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Remarks of Stefanie A. Brand, Director, Division of Rate Counsel, Regarding S877 and A2850 (Establishes Nuclear Diversity Certificate Program) Presented at the Joint Meeting of the Senate Budget and Appropriations Committee and the Assembly Telecommunications Committee February 22, 2018

Good afternoon. My name is Stefanie Brand, and I am the Director of the Division of Rate Counsel. I would like to thank Chairman Sarlo, Chairman DeAngelo, and members of the committees for the opportunity to testify today on S877 and A2850.

The Division of Rate Counsel represents and protects the interest of all 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 or businesses 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, I have testified several times before the Senate Environment and Energy Committee and the Assembly Telecommunications Committee about earlier iterations of this bill. While it is not possible to quantify the economic impact of all aspects of this bill, Rate Counsel's economic consultants have been able to calculate the price tag of the nuclear and solar RPS portions of the bill. The total of just those two pieces of the bill, taking into account the time value of money is almost $4 billion dollars. Here is the breakdown:

- On the nuclear side, using the rate in the bill of .4 cents per kilowatt-hour, and New Jersey's EY2017 retail sales (approximately 75 million megawatt-hours) the direct cost of the ZEC program comes to a little over $300 million per year. If we assume that the program will run for seven years, *i.e.*, for the first four-year rate period and one additional three-year period, this would total $2.1 billion in direct costs for the seven years. If the program runs for ten years, it would be an even $3 billion in direct costs.
- There will also be indirect and induced costs associated with this level of rate increase. These are the secondary costs associated with ratepayers having less money to spend on other things because they are spending additional money on the nuclear subsidies. Indirect and induced costs will add another $244 million per year to the bill, for a total of $544 million per year. For seven years, that comes to $3.8 billion total, or $5.4 billion if the program lasts for ten years. If we take into account the time value of money, or the net present value ("NPV"), the total cost for a seven year program is $2.7 billion and the total cost for a ten year program is $3.4 billion.
- On the solar side, the latest revisions not only extend the Renewable Portfolio Standard out an additional 5 years, they also increase the RPS overall. Since the bill only includes very small reductions in the Alternative Compliance Payment, which forms the price ceiling on SRECs, ratepayer exposure from just the changes to this bill is approximately $465 million between 2018 and 2028 (NPV). The bill

does bring some ratepayer relief at toward the end of the program, but that ceiling does not fall below $200 until EY 2029. This adds to the total that ratepayers have already committed to pay for the solar RPS during this period, putting the total exposure to ratepayers for SREC subsidies at $5.3 billion (NPV) between 2018 and 2028 ($5.6 billion out to 2033).

I want to reiterate that Rate Counsel has no interest in seeing nuclear power plants shuttered 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.

As I have stated previously, there has been no demonstration that PSEG's nuclear plants are in financial difficulty other than bald assertions and ultimatums issued by the Company. 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. However, not all nuclear power plants are in trouble. The PJM Market Monitor has submitted testimony that shows based on public data that PSEG's nuclear plants are making money. In fact, the Market Monitor's testimony shows that over the last five years (2013-2017), PSEG's nuclear plants have covered their avoidable costs by over

$1.4 billion. In the first 17 days of 2018 alone, PSEG covered its avoidable costs by more than $131 million. PSEG has admitted that the plants are currently making money, but they argue that they do not expect them to continue to earn the return the company is seeking – 18% - which is almost double the return authorized for its regulated side. So it is imperative that we make sure, before raising ratepayer bills by billions of dollars, that there really is a threat to these plants that warrants this level of subsidies.

The language of the bill is insufficient to ensure that ratepayers are adequately represented in the process. Right now the participation of our office and any party who may be impacted by these subsidies is left to a ruling by the BPU and the Attorney General based on a finding that our participation is "essential" to the Board's ability to render a decision. The Legislature has previously recognized that our office's participation on behalf of the public interest should be guaranteed by statute and not subject to litigation in every case. See, N.J.S.A. 52:27EE-48. There are good reasons for that, since our office serves as the institutional adversary to the utilities and our participation ensures a fair process and full record. Since the mid-1970's Rate Counsel has participated in every case where a rate increase is sought and has never released confidential information to the public. There is absolutely no good reason to deviate from the process that has protected interests on both sides for over 40 years. It is also not appropriate for the Attorney General's office, which at times is our adversary in these cases, to pass on our value to the process. Nor should "essential" be the appropriate threshold for standing. This state has a long history of a liberal construction for standing and intervention. Yet this statute sets as high a bar as could be constructed. It makes no sense to litigate whether we are “essential” when this Legislature has already found us to be when enacting in our enabling statute.

