

IN THE
SUPREME COURT OF NEW JERSEY

No. 085640

**IN THE MATTER OF
IMPLEMENTATION OF L. 2018, C.
16 REGARDING THE
ESTABLISHMENT OF A ZERO
EMISSION CERTIFICATE
PROGRAM FOR ELIGIBLE
NUCLEAR POWER PLANTS**

**Application for Zero Emission
Certificates of Salem 1 Nuclear Power
Plant,**

**Application for Zero Emission
Certificates of Salem 2 Nuclear Power
Plant,**

**Application for Zero Emission
Certificates of Hope Creek Nuclear
Power Plant**

:
:
: ON A PETITION FOR CERTIFICATION
: OF A FINAL ORDER OF THE
: APPELLATE DIVISION,
: SUPERIOR COURT OF NEW JERSEY
:
: APPELLATE COURT Docket No. A-
: 003939-18
:
: SAT BELOW:
: HON. MARY GIBBONS WHIPPLE, J.A.D.
: HON. LISA ROSE , J.A.D.
: HON. LISA A. FIRKO, J.A.D.

**PETITION FOR CERTIFICATION OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**STEFANIE A BRAND
DIRECTOR, DIVISION OF RATE COUNSEL**

Division of Rate Counsel
140 East Front Street, 4th Floor
P. O. Box 003

Trenton, New Jersey 08625
T(609)984-1460, F(609)292-2923
njratepayer@rpa.state.nj.us

DATED: April 19, 2021

ON THE PETITION:

Stefanie A. Brand, Atty. ID No. 032331986, sbrand@rpa.nj.gov
Brian O. Lipman, Atty. ID No. 026711995, blipman@rpa.nj.gov
T. David Wand, Atty. ID No. 037002008, dwand@rpa.nj.gov
Sarah H. Steindel, Atty. ID No. 002271986, ssteinde@rpa.nj.gov

TABLE OF CONTENTS

	Page No.
TABLE OF CONTENTS	i
TABLE OF JUDGMENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE MATTER INVOLVED	1
QUESTIONS PRESENTED	5
ERRORS COMPLAINED OF	5
REASONS WHY CERTIFICATION SHOULD BE GRANTED	7
DISCUSSION	11
A. The Decisions Below Deviated From the Eligibility Criteria in the Statute and Failed to Analyze the Evidence Regarding Costs, Risks, and Revenues.	11
B. The Decisions Below Failed to Harmonize EDECA and the ZEC Act and Violate Ratepayers' Right to Challenge Unjust and Unreasonable Rates.	17
CONCLUSION	20

APPENDIX

Decision, 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. 003939-18, 2021 N.J. Super LEXIS 33 (March 19, 2021).....	Pa1
Notice of Petition for Review.....	Pa48
Transcript of Agenda Item 9A during the April 18, 2019 Board of Utilities Agenda Meeting.....	T1
Transcript of Agenda Item 9B during the April 18, 2019 Board of Utilities Agenda Meeting.....	T58

TABLE OF JUDGMENTS

Decision

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.
003939-18, 2021 N.J. Super LEXIS 33 (March 19,2021).....Pa1

TABLE OF AUTHORITIES

Page No.

Cases

In re Centex Homes, LLC, 411 N.J. Super. 244 (App. Div. 2009) 12

In re Proposed Increase in Industrial Sand Rates, 66 N.J. 12
(1974) passim

In re Pub. Serv. Coordinated Transp., 5 N.J. 196 (1950) 17

In re Redi-Flo Corp., 76 N.J. 21 (1978) 18, 19

New Jersey Regulations

N.J.S.A. 48:2-21 3

N.J.S.A. 48:3-49 et seq. 6

N.J.S.A. 48:3-56 & -59 6

N.J.S.A. 48:3-87.3 et seq. 1

N.J.S.A. 48:3-87.5(e) 1, 11, 13

N.J.S.A. 48:3-87.5(e) (3) 1, 13, 15

N.J.S.A. Title 48 7

Unpublished Case

In re Investigation of Local Exchange Carrier Intrastate Access Rates,
2012 N.J. Super Unpub., LEXIS 1430 at *42 21

STATEMENT OF THE MATTER INVOLVED

This case involves the award of approximately \$300 million per year in "Zero Emissions Certificates" ("ZECs") to unregulated merchant nuclear power plants pursuant to N.J.S.A. 48:3-87.3 et seq. ("the ZEC Act"). The Board of Public Utilities ("BPU" or "Board") allowed these charges to be added to the bills of all New Jersey electricity customers based on a threat by the owners that they would close their plants without the subsidies.

The ZEC statute establishes five eligibility criteria for the award of ZECs. N.J.S.A. 48:3-87.5(e). The contested criterion was the financial one, which requires a showing that the financial condition of the nuclear plants is such that they are likely to cease operations within the next three years. N.J.S.A. 48:3-87.5(e)(3). All of the entities that reviewed this question - the consultant hired by the BPU ("LAI"), BPU Staff, the PJM Independent Market Monitor, the consultants hired by Rate Counsel, and a consultant hired by participant PJM Power Providers - concluded that the plants were anticipated to earn sufficient revenues over the next three years to cover their avoidable costs so they should not need to cease operations. (Order at 4-7, 9-10, Aa602-05, Aa607-08). The BPU, however, summarily rejected all of these analyses, adopted the cost and revenue assumptions submitted by the applicants in their

entirety, and considered "externalities" outside of the criteria specified in the statute to find these plants eligible for ZECs. (Order at 15, Aa613) The Board's Order acknowledged Rate Counsel's argument that the Board could exercise its regulatory authority to ensure just and reasonable rates to modify the \$0.004 per kwh charge set in the ZEC Act (Order at 5, Aa603), but apparently determined, with no stated finding or analysis, that it lacked authority to do so and was required to award the full amount whether it was just and reasonable or not.

