Recognizing that energy price forwards have changed since the January 31st filing, Messrs. Fagan and Chang have updated their original Figure 3, depicting PECO Zone prices, to include more recent forward prices. The updated analysis is shown in Figure 3A below. Messrs. Fagan and Chang have approximated around-the-clock prices based on averaging publicly available on- and off- peak PECO zone prices from CME Group data. While these estimates do not precisely match the forward prices based on ICE data that are presented by PSEG, they are generally consistent. Both PSEG and Messrs. Fagan and Chang note that the difference in energy price forwards for the PECO Zone are about two to three percent between recent energy price forwards and the September 28, 2018 date chosen by PSEG. PSEG's presentation of this difference uses a wider scale than the figure below, which minimizes the visualization of the forward price differences. In their original Figure 3 and Figure 3A below, Messrs. Fagan and

Chang's show their approximation of the PECO forward prices on a scale that more clearly shows the variation in prices over time.

Figure 3A Average of Monthly Energy Price Forwards (Feb 2019- Dec 2023) for PECO Zone ($/MWh)



The updated Figure 3A for PECO Zone shows that around-the-clock price forwards still remain about 2 percent higher than the Company's forward price estimates.

PSEG's criticism of the energy price forecast used in Rate Counsel's analysis does not address Messrs. Fagan and Chang's conclusion that the lack of a reasonable range of energy price forecasts in the application limits the ability of the Board to determine if an applicant requires ZECs. The two percent difference in energy price forecasts remains consistent with Messrs. Fagan and Chang's illustrative analysis that finds that an increase in energy revenues by three percent and capacity revenues by ten percent along with Ms. Crane's recommendations of removing financial and market risk adders would result in positive cash flow for one or more units. Their illustrative analysis demonstrated that small percentage changes in energy prices will have a material impact on the profitability of the three nuclear units. Their illustrative analysis

demonstrated that small percentage changes in energy prices will have a material impact on the profitability of the three nuclear units.

B. The Brattle Report is an Incomplete Analysis That Does Not Demonstrate the Potential Increased Value of Preserving the Nuclear Plants.

PSEG's Response faults both Rate Counsel and the Independent Market Monitor for failing to consider the Brattle Report, sponsored by PSEG and Exelon, in their analysis of the impact of potential market design changes in the PJM markets. According to PSEG, the Brattle Report concluded that retiring Salem 1, Salem 2 and Hope Creek could cost ratepayers about $400 million annually, and that this figure "would be expected to increase" if the market reforms are adopted. *PSEG Response, p. 34-35.* The Brattle Report does not support PSEG's conclusion. The Brattle report is an incomplete analysis which, as acknowledged by the authors, did not consider "the structure or cost of any potential policy mechanism that may be necessary to ensure the continued operation of these nuclear plants." *Brattle Report, p. 1.* For this reason, the authors cautioned that the analysis addressed only "the gross economic benefits of preserving these plants, not the net benefits of a proposed policy that would do so." *Id.* The Board should not rely on this incomplete and one-sided analysis in support of PSEG's request for ZECs.

C. Rate Counsel Correctly Criticized PSEG For Failing to Consider Expected New Offshore Wind Generation in its Environmental Analysis.

Rate Counsel's earlier comments noted that PSEG's environmental analysis failed to take account of the anticipated addition of 1,100 megawatts of offshore wind generation in 2021 and 3,500 Megawatts over a longer term. *Rate Counsel Initial Comments, p. 44.* In response to this observation, PSEG asserts that "Rate Counsel's claim that New Jersey offshore wind will be operational during the three-year term covered by these applications is not realistic." *PSEG*

Response, p. 38. In support of this assertion, PSEG cites the legislative testimony of Dr. Dean Murphy in which Dr. Murphy opines that, under the currently effective Renewable Portfolio Standard, it would take ten years to replace the output of the nuclear plants with renewable generation. *PSEG Response, p. 39.*

The cited testimony is entirely beside the point. As explained in Rate Counsel's earlier comments and supporting certification, PSEG's environmental analysis makes the simplistic and unrealistic assumption that all of the nuclear generation would be replaced with fossil generation. *Rate Counsel Initial Comments, p.29-30; Fagan and Chang Certification, p.33.* Dr. Murphy's testimony concerns the overall time frame for all types of renewable generation to completely replace the nuclear units. His testimony does not dispute the essential point of Rate Counsel's comments—that PSEG has failed to consider the impacts of recent initiatives to develop offshore wind and other renewables.