This is particularly true given the importance and the complexity of the review that must be conducted. The criteria in the statute for determining if subsidies should be awarded and to whom, are either undefined, or heavily weighted in favor of the utility. The timeframes are insufficient to ensure adequate process and review, and basic principles of ratemaking and due process are simply discarded. 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 do not. Consumers are not protected at all, while the utilities and the nuclear plant owners are insulated from any risk whatsoever.

For example, terms like “fuel diversity” and “air quality attributes” are undefined and are not generally part of the process for dispatching generation. PJM certainly focuses on fuel security, and has taken steps to ensure such security to further reliability, but diversity and security are not the same thing. No guidance is given to the BPU on how to assess “air quality attributes,” which are generally outside its purview and expertise. The bill also does not tell us what “risk of loss” is acceptable. These gaps in the statute, combined with the impossible timeframes afforded to review these issues, give the applicants the ability to drive the inquiry and make the potential for a misguided decision that much greater.

The bill says that a nuclear plant can be awarded subsidies if it proves it is not projected to “fully cover its costs and risks including its risk adjusted cost of capital.” In other words, ratepayers are being asked to guarantee recovery of PSEG’s full costs and “risk adjusted cost of capital.” However, because PSEG’s generation plants were deregulated in 1999 by this Legislature, it is not entitled to any particular cost of capital. Mr. Izzo has told the Bergen Record that the return on capital that he seeks is 18% which is far more than the already inflated 11.6% the Company earns on transmission or the 9.6% that the BPU has been awarding to regulated electric utilities in the past year. Asking BPU to assure a return for a deregulated entity is inappropriate. Asking ratepayers to assume the obligation to make sure PSEG Power is earning 18% is beyond inappropriate. Moreover, with regard to risk, some of the “risks” described in the statute cover obligations that fall squarely on the generators in order to ensure reliability (e.g. the obligation to cover contractual sales obligations). It would be specifically contrary to the public interest and the law to relieve PSEG from those obligations.

The timeframes provided for the review are also unworkable. From the date the applications are actually submitted, there is only 90 days for review, which leaves little time for follow up that would allow our office or the BPU to obtain the 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. The process set forth in the Administrative Procedures Act, which has been the blueprint in this state for adequate process for many years, should be used to make sure that the process here is fair and thorough. There is no legitimate reason to deviate from it here. I understand that proposed amendments have been submitted that would reaffirm the applicability of the Administrative Procedures Act to this process and I fully support those amendments.

The rate set in the statute of .4 cents per kilowatt hour for the subsidy is completely arbitrary. This version of the bill adds that it “reflects the emissions avoidance benefits” associated with the continued operation of the nuclear plant, but the definition of that terms tells us absolutely nothing about how that is reflected in a .4 cent per kilowatt hour rate. Where does the number come from? What is the basis for it? All we 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, shockingly, this version of the bill removes the provision allowing BPU to reduce the rate for the first four year period. There is a provision allowing them to lower the rate in the fourth year, but by the time anyone looks at this rate to make sure it is just and reasonable, ratepayers will have been charged nearly $1 billion. Moreover, 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 a ZEC, for instance by imposing wholesale market rules that will minimize the market distortion from the ZEC.

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 ZEC supplemental payments for that entire period. There is no definition of when the closure of a nuclear plant will no longer be considered "premature," and the study called for in the bill at the end of ten years is of little comfort since ratepayers will have already paid $3 billion that, based on the language of the statute, they will likely never get back.

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. For example, with New Jersey re-entering RGGI, we will be seeing revenues from the price on carbon that other plants will pay. But that money is already earmarked to go to clean energy and energy efficiency programs. So while the RGGI payments paid by 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.

The bill also effectively ensures that New Jersey ratepayers will be 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. Moreover, given that the bill allows for subsidies until the megawatt-hours reach 40% of New Jersey's E.Y. 2017 load, we may well be subsidizing out of state plants as well, as the three eligible in-state nuclear plants provide New Jersey with less than 40% (about 33%) of our electricity.

In sum, this is 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. Many of the tasks being assigned to BPU cannot be adequately performed in the timeframes allowed, and without further changes, we will be spending some of that time litigating the intervention of those who represent the ratepayers. 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 normal administrative procedures are cast aside as if they were of no importance to protecting the due process rights of ratepayers.