At the Board Agenda meeting where the decision was rendered, each Commissioner spoke separately. They explained at length the bases for their decisions and their votes. Several expressed concern regarding the choice they were faced with, noting that they felt ratepayers were being held "hostage" and that they were being asked to pay "ransom." (T26-14 to 16, Aa742) One dissented, describing the choice facing them as "highway robbery." (T32-13 to 14, Aa748)

This April 2019 decision by the BPU was immediately appealed by Rate Counsel and others. Nearly two years later, the Appellate Division upheld the Board's decision. Relying heavily on administrative deference, the Court upheld the BPU's wholesale adoption of the applicants' quantification of costs and revenues. Like the BPU, the Appellate Division spent much time discussing an issue that was not disputed, that is, whether

operational and market "risks" should be reviewed and quantified. (Order at 13-15, Aa611-Aa613; Slip op. at 32-37) However, once the Court determined that the applicants' claimed "costs of risk" should be considered, it failed to analyze (or remand for the Board to analyze) whether the applicants' quantification of their claimed costs of risk, or any of their other claimed costs and revenues, were reasonable or whether the evidence submitted by other parties was more credible. The Court ignored the transcript of the Board's decision and the statements of the Commissioners regarding their fears that applicant PSEG Nuclear ("PSEG") would close these plants if not awarded ZECs, and concluded that the record "belies Rate Counsel's contention" that such fears formed the basis for the Board's decision. (Slip op. at 40)

The Appellate Division also rejected Rate Counsel's arguments that someone - the Board, the Court, someone - had to ensure that the rate being charged here is just and reasonable. In a decision that can only be described as Kafkaesque, the Court ruled that although the ZEC subsidy is being charged to customers as a non-bypassable charge on their bills, the "just and reasonable" requirement in N.J.S.A. 48:2-21 only applies to utility rate hearings, and since PSEG's nuclear plants have been deregulated that statute does not apply to them. (Slip op. at 45-46). No effort at all was made to harmonize the two statutes

that both unquestionably apply to ratepayers. The Court did acknowledge this Court's decision in In re Proposed Increase in Industrial Sand Rates, 66 N.J. 12 (1974), which states plainly that rates must be just and reasonable even when established by the Legislature, but held that the only recourse for ratepayers to challenge a rate set by a Legislative body is in the Legislature itself or by challenging the statute on its face. (Slip op. at 47) Of course, when this statute was passed there was no way to know whether ZECs would be awarded or to which plants, so any challenge arguing that the rate was unjust or unreasonable at that time would not have been ripe.

In short, the issue of ratepayer subsidies for the unregulated nuclear power plants owned by PSEG and Exelon were the subject, first, of a highly political Legislative process. As set forth in the record below, ratepayers were told then that the statute was simply establishing a process at the BPU where the interests of ratepayers would get a fair review alongside those of the generation owners. At the BPU, while its Staff embarked on a thorough and probing factual review, the Board Order and the transcript of the Board's decision make clear that the decision was ultimately based on factors other than the strict financial criteria and eligibility requirements established in the Act. Two years later, the Appellate Division failed to probe any deeper and simply rubber-stamped the

superficial review conducted by the BPU. Ratepayers continue to wait for someone to analyze the evidence in this case based on the actual facts and governing law. For this reason, Rate Counsel requests that the Court grant Certification.

QUESTIONS PRESENTED

1. Was the BPU bound by the eligibility criteria set forth in the ZEC Act when determining the eligibility of the applicant nuclear plants for ZECs?
2. Should the Board have analyzed the competing evidence in the record regarding the applicants' costs, risks and revenues rather than adopting the applicants' numbers?
3. Should the Board and the Appellate Division have attempted to harmonize the provisions of the ZEC Act and the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA")?
4. Were the Board and the Appellate Division correct that the ZEC rate cannot be challenged in Court as unjust and unreasonable as applied?

ERRORS COMPLAINED OF

The Appellate Division erred in upholding BPU's decision to award ZECs based on factors other than the specific eligibility criteria set forth in the ZEC Act. As detailed below, the record is clear that the Board relied on "externalities" in reaching its decision, despite express statutory language establishing eligibility criteria. Moreover, after affirming the Board's determination that operational and market risks must be considered in assessing eligibility, the Appellate Division erred by simply adopting the applicants' quantification of those

risks as the Board had done, rather than analyzing competing evidence regarding the proper quantification of those risks or remanding for the Board to conduct such an analysis. The Appellate Division also erred in adopting the applicants' quantification of other operating costs and projected revenues, rather than analyzing the evidence regarding those costs and revenues or remanding for the Board to do so.

The Appellate Division and the BPU also erred in making no effort to harmonize the provisions of the ZEC Act and EDECA, N.J.S.A. 48:3-49 et seq. In EDECA, the Legislature deregulated electricity generation and transferred the risks and costs of operating such plants to the generators. See, N.J.S.A. 48:3-56 & -59. The ZEC Act does alter EDECA insofar as it returns to ratepayers some of the obligations to pay for these plants, but it did not purport to repeal EDECA in its entirety. Yet the Appellate Division dispensed with EDECA's protections, and found that there was no obligation to harmonize the provisions of the two statutes because they were unrelated. In doing so, the Court dispensed with the important constitutionally-based protection in EDECA that rates charged to customers be just and reasonable. It also effectively overruled this Court's decision in In re Industrial Sand, supra, 66 N.J. 12, which requires that rates be just and reasonable even when set by the Legislature, and foreclosed any meaningful path to challenge the ZEC rate set by

the Legislature in contravention of ratepayers' rights to due process. The Court ruled that when a rate is set by the Legislature in a statute the only means to challenge that rate is in the Legislature itself or by bringing a challenge to the statute on its face. The Court found that the provisions of N.J.S.A. Title 48 requiring that rates be just and reasonable do not apply because the nuclear plants are not utilities, even though the ZECs are to be charged through utility rates. The Court also ignored the fact that a facial challenge to the statute would not have been ripe as it was not known until the Board issued the decision appealed herein whether ZECs would be awarded and to whom. Thus, the Appellate Division decision rendered the rates judicially unappealable in violation of ratepayers' due process rights.