Rate Counsel acknowledges that, based on a recent report, the Board is now projecting a 2024 Commercial Operation Date for the initial 1,100 megawatts of offshore wind.[3] However, PSEG's implicit assumption that this makes the State's offshore wind initiatives irrelevant reflects an overly narrow view of the issues the Board must consider. Under the ZEC statute, the Board is required to determine whether the nuclear plants make "a significant and material contribution to the air quality in the State" and whether the plants' retirement would "significantly and negatively impact New Jersey's ability to comply with State air emissions reduction requirements ...." N.J.S.A. 48:3-87.5(e)(2). This language does not limit the Board's analysis to a three-year period. As is recognized in the ZEC law, New Jersey's renewable energy goals are long-term goals. N.J.S.A. 48:3-87.3(a)(5); N.J.S.A. 48:3-87.3(b)(7). There is nothing

[3] 2019 Annual Report on New Jersey Offshore Wind and the Implementation of Executive Order No. 8, (NJBPU Jan. 31, 2019).

in the ZEC act that would limit the Board's authority to consider the impact of the nuclear units on these goals over a term longer than three years.

D. Rate Counsel Correctly Criticized PSEG's For Failing to Consider Hedging Revenues.

On pages 15-16 of its comments, the PSEG states that "Rate Counsel contends that PSEG Nuclear failed to properly represent its portfolio of hedging contracts because it did not apply its hedged positions directly to the units." This statement mispresents Rate Counsel's position. Rate Counsel did not suggest that PSEG could or should attribute specific hedges to specific units. Instead, Rate Counsel noted that the Company claimed that one of the reasons why it did not consider hedging revenues in its analysis was that hedged positions were not attributable to a specific unit. The point is that the lack of attribution does not eliminate the need to at least consider the impact of hedging revenues on the overall profitability of the underlying generation that, at least partially, supports these hedged positions. Thus, Rate Counsel did not opine on the specific hedges that are currently in place, only that the nuclear operators do hedge their risk and the ability to hedge risk should have been considered – especially if the BPU decides to consider market and operational risks. Moreover, whether current hedges are successful or not is not the point – the point is that a tool does exist to manage risks and that tool was not fully considered by the nuclear operators in their applications.

E. Rate Counsel Correctly Criticized PSEG's Asserted Spent Fuel Costs.

Rate Counsel's earlier submission noted that PSEG's claimed operational costs include millions of dollars of spent fuel costs that are not actually being incurred because the charge intended to pay for the development of a federal repository has been suspended as the result of litigation brought by nuclear plant operators. *Rate Counsel Initial Comments, p. 25; Crane*

Certification, p. 17. PSEG argues that these non-existent costs should nonetheless be recovered from captive ratepayers because the suspended charge is a "reasonable proxy" for the costs of storing and disposing of spent fuel. *PSEG Response, p. 22.*

PSEG's argument fails to recognize the full context of the suspended charge. At this time, it is unclear whether, and, if so, when, a federal spent fuel storage facility will ever be built. There have already been dozens of judgments awarded in breach-of-contract litigation brought by nuclear plant operators against the federal government, to cover the costs of on-site, dry-cask storage.[4] While the delays in developing a permanent disposal site will almost certainly result in increased costs, PSEG's proposal to recover additional money from captive ratepayers is manifestly unreasonable. These costs are highly speculative. It is also far from clear who will actually bear them. PSEG's proposal does not include any mechanism for reimbursing ratepayers if these costs of permanent spent fuel disposal do not ultimately fall on PSEG's shareholders, such as for example, if these costs are ultimately socialized through taxes or some other broad-based funding mechanism. Clearly, it would be unreasonable to charge captive ratepayers for these highly speculative costs that PSEG may never have to pay.

[4] Peter Maloney, "Yucca Mountain: High Stakes and High Hurdles," UtilityDive (July 21, 2017), available at: https://www.utilitydive.com/news/yucca-mountain-high-stakes-and-high-hurdles/447573/

CONCLUSION

For all the reasons stated above, as well as in Rate Counsel's initial comments, the Board should not award ZECs to the Applicants.

Respectfully submitted,

Stefanie A. Brand
Director, Division of Rate Counsel

c: President Joseph Fiordaliso
Service List

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 Dkt. No.: EO18080899
CONFIDENTIAL LIST

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