If the goal is to only give PSEG a subsidy if they need it, this bill doesn't get us there. In fact, it makes sure they get asubsidy even when we know they don't need 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. Ratepayers do not have bottomless pockets. If we spend $3 billion on nuclear subsidies and it turns out we didn't need to, that is $3 billion less that we can spend on something else that we do need.

The solar provisions of this bill are also of great concern. While Rate Counsel supports solar energy we are currently spending more than we need to in SREC subsidies. We are second in the nation in the size of our subsidies even though we are no longer second in the nation in solar development. If we are paying too much for each kilowatt of solar, we will end up being able to afford less than we want.

New Jersey pays some of the highest prices for solar SRECs in the country. Other Mid-Atlantic States are trading much lower, and some have moved away from SREC markets altogether. Currently SREC prices in New Jersey average about $200-$220. In Maryland and Pennsylvania, prices are below $20. Delaware recently moved to an annual solicitation rather than an SREC market, which produced a weighted average price also at about $20. Information that we have from talking to solar investors is that projects can be paid off in a reasonable period of time with a reasonable return for the developer for well under the price we are paying for SRECs. The extra proceeds are allowing for faster payback periods and windfall profits. The provisions of this bill fail to provide any real relief to ratepayers, adding $465 million in ratepayer exposure that is already over $5 billion for the 2018-2028 period. In this proposal, the Alternative Compliance Payment (ACP), which provides the ceiling on SREC prices, doesn't even fall below $200 until 2029. In short, we are developing solar in a way that is much more expensive than necessary. While we welcome the provisions of the bill that call for a two year study to figure out a better way, further reductions in the ACP are needed. Other states start lower and decline faster. For example, Maryland's 2017 SACP is $200. In 2019, Maryland goes to $150 and in 2023 they go to $100. There is no evidence that New Jersey companies need so much more to finance their projects than developers in other states. So unless changes are made, New Jersey will continue to support its solar program in a manner that is much more expensive than necessary.

With respect to the significant increase in the Class I RPS that is included in this bill, we support the goal, but note that it will be difficult to reach these goals without a substantial portion of the electricity coming from out of state sources. A significant number of our Class I RECS come from solar and wind projects in the mid-west. While this may not be a concern, it is something that must be considered when looking at the impact of this bill on New Jersey ratepayers. While the bill provides for rate caps, a concept that we generally appreciate, the language of the bill is a bit ambiguous. It is unclear if it allows rate increases of 7% each year from 2019-2021 and 5% increases each year thereafter, or if it is intended to keep the percentage of residential rates used to meet the Class I RPS at 7% and 5%. The former would represent a huge increase in rates, the latter would be more reasonable. The bill is also silent on whether or how these caps would apply to business and commercial customers.

It is not possible for us to calculate the overall cost of the energy efficiency, storage and virtual net metering portions of the bill. We are great supporters of energy efficiency and do support a program that requires utilities to undertake such programs.

We also support paying them fairly and rewarding them for successful programs. However, we do not support decoupling utility revenues from what they sell or giving them lost revenues “associated with” their programs. If the Board is to consider any lost revenues at all, the utilities should be required to prove that the losses resulted from their programs, rather than take credit for weather, economic downturns, or customer driven energy efficiency. Otherwise, the disincentive is transferred to the ratepayer which could threaten the success of these programs. While some argue decoupling removes disincentives to pursue energy efficiency, a mandate that requires utilities to undertake energy efficiency also removes any such disincentive. We can pay the utility a fair amount and still preserve the economic benefits for customers who save electricity through energy efficiency.

We are also concerned about the community solar or virtual net metering provisions of the bill. At the same time the BPU is being asked to review the financial status of nuclear plants, establish offshore wind regulations, study energy storage, review new ways to promote solar development, determine the impact of the new Tax code, and process many infrastructure and rate cases, the Board will also have to develop regulations governing Community Solar. This is simply not feasible. Community Solar should be folded into the review of our Solar program provided for elsewhere in the statute.

In sum, this bill is massive, and with each iteration it gets worse. It will add huge costs to the monthly bills of the customers you represent. It will impact our state’s economy for many years to come. There is no reason to proceed on the fly like this. There is no imminent emergency related to any of this. We need to take the appropriate amount of time to make sure that the provisions of the bill have been crafted appropriately and that we are not paying for things we don't need or paying too much for the things we do need. That probing review has not occurred in the crafting of this bill. I urge you not to vote it out of Committee. Thank you for the opportunity to testify today. I am available to answer any questions you may have.