REASONS WHY CERTIFICATION SHOULD BE GRANTED

This appeal unquestionably raises issues of great public importance. Over the first three-year ZEC period, PSEG and Exelon are expected to collect nearly \$1 billion from New Jersey electric customers.¹ That money is to be collected from customers through their regulated rates even though these plants were deregulated in 1999 in EDECA, and the owners of the plants were to assume the risks of operation from captive ratepayers.

¹The applicants have already applied for ZECs for a second three year period. Those applications are currently pending before the BPU.

While the Legislature may alter the regulatory structure regarding these plants when passing the ZEC Act, it specifically did not repeal or alter the applicable provisions of EDECA, yet both the BPU and the Appellate Division acted as though it did. There was no attempt to harmonize the two statutes, explain how the benefits and obligations are distributed going forward, or where this leaves important protections for ratepayers, such as the principle that rates must be just and reasonable.

Instead, the decision below leaves New Jersey ratepayers in regulatory limbo. Under EDECA, electricity generation is no longer regulated and generators are no longer utilities. Thus, if rates are high and profits soar, the generators need not share those profits with ratepayers and BPU has no authority to lower their rates. This was the circumstance when these plants were highly profitable between the passage of EDECA in 1999 and before the passage of the ZEC Act in 2018. However, when market conditions changed and the plants became less profitable, the Legislature granted new rights and privileges to the nuclear operators. According to BPU and the Appellate Division, those new rights and privileges apparently superseded the existing protections for ratepayers in EDECA, even though there is nothing in the ZEC Act that repeals EDECA and even though the two Acts are not in conflict.

The decisions below also establish a new precedent that when a rate is set by the Legislature, it may only be challenged on its face or in the Legislature itself, not by recourse to the courts if a statute as applied creates an unreasonable rate. Ratepayers, therefore, are now left not knowing which aspects of EDECA still apply, when rates that are alleged to be unjust and unreasonable may be challenged, and what portion of the rates that are being charged on their bills are subject to regulatory oversight. These decisions also set a precedent allowing the "regulatory compact" between ratepayers and utilities to be upended. Ratepayers are captive, having no choice but to pay the ZECs, but pursuant to the decisions below, the regulatory authority embodied in EDECA that is intended to protect customers in the face of utility monopoly power does not apply because these plants and their owners are no longer "regulated."

From a precedential standpoint, the impact of this published decision will be grave. If the BPU is permitted to order captive ratepayers pay these plants hundreds of millions of dollars in non-bypassable charges on their electric bills, then there must be a legal means for ratepayers to challenge the assessment and amount of these charges. The nuclear plants should not be permitted the benefits of regulation without any of the obligations. To do otherwise is a clear violation of due process that would open the door for the politicization of

utility rates on a scale never seen before. The Court should grant Certification to finally - for the first time in this entire process - give ratepayers a fair hearing.

In addition, the Court should take this case to correct obvious errors in how the matter was heard. Even accepting the need to consider the costs of operational and market risks, the decisions below failed to probe the evidence regarding the proper quantification of those risks and other disputed elements of the applicants' claimed costs and revenues. The Appellate Division failed to rule on the argument that the Board was not permitted to modify the statutory criteria, and literally ignored the transcript of the Board's decision, finding that there was no evidence in the record that the Board considered PSEG's threats to shutter the plants regardless of their financial showing, despite statements to that effect by the voting Commissioners. The highly politicized nature of the proceedings in the Legislature and at the BPU may not have come as a surprise, but after two years the Appellate Division conducted no more probing analysis, simply parroting the decision below in the name of "deference."

If this Court fails to grant certification, ratepayers will be left to wonder when the next politically powerful constituency will come along asking for ransom. It is unclear whether any path will remain for customers to challenge the

additional costs they are being asked to pay, whether the regulatory compact still has any validity, or whether regulation still stands as a protection against the exercise of monopoly power. This Court stands as the last hope that someone will take a close look at whether the applicants made their case under the statute and whether the process employed was legal and fair. For these reasons, the Court should grant Certification.

DISCUSSION

A. The Decisions Below Deviated From the Eligibility Criteria in the Statute and Failed to Analyze the Evidence Regarding Costs, Risks, and Revenues.

N.J.S.A. 48:3-87.5(e) sets forth five specific eligibility criteria for the award of ZECs, all of which must be met for an applicant to be eligible. However, the Board expanded upon the eligibility criteria set forth by the Legislature, indicating that it believed it should consider "other outside factors, including fuel diversity, resiliency, and the impact of nuclear power plant retirement on RGGI, New Jersey's economy, carbon and the Global Warming Response Act." (Order at 15, Aa613) While these may be laudable public policy goals generally, none were listed as eligibility criteria by the Legislature in the statute. See N.J.S.A. 48:3-87.5(e). At the Agenda meeting, some of the Commissioners noted other factors that led to their decisions to vote for the subsidies. See T23-16 to 21, Aa739 (Commissioner Solomon: "Because I believe that some level of

subsidy is warranted and I believe that the risk of losing our in-state generation and the resulting loss of jobs and costs to ratepayers and the environment, as well as system reliability, outweighs the cost of the proposal, I will reluctantly vote yes.”); T27-13 to T28-2, Aa743-44 (Commissioner Gordon: “I believe the ZEC legislation was enacted ... not because these three plants are losing money, but because they are not profitable enough. Absent a subsidy, PSE&G and Exelon can make a higher return by deploying capital to alternative investments. While a strict reading of the ZEC legislation links eligibility for the subsidy to a determination of operating losses, I am compelled to take a more expansive view of the factors that should drive this decision and what constitutes the public interest. In making my decision, I felt a need to weigh the economic impact of the proposed energy tax against the likely environmental climate and public health impacts associated with the plant closures.”) Thus, it is clear that the Board deviated from the plain language of the statute to apply eligibility factors other than those enumerated by the Legislature. In doing so, the Board exceeded its authority. See, In re Centex Homes, LLC, 411 N.J. Super. 244, 262 (App. Div. 2009) (citing “the Court’s prior invalidation of BPU regulations for adding criteria not specifically enumerated in the statute” as part of

the basis for invalidating service extension rules that incorporated "smart growth" policy goals).

