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**Remarks of Stefanie A. Brand, Director, Division of Rate Counsel, Regarding
S3560/A5330 (Establishes Nuclear Diversity Certificate Program) Presented at the
Joint Meeting of the Senate Environment and Energy Committee and the
Assembly Telecommunications and Utilities Committee
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Good morning. My name is Stefanie Brand, and I am the Director of the Division of Rate Counsel. I would like to thank Chairman Smith, Chairman DeAngelo and members of the committees for the opportunity to testify today on S3560/A5330.

The Division of Rate Counsel represents and protects the interest of all utility consumers -- residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates and/or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

As the statutorily mandated advocate for ratepayers who have a direct interest in the continued provision of electricity at reasonable rates, Rate Counsel certainly has no interest in seeing nuclear power plants shuttered at this time or at any time prior to when we no longer need the electricity they generate. However, there is no reason to believe that the federal, state and regional entities that ensure our continued reliability and administer our deregulated wholesale energy and capacity markets, are unable to

oversee our grid and administer those markets to protect these plants from shutting down while they are still needed. Nor is there any reason to reverse the decades-long deregulation of generation throughout the state to suddenly provide the benefits, but not the burdens, of re-regulation to one preferred fuel source.

There has been no demonstration that PSEG's nuclear plants are in financial difficulty other than bald assertions and ultimatums issued by the Company. This Legislature has a duty to its constituents to test those assertions and not simply succumb to the Company's threats. While there are some nuclear power plants in this country that are at risk of shutting down, most of them are in areas where the energy and capacity prices paid are lower than New Jersey's or where other factors may increase their operating costs. But not all nuclear power plants are in trouble. In fact, in Connecticut, where the bill passed by the Legislature required an independent review of the nuclear plant's finances prior to the institution of any subsidy program, that independent consultant found that those plants continue to be profitable. If we had an independent review of NJ's plants before rushing into a subsidy that will cost ratepayers over \$300 million per year, I believe we would see the same conclusion. Indeed, the PJM Independent Market Monitor testified here a few weeks ago that these plants are making money. Even the Company admits that the plants are profitable now and will be for the next several years. Yet the subsidies set forth in this bill would take effect in less than a year.

I cannot urge this Legislature more strongly not to rush into this, to understand fully what you are voting on before you approve it, and to consider not only the impact

on PSEG, but the impact on every business and family in this state. You have heard and will continue to hear me say that ratepayers do not have bottomless pockets. If you do this, we will not be able to afford the renewable energy and energy efficiency programs we want to do; we will not be able to replace the aging infrastructure we need to replace and we will lose jobs, as businesses close and companies move out of state to avoid some of the highest electricity rates in the country. If even the CEO of PSEG acknowledges that these plants will continue to be profitable for a few years, the Legislature has an obligation to take the time to consider this issue fully and determine if any solutions are needed or warranted.

Even if you believe that some form of program should go forward, the scheme set forth in this bill is unworkable and so heavily weighted in favor of the nuclear plant owners, that it is outrageous. Very few of the key terms are defined, the timeframes are insufficient to ensure adequate process and review, and some provisions are internally inconsistent. While the bill contains a number of provisions that appear to be aimed at protecting consumers, they are written in such a way that they don't. Consumers are not protected at all, while the utilities and the nuclear plant owners are insulated from any risk whatsoever.

Here are a few examples:

- Despite the language in Section 3a of the bill, it does not in fact require PSEG to open its books so that a probing independent analysis can be conducted to

ensure that these plants are truly at risk of losing money. The list of items that PSEG would be required to submit and “certify” do not include all of the items we will need to review and analyze its assertion that it is “cash negative.” There is no time for follow up that would allow our office or the BPU to obtain further information necessary to make the required findings, and no administrative process is provided if the findings or data are contested. The information is all forward-looking, based on estimates that can easily be wrong or gamed. All that is required essentially is a certification from the Company providing the information they choose to give to us and a declaration that if we don’t give them what they want, they will close.