While acknowledging that the Board expanded the eligibility factors (Slip op. at 29) the Court below did not address whether this is permitted under the statute. Oddly, the Appellate Division later cited a series of cases holding that unambiguous statutory language should be followed when discussing the financial criterion in N.J.S.A. 48:3-87.5(e)(3) (Slip op. at 33), but did not discuss whether the Board was free to modify the eligibility criteria that are explicitly set forth in that very same statutory provision. There is no discussion of the Commissioners' statements regarding the bases for their decisions. Although this issue was unquestionably raised in the briefs below (RCb1-2, 21, 38; NJLEUCb2-3, 22-24), the Court did not address it or explain why it believed the Board was free to modify the eligibility criteria in the statute.

The closest the Court came to addressing this argument is its statement that the record does not support a finding that external factors were "weighed ... more heavily than the eligibility criteria codified at N.J.S.A. 48:3-87.5(e)." (Slip op. at 40) This was not the issue presented. The issue was not how much weight to accord factors beyond the statutory criteria, but whether the statute allowed them to be weighed at all.

The Court's summary dismissal of Rate Counsel's argument that the Board's decision was based on fears that PSEG would close the plants if they did not receive ZECs is contrary to the record. The Court found that "[t]he extensive record in this case belies Rate Counsel's contention that the Board's decision is based on a fear that regardless of whether the eligibility criteria were met PSEG Nuclear would close the plants if it did not get subsidies for all three units." (Slip op. at 40) This statement is directly contradicted by the Agenda transcript which was ignored by the appellate panel: President Fiordaliso: "PSEG has made it quite clear that they will not continue to operate the nuclear facilities absent the subsidies." (T18-5 to 7, Aa734); Commissioner Gordon: "I would characterize the choices we face as genuinely awful. On the one hand, we could reject the mandated subsidy and see the three plants shut down. And I have no doubt that the owners would carry out their threat." (T25-3 to 7, Aa741); Commissioner Holden: "I, for one, will not play the equivalent of a generation chicken game with our nuclear power plants." (T37-9 to 10, Aa753).

Moreover, as noted by the BPU and the court below, the criterion that was primarily contested was the financial criterion, which requires the applicants to demonstrate that the nuclear power plants' attributes "are at risk of loss because the nuclear power plant is projected to not fully cover its

costs and risks,... 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). Both the BPU and the Appellate Division spend a considerable amount of time describing the arguments made by the parties regarding this criterion. Both concluded that the statute did require a quantification of the "costs" of operational and market risks, despite the testimony and conclusions of several expert economists that such risks are not "costs" in the traditional sense that would be incurred by the applicants. (Order at 13-15, Aa611-Aa613; Slip op. at 32-37) However, once they reached that conclusion, neither made any effort to analyze the record evidence on the value of those risks or the applicants' other costs or revenue projections supporting their claim that the plants would not fully cover their costs and risks. The BPU's analysis consisted of the statement that "[h]ad the Eligibility Team and LAI considered the two risk factors as well as the other externalities and had they reviewed the financial filings as submitted by the applicants, the plants would have been deemed eligible to receive subsidies, as a matter of fact." (Order at 15, Aa613) The Appellate Division upheld this conclusory finding, noting that PSEG "certified on behalf of each applicant that each plant's projected costs exceeded its projected revenues," and

that it "submitted extensive financial information to support each plant's certified cost projections, summarized in charts listing various subcategories of costs and revenues showing that its costs and risks were projected to exceed its revenues by millions of dollars each year." (Slip op. at 37) However, a summary certification by the applicant and submission of the application alone is not sufficient. Rate Counsel and others raised specific questions regarding the costs and risks claimed by the applicants. For example, the spent fuel charge claimed as a cost was suspended by Court Order in 2014 and has not been paid since. (Order at 4, 10, Aa602, As608) Whether that may continue to be claimed as a cost was not resolved by the BPU or the Appellate Division. PSEG did not itemize or summarize its operational risks in the charts included in its application but "quantified" them by including an across-the-board 10% adder to account for such risks. (PSEG Feb. 14, 2019 letter to BPU at 14, Aa542) There was no analysis by the BPU or the Appellate Division as to whether this was legitimate. PSEG accounted for its capital expenditures as if they were paid off in one year, even though this inflates those costs and is contrary to generally accepted accounting principles and normal business practice. (Order at 4, Aa602) There was no analysis by the BPU or the court below regarding whether this was legitimate or whether it artificially inflated PSEG'S costs and made its

financial picture look worse. Instead, the BPU and the appellate court arbitrarily and capriciously accepted the applicants' numbers on a wholesale basis. (Order at 15, Aa613, Slip op. at 36-37) In doing so, they committed clear error. See In re Pub. Serv. Coordinated Transp., 5 N.J. 196, 218 (1950) (holding that the Board has "a duty to go behind the figures shown by the companies' books and get at realities.")

B. The Decisions Below Failed to Harmonize EDECA and the ZEC Act and Violate Ratepayers' Right to Challenge Unjust and Unreasonable Rates.

There is no question that the ZEC Act upends aspects of traditional utility regulation. It allows unregulated generators to earn additional revenues through a non-bypassable charge added to regulated utility rates. In enacting the statute, the Legislature did not express a desire to repeal EDECA or the basic provisions protecting ratepayers included in EDECA. However, the decisions below make no effort to harmonize the two statutes but instead interpret the ZEC Act as granting PSEG and Exelon the benefits of regulation without the obligations. The decisions below thus deprive ratepayers of basic due process protections and effectively render the ZEC rate set forth in the statute unappealable, which is contrary to this Court's decision in Industrial Sand, supra, 66 N.J. 12.

As discussed fully in Rate Counsel's briefs below, EDECA deregulated electricity generation in New Jersey, including the

nuclear plants at issue here. The risks of ownership and operation were transferred to the plants' owners and they were paid \$2.94 billion to compensate for the "stranded" costs of the plants and for assuming those risks. (RCb6-9). The ZEC Act has admittedly changed portions of that bargain, but there is no statutory language or Legislative history that suggests that the ZEC Act was intended to replace EDECA in its entirety. In such circumstances, the BPU and the Appellate Division should have made an effort to harmonize the provisions of the two statutes rather than simply dispensing with the provisions of EDECA.

Most importantly, they should not have simply dispensed with the requirement that the ZEC rate be just and reasonable. This Court has made it clear that the question of what is a "rate" should be viewed from the perspective of the consumer. In re Redi-Flo Corp., 76 N.J. 21, 40-41 (1978). The requirement that rates be just and reasonable has been held to apply even when rates are set under alternative plans of regulation. In re Investigation of Local Exchange Carrier Intrastate Access Rates, 2012 N.J. Super Unpub., LEXIS 1430 at *42. Of course, the just and reasonable requirement also applies when the rate is set by the Legislature. Industrial Sand, supra.

The Appellate Division's decision on this point is bizarre and confounding. It finds that the two statutes need not be read in pari materia because, although both part of Title 48 and

both addressing utility rates, "they do not reference each other and were not designed to serve a common purpose." (Slip. Op at 46) It is unclear how the Court could even say this, given the extensive briefing regarding how the ZEC Act altered the construct of EDECA and the deregulation of generation. Needless to say, the Court's discussion does not even reference this Court's decision in Redi-Flo, supra, 76 N.J. at 40-41. which holds that the definition of a "rate" or "rate increase" should be viewed from the perspective of the customer, as these statutes can only be viewed as unrelated if the perspective of the customer is ignored. The Appellate Division utterly fails to address this Court's decision in Industrial Sand, finding that the only "relevant takeaway" is that aggrieved parties can seek redress for unjust and unreasonable legislatively set rates by going back to the Legislature or by seeking to restrain the enforcement of the statute as unconstitutional. (Slip op. at 47) It utterly ignores this Court's holding, cited extensively by appellants, that the protection from unreasonable rates is "related to constitutional principles which no legislative or judicial body may overlook," and that and unreasonably high rates "cannot be permitted to inflict extortionate and arbitrary charges upon the public," and that "this is so even where the rate or limitation on the rate is established by the Legislature itself." Industrial Sand, supra, 66 N.J. at 23-24.

The fact is that the decisions below have left ratepayers with no remedy to challenge the fixing of rates here. A facial challenge to enjoin the statute as unconstitutional would not have been ripe until it was known if any ZECs were awarded and to whom. That did not occur until the Order appealed from in this case was issued. It is not the Legislature's domain to review the Board's decision or determine whether the record supports the reasonableness of the rate, as that balancing properly belongs in the judicial review of the administrative decision. As this Court so clearly held in Industrial Sand, ratemaking power grounded in the police power of the state cannot be permitted to inflict arbitrary charges on the public and some meaningful path of review must exist to satisfy due process. This Court should grant certification to provide that path and overturn the arbitrary and capricious decisions below.

CONCLUSION

For the foregoing reasons, the Petition for Certification should be granted.

Respectfully submitted,

/s/ Stefanie A. Brand

Stefanie A. Brand, Director
On Behalf of Appellant
New Jersey Division of Rate Counsel

IN THE
SUPREME COURT OF NEW JERSEY

No. 085640

**IN THE MATTER OF
IMPLEMENTATION OF L. 2018, C.
16 REGARDING THE
ESTABLISHMENT OF A ZERO
EMISSION CERTIFICATE
PROGRAM FOR ELIGIBLE
NUCLEAR POWER PLANTS**

**Application for Zero Emission
Certificates of Salem 1 Nuclear Power
Plant,**

**Application for Zero Emission
Certificates of Salem 2 Nuclear Power
Plant,**

**Application for Zero Emission
Certificates of Hope Creek Nuclear
Power Plant**

:
:
: ON A PETITION FOR CERTIFICATION
: OF A FINAL ORDER OF THE
: APPELLATE DIVISION,
: SUPERIOR COURT OF NEW JERSEY
:
: APPELLATE COURT Docket No. A-
: 003939-18
:
: SAT BELOW:
: HON. MARY GIBBONS WHIPPLE, J.A.D.
: HON. LISA ROSE, J.A.D.
: HON. LISA A. FIRKO, J.A.D.

**APPENDIX TO THE PETITION FOR CERTIFICATION OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**STEFANIE A BRAND
DIRECTOR, DIVISION OF RATE COUNSEL**

Division of Rate Counsel
140 East Front Street, 4th Floor
P. O. Box 003
Trenton, New Jersey 08625
T(609)984-1460, F(609)292-2923
njratepayer@rpa.state.nj.us

DATED: April 19, 2021

ON THE PETITION:

Stefanie A. Brand, Atty. ID No. 032331986, sbrand@rpa.nj.gov
Brian O. Lipman, Atty. ID No. 026711995, blipman@rpa.nj.gov
T. David Wand, Atty. ID No. 037002008, dwand@rpa.nj.gov
Sarah H. Steindel, Atty. ID No. 002271986, ssteinde@rpa.nj.gov

(Pages Pa1 through Pa48 and T1 through T67)

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3939-18

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,

APPROVED FOR PUBLICATION

March 19, 2021

APPELLATE DIVISION

and

APPLICATION FOR ZERO
EMISSION CERTIFICATES OF
SALEM 1 NUCLEAR
POWER PLANT,

APPLICATION FOR ZERO
EMISSION CERTIFICATES OF
SALEM 2 NUCLEAR
POWER PLANT,

APPLICATION FOR ZERO
EMISSION CERTIFICATES OF
HOPE CREEK NUCLEAR
POWER PLANT.

Argued December 9, 2020 – Decided March 19, 2021

Before Judges Whipple, Rose, and Firko.

On appeal from the New Jersey Board of Public
Utilities, Docket Nos. EO18080899, EO18121338,
EO18121339 and EO18121337.