- The sections providing for blanket confidentiality for all of the information submitted is highly unusual. While we certainly see confidential information in BPU cases, and take that information subject to a non-disclosure agreement, the normal BPU procedures place the burden on the Company to assert, and support if challenged, the confidentiality of specific information. They do not simply provide blanket confidentiality for all information submitted. This further undermines the independence and integrity of the process.
- The confidentiality provisions will also make the public hearings meaningless. The bill does require that the BPU hold public hearings when establishing the “Nuclear Diversity Certificate” (NDC) program, when determining the eligible plants, and when approving the tariffs to authorize the collection of the rate by

the utilities. However, if all the information submitted by the nuclear plant owner to justify its eligibility is confidential, what will the public be able to discuss at those hearings?

- The eligibility criteria also put the thumb on the scale of the nuclear plant owner. Pursuant to Section 3e, the plant must show that “the nuclear power plant’s fuel diversity and air quality attributes are at risk of loss because the nuclear power plant is cash negative on an annual basis, or alternatively is not covering its costs including its cost of capital on an annual basis.” What are “fuel diversity and air quality attributes?” What “risk of loss” is acceptable? These terms, like many other important terms in the statute, are not defined. However, we do know that because these generating plants are deregulated, there is no set cost of capital that they are entitled to or authorized to receive. That is why when they were making windfall profits a few years ago, ratepayers couldn’t get back the approximately \$3 billion in stranded costs we were paying. So what is the cost of capital that forms the basis for eligibility? Is it the cost of capital that Company would like to earn? The amount it will accept in order to withdraw its ultimatum to close? If so, that is not an economically sound basis for subsidizing these plants and undermining the energy markets, and it is not fair to consumers.
- Just as arbitrary is the rate set in the statute of .4 cents per kilowatt hour for the subsidy itself. Where does that come from? What is the basis for it? All we do know is that the rate is included in this bill which means it was established before

any review of the plants' financial information. There are well-established constitutionally-based principles that rates must be just and reasonable. There is no way to know how this rate was derived, whether it has any correlation to any alleged revenue shortfalls being experienced by PSEG or whether it is just and reasonable.

- And don't be fooled into thinking that the BPU can lower that rate if it proves to be too much. First, for the first four year subsidy period, the timelines in the statute provide that tariffs would have to be filed and BPU would have to have a proceeding to lower the rate before the agency even completes the proceeding to establish the program. Given the complicated tasks that BPU will be required to complete in very short timeframes in the midst of a transition, it is not likely the agency will be able – consistent with due process and the evidentiary rules that still apply- to have simultaneous proceedings to lower the rate, review the tariffs, develop the program, and review eligibility in the timeframes allowed. Second, if the BPU does lower the rate, pursuant to Section 3k, PSEG can simply back out of the program. While there is no relief valve for ratepayers if prices and revenues go up during the four year and subsequent three year periods, there are many unilateral off ramps for the Company. Not only may the Company drop out if the BPU lowers the rate, it can drop out if the Legislature passes any new tax, assessment or fee on generators, or if a state or federal law reduces the

value of an NDC, for instance by imposing wholesale market rules that will minimize the market distortion from the NDC.

- And the fact that the bill makes this charge *irrevocable* cannot be ignored. Once the initial four year period or subsequent three year periods begin, ratepayers are on the hook for the entire period. If prices go up, which is likely to happen for a number of reasons, only some of which relate to the financial stress on nuclear and coal plants, PSEG gets to keep the additional revenues as well as the NDC supplemental payments for that entire period. There is also no end date to this statute and no definition of when the closure of a nuclear plant will no longer be considered "premature."
- The provision providing for an offset if PJM, FERC or other entities act to address the financial condition of coal and/or nuclear plants is also of little value for ratepayers. It does not change a nuclear plant's eligibility for subsidies unless, according to the nuclear plant itself, the program "*eliminates* the need for the nuclear power plant to retire prematurely." (Section 3e(5)). The bill does provide for the BPU to determine each year the "dollar amount" received from such programs and deduct it from the overall subsidy, but establishing that dollar amount will be virtually impossible, given that the market prices are set by a variety of factors making it difficult to pull out that one strand to determine its impact on the overall price. If New Jersey re-enters RGGI, it is essential that any revenues generated from the price on carbon that other plants will pay go to