Stefanie A. Brand, Director, argued the cause for intervenor-appellant New Jersey Division of Rate Counsel (Stefanie A. Brand, attorney; Stefanie A. Brand, Brian O. Lipman, Litigation Manager, and Sarah H. Steindel, Assistant Deputy Rate Counsel, on the briefs).

David Chester Apy, Assistant Attorney General, argued the cause for respondent New Jersey Board of Public Utilities (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Alex Moreau, Deputy Attorney General, on the brief).

Christopher S. Porrino argued the cause for intervenors-respondents Public Service Enterprise Group Incorporated and PSEG Nuclear, LLC (Lowenstein Sandler, LLP, attorneys; Christopher S. Porrino, Peter Slocum, Tamara Linde, Grace H. Park, Aaron I. Karp, and Joseph Accardo, Jr., on the brief).

Steven S. Goldenberg argued the cause for intervenor-respondent New Jersey Large Energy Users Coalition (Giordano, Halleran & Ciesla, PC, attorneys; Steven S. Goldenberg, of counsel and on the brief).

George C. Jones argued the cause for intervenor-respondent PJM Power Providers Group (McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Joseph P. LaSala, of counsel; George C. Jones, on the brief).

Matthew M. Weissman, attorney for intervenor-respondent Public Service Electric and Gas Company; Cozen O'Connor, PC, attorney for intervenor-respondent Jersey Central Power & Light Company; and Philip J. Passanante, attorney for intervenor-respondent Atlantic City Electric Company (Matthew

M. Weissman, Gregory Eisenstark, and Philip J. Passanante, on the joint brief).

Day Pitney, LLP, Jeanne J. Dworetzky (Exelon Generation Company, LLC) of the District of Columbia bar, admitted pro hac vice, and Matthew E. Price (Jenner & Block, LLP) of the District of Columbia and Massachusetts bars, admitted pro hac vice, attorneys for intervenor-respondent Exelon Generation Company, LLC (Christopher John Stracco, Jeanne J. Dworetzky, Matthew E. Price, and Andrew J. Lichtman, on the brief).

Carlin & Ward, PC and Jeffrey W. Mayes (Monitoring Analytics, LLC) of the Pennsylvania, Virginia, and District of Columbia bars, admitted pro hac vice, attorneys for intervenor-respondent Monitoring Analytics, LLC (Michael J. Ash and Jeffrey W. Mayes, of counsel and on the brief).

Szaferman, Lakind, Blumstein & Blader, PC, attorneys for amicus curiae AARP (Janine G. Bauer, on the brief and Evelyn Liebman).

Connell Foley, LLP, and Ann Brewster Weeks (Clean Air Task Force) of the Massachusetts bar, admitted pro hac vice, attorneys for amicus curiae Clean Air Task Force (Thomas S. Cosma and Ann Brewster Weeks, on the brief).

Richard M. Pescatore, PC, and Bethany A. Davis Noll (Institute for Policy Integrity) of the New York bar, admitted pro hac vice, attorneys for amicus curiae Institute For Policy Integrity (Jennifer Carlson and Bethany A. Davis Noll, on the brief).

Sills Cummis & Gross, PC, attorneys for amicus curiae Nuclear Energy Institute, Inc. (Peter G. Verniero and Michael S. Carucci, of counsel and on the brief).

The opinion of the court was delivered by

WHIPPLE, J.A.D.

In 2007, the New Jersey Legislature passed the Global Warming Response Act, N.J.S.A. 26:2C-37 to -68, having declared that it was in the State's interest to reduce greenhouse gas emissions by eighty percent by 2050. In furtherance of that goal, in 2018 the Legislature enacted a Zero Emission Certificate (ZEC) program for eligible nuclear power plants, L. 2018, c. 16, codified at N.J.S.A. 48:3-87.3 to -87.7 (the ZEC Act). The purpose of the ZEC Act is to subsidize nuclear power plants at risk of closure, helping them to remain operational despite competition from other carbon-emitting power sources, in the interest of New Jersey's clean energy goals. The Board of Public Utilities (the Board) administers the ZEC program, reviews applications, and selects eligible nuclear power plants to receive ZECs.

The Board considered ZEC applications from the Salem 1, Salem 2 and Hope Creek nuclear power plants located in Salem County. Following an extensive review of the applications, including voluminous confidential financial information about the nuclear power plants' costs and revenues, certifications that the plants would shut down in three years absent a material financial change, as well as consideration of thousands of public comments, the Board determined that all three applicants satisfied the five statutory

eligibility criteria codified at N.J.S.A. 48:3-87.5(e) and should receive ZECs. In this appeal, we address challenges to the Board's decision. Because the Board's decision is adequately supported by the record and consistent with both the ZEC Act's plain language and the legislative intent, we affirm.

I.

Significant ZEC subsidy costs are ultimately passed on to consumers; thus, the New Jersey Division of Rate Counsel (Rate Counsel) appealed the Board's decision, arguing it was arbitrary, capricious, or contrary to law for various reasons. Rate Counsel contended none of the nuclear power plants need ZECs to remain financially viable and therefore do not satisfy the third statutory eligibility criterion. Rate Counsel advanced other general challenges to aspects of the Board's findings and conclusions, asserting the Board did not interpret certain aspects of the ZEC Act correctly, and further argued that the Board ignored its responsibility to ensure that the \$0.004-per-kilowatt-hour charge mandated in the ZEC Act to fund the ZEC program was just and reasonable.

Rate Counsel was an intervenor before the Board based upon its statutory authority to represent and protect the public interest. N.J.S.A. 52:27EE-48(a). Respondent Monitoring Analytics, LLC (Monitoring Analytics), also an intervenor, is the Independent Market Monitor (IMM) for

PJM Interconnection, LLC.¹ In its role as IMM, Monitoring Analytics objectively monitors the competitiveness of PJM's markets.

Numerous other stakeholders participated before the Board and in this appeal. Respondent Exelon Generation Company, LLC (Exelon) participated as co-owner of the Salem 1 and Salem 2 nuclear power plants with respondent PSEG Nuclear, LLC (PSEG Nuclear). PSEG Nuclear is the sole owner of the Hope Creek nuclear power plant and has the sole and exclusive authority to make decisions regarding the retirement of all three plants. PSEG Nuclear submitted ZEC applications to the Board for Salem 1, Salem 2, and Hope Creek.

Respondents Public Service Electric and Gas Company (PSE&G), Jersey Central Power & Light Company (JCP&L), and Atlantic City Electric Company (ACE), are investor-owned electric distribution companies (EDCs).

Respondent PJM Power Providers Group (P3) is a nonprofit organization of power providers whose mission is to promote properly designed and well-functioning competitive wholesale electricity markets in the region served by

¹ PJM Interconnection, LLC (PJM) manages the regional, high-voltage electricity grid serving all or parts of thirteen states including New Jersey and the District of Columbia, operates the regional competitive wholesale electric market, manages the regional transmission planning process, and establishes systems and rules to ensure that the regional and in-state energy markets operate fairly and efficiently. N.J.S.A. 48:3-51.

PJM. Respondent New Jersey Large Energy Users Coalition (NJLEUC) is an association of large volume electric customers.

We also granted AARP, Nuclear Energy Institute, Inc. (NEI), Institute for Policy Integrity (IPI) and Clean Air Task Force leave to file amicus briefs.

II.

As a subsidy promoting nuclear power, a ZEC is "a certificate, issued by the [B]oard or its designee, representing the fuel diversity, air quality, and other environmental attributes of one megawatt-hour of electricity generated by an eligible nuclear power plant selected by the [B]oard to participate in the program." N.J.S.A. 48:3-87.4. To be deemed eligible by the Board, a nuclear power plant must meet the following five criteria:

(1) be licensed to operate by the United States Nuclear Regulatory Commission by the date of enactment of this Act and through 2030 or later;

(2) demonstrate to the satisfaction of the [B]oard that it makes a significant and material contribution to the air quality in the State by minimizing emissions that result from electricity consumed in New Jersey, it minimizes harmful emissions that adversely affect the citizens of the State, and if the nuclear power plant were to be retired, that that retirement would significantly and negatively impact New Jersey's ability to comply with State air emissions reduction requirements;

(3) demonstrate to the satisfaction of the [B]oard, through the financial and other confidential information submitted to the [B]oard pursuant to

subsection a. of this section, and any other information required by the [B]oard, . . . that the nuclear 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;

(4) certify annually that the nuclear power plant does not receive any direct or indirect payment or credit [from the state, federal government, or regional compact] . . . despite its reasonable best effort 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; and

(5) submit an application fee to the [B]oard in an amount to be determined by the [B]oard, but which shall not exceed \$250,000, to be used to defray the costs incurred by the [B]oard to administer the ZEC program.

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

The central issue in this appeal is the satisfaction of the third statutory criterion, financial eligibility. ZEC applicants must provide the Board with extensive financial information about the nuclear power plant,

including, but not limited to, certified cost projections over the next three energy years, including operation and maintenance expenses, fuel expenses, including spent fuel expenses, non-fuel capital expenses, fully allocated overhead costs, the costs of operational risks

and market risks that would be avoided by ceasing operations, and any other information, financial or otherwise, to demonstrate that the nuclear 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 fully cover its costs and risks including its risk-adjusted capital.

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

For purposes of this subsection, operational risks include, but are not limited to, the risk that operating costs will be higher than anticipated because of new regulatory mandates or equipment failures and the risk that per-megawatt-hour costs will be higher than anticipated because of a lower than expected capacity factor. Market risks include, but are not limited to, the risk of a forced outage and the associated costs arising from contractual obligations, and the risk that output from the nuclear power plant may not be able to be sold at projected levels. Id.

Applicants must also include a certification that the nuclear power plant will cease operations within three years unless the nuclear power plant experiences a material financial change; the certification shall specify the necessary steps required to be completed to cease the nuclear power plant's operations.

The ZEC Act contains a confidentiality provision² to protect the information submitted by ZEC applicants and mandates procedural timelines for establishment of the ZEC program by the Board, submission of ZEC applications and selection of eligible nuclear plants to receive ZECs, all of which were met. N.J.S.A. 48:3-87.5(b), (c), (d).

The selected nuclear power plants must certify annually that they remain eligible for ZECs pursuant to the ZEC Act's requirements. N.J.S.A. 48:3-87.5(h)(2), (3). For the first energy year, the eligible nuclear power plant receives a number of ZECs equal to the number of megawatt-hours of electricity it produced in that energy year starting on the date the Board selected it. N.J.S.A. 48:3-87.5(g)(2). For each subsequent energy year, the eligible nuclear power plant receives a number of ZECs equal to the number of megawatt-hours of electricity that it produced in that energy year. Ibid.

² During the Board proceedings, the Attorney General and the Board approved the requests by intervenors for access to confidential information in the record, including the three ZEC applications, pursuant to N.J.S.A. 48:3-87.5(a), upon determining that both parties were "essential to aid the Board in making the applicable determinations under the [ZEC] Act" and that the disclosure would not harm competition. None of the other parties were granted access to any of the confidential information. Consequently, the Board issued two versions of its order, decision, and attachments thereto: a public version and a confidential version. Rate Counsel, Exelon, and PSEG Nuclear filed public and confidential versions of their appellate briefs and appendices. Our decision is based on the confidential record.

The ZEC Act requires the Board to determine the price of a ZEC for each energy year:

by dividing the total number of dollars held by electric public utilities in the accounts established pursuant to paragraph (1) of subsection j. of this section at the end of the prior energy year by the greater of: [forty] percent of the total number of megawatt-hours of electricity distributed by the electric public utilities in the state in the prior energy year, or the number of megawatt-hours of electricity generated in the prior energy year by the selected nuclear power plants.

[N.J.S.A. 48:3-87.5(i)(1).]