clean energy and energy efficiency programs. However, while the RGGI payments paid by its competitors will help PSEG's plants compete, the RGGI revenues will not be deducted from this program, as only amounts "received" by the nuclear plants are deducted.

- It will also be impossible to ensure that New Jersey ratepayers are not subsidizing ratepayers in other states. Not all of the electricity generated by these plants goes to New Jersey. In fact, much of it goes to Delaware, Maryland and Pennsylvania. With additional transmission being built from these nuclear plants, the amount going out of state, according to the PJM cost allocation formula, may very well increase. Many New Jersey businesses compete with businesses in nearby Delaware, Maryland and Pennsylvania. With this bill, you will be giving those out of state competitors a leg up.
- Furthermore, assuming they can show that they are replacing upwind gas or coal plants, or otherwise contribute to air quality and fuel diversity, out of state nuclear plants such as Three Mile Island may also be eligible for these subsidies. Given that the bill allows for subsidies until the megawatt-hours reach 40% of New Jersey's E.Y. 2017 load, we will almost certainly be subsidizing out of state plants, as the three eligible in-state nuclear plants provide New Jersey with less than 40% (about 33%) of our electricity.

- The bill also makes it appear that if the state's Basic Generation Service prices go up more than .75 percent over a two year period, then the BPU can lower the subsidy. But again this provision is illusory, because the BPU would only have a brief window every three years to lower the rate and, as noted earlier, if the BPU does lower the rate, the Company can walk away.
- Finally, many of the "findings," in the bill do not comport with real facts. For example, New Jersey has not experienced supply constraints for natural gas and the PJM Capacity Performance rules have been put in place to require sufficient firm capacity to ensure fuel security. The NERC study cited in the findings has been superseded by this year's report which specifically cites programs like that as helping ensure reliability. All objective studies from DOE, NERC, PJM etc. have concluded that our system is reliable and that there is no imminent crisis from a lack of fuel diversity.

In sum, this is a flagrant transfer of wealth from New Jersey's ratepayers to PSEG's shareholders without an independent or significant review of whether these subsidies are needed, whether the amount of the subsidy correlates to any shortfall in compensation from the federal markets, whether the rate is just and reasonable, or whether this will ultimately benefit New Jersey's economy. It's a "heads I win, tails you lose" situation for PSEG. It puts all the power and benefits on PSEG's side of the ledger, allowing it to determine what it is entitled to earn, whether other programs provide enough assistance, and even its own eligibility. The tasks being assigned to

BPU are impractical, impossible and cannot be adequately performed in the timeframes allowed. PSEG can back out if any term doesn't go in its favor, but ratepayers are on the hook for an irrevocable charge even if PSEG starts earning more. The public comment process is a sham and normal administrative procedures are cast aside as if they were of no importance to protecting the due process rights of ratepayers.

If there really is a problem to be solved here there is time to solve it. There should be an orderly, objective process to assess the problem, figure out what is needed to solve it, and come up with a fair way to balance the competing interests of both the Company and ratepayers. This is going to cost over \$300 million per year. That is \$300 million each and every year that we can't spend on other things, like the transition to a new energy economy. This rushed process and sloppy Legislative language is going to come back to haunt us.

Thank you for the opportunity to testify today, Rate Counsel looks forward to continued dialogue to achieving goals that meet the state's energy needs and protect utility customers. I am available to answer any questions you may have.