The ZEC Act further requires EDCs to purchase ZECs on a monthly basis from each selected nuclear power plant with payment to follow within ninety days after the conclusion of the first energy year in which selected nuclear power plants receive ZECs, and within ninety days after the conclusion of each subsequent energy year. N.J.S.A. 48:3-87.5(i)(2). The total number of ZECs that each EDC is required to purchase is equal to the total number of ZECs received by the selected nuclear power plants for the prior energy year, multiplied by the percentage of electricity distributed in the State by the electric public utility as compared to other electric public utilities in New Jersey. Id.

This purchase is funded through a charge imposed on retail customers. N.J.S.A. 48:3-87.5(j)(1). The ZEC Act requires EDCs to file a tariff to recover

from its retail distribution customers a charge in the amount of \$0.004 per kilowatt-hour, which reflects the emissions avoidance benefits associated with the continued operation of selected nuclear power plants. Following an opportunity for comment, public hearing and the Board's approval, the revenue collected from the charge is held in a separate, interest-bearing account used solely to purchase ZECs. Any excess money in that account at the end of each energy year is refunded to customers. N.J.S.A. 48:3-87.5(j)(2). The ZEC Act also contains refund mechanisms triggered by a nuclear power plant's cessation of operations despite having received ZECs. N.J.S.A. 48:3-87.5(k).

In order to ensure that the ZEC program remains affordable to New Jersey retail distribution customers, and notwithstanding the provisions of N.J.S.A. 48:3.87.5(j)(1), the Board may reduce the \$0.004-per-kilowatt-hour charge at certain times, and under certain circumstances set forth in N.J.S.A. 48:3-87.5(j)(3)(c). For example, the Board may reduce the charge if it does not certify any nuclear power plants for a subsequent eligibility period upon determining that a reduced charge will nonetheless be sufficient to achieve the state's air quality. This would meet other environmental objectives by preventing the retirement of the nuclear power plants that meet the eligibility criteria established pursuant to subsections (d) and (e).

III.

On August 29, 2018, the Board initiated the ZEC program, with a vigorous application and review process. The Board created an Eligibility Team (ET) to evaluate and rank the applications based upon the five criteria set forth in the ZEC Act and stated its intent to hire a consultant to assist its staff. It determined that after the initial three-year award of ZECs to a unit, it would evaluate the set kilowatt-hour charge established by the ZEC Act and modify that amount if necessary, pursuant to N.J.S.A. 48:3-87.5(j)(3).

The Board issued orders accepting the tariffs filed by EDCs for the recovery of the ZEC charges from their customers but directed that the tariffs not be implemented unless and until the Board issues a final order authorizing the EDCs to implement the ZEC program. The Board selected Levitan & Associates, Inc. (Levitan) as a consultant to assist its staff with evaluation and ranking of the ZEC applications.

IV.

With these procedures in place, on December 19, 2018, PSEG Nuclear submitted ZEC applications for Salem 1, Salem 2 and Hope Creek. Applicants each submitted a confidential application designed to elicit information that tracked the statutory eligibility criteria, which included: I. General Applicant Information; II. Generation Asset Information and Operation; III. Zero

Emission Credit Justification – Financial; IV. Zero Emission Credit Justification – Environmental; V. Impact of the Unit's Deactivation; and VI. Miscellaneous. Section VII sought thirty-eight supplemental submissions from each applicant, including a certification that the nuclear power generation unit will cease operations within three years unless the nuclear power plant experiences a material financial change. The information sought from applicants in Section III of the application pertained to projected costs and is especially relevant to the issues raised on appeal. The first category of information sought:

[C]ertified cost projections over the next three (3) energy years, including operation and maintenance expenses; fuel expenses, including spent fuel expenses; on-fuel capital expenses; fully allocated overhead costs; the costs of operational risks and market risks that would be avoided by ceasing operations to demonstrate that the plant is projected to not fully cover its costs and risks, or alternatively is projected to not fully cover its costs and risks, including its cost of capital, or alternatively its risk-adjusted cost of capital.

The second category required applicants to:

Demonstrate that the unit is financially unviable, i.e., if the unit's revenue and funding outweighs the avoided costs expenses (operations, training, engineering, materials, fuel, etc.) of the unit, for each year through 2030. Provide all backup documentation.

Because Rate Counsel does not contend on appeal that the applicants failed to satisfy all of the eligibility criteria, we limit our discussion to those aspects of the applications pertaining to the third eligibility criterion, codified at N.J.S.A. 48:3-87.5(e)(3), financial viability.

The applicants' cost projections included the following categories of expenses: labor and materials, outside services such as contractors and maintenance, real estate taxes, support services such as accounting, human resources, etc., fully allocated corporate overhead, spent fuel, working capital, fuel and non-fuel capital expenditures, regulatory and other fees and expenses, operational risks and market risks. Their revenue projections included energy, capacity, and ancillary revenue.

Rate Counsel asserted the applicants are financially viable without ZECs because the applicants improperly included operational risks, market risks, spent fuel costs, certain support service and overhead costs and certain capital expenditures in their cost projections. Thus, we focus on these five categories and how the Board reviewed them.

1. Operational Risks

For each applicant, PSEG Nuclear included "a cost of operational risk in its financial evaluation equal to ten percent of total costs, which is consistent with operating cost estimation rules adopted in the [Federal Energy Regulatory

Commission]-approved PJM tariff." PSEG Nuclear explained that the cost of operational risk for each plant included potential regulatory mandates, equipment failures and attendant outages for repairs.

Addressing regulatory mandates, PSEG Nuclear asserted that nuclear plants are subject to stringent safety- and security-focused regulatory oversight by the United States Nuclear Regulatory Commission (NRC), and can face significant unseen regulatory requirements at any time, such as recent orders issued by the NRC after a 2011 "nuclear event" in Japan that required all United States nuclear plants to upgrade their facilities. These upgrades cost Salem 1, Salem 2 and Hope Creek approximately \$105 million. Security requirements after the September 11, 2001, terrorist attacks cost Salem 1, Salem 2 and Hope Creek approximately \$140 million.

PSEG Nuclear cited unexpected expenditures in 2008 at Salem 1 of approximately \$266 million. In addition, PSEG Nuclear asserted that the cumulative impact of even relatively modest capital projects required to address unforeseeable equipment failure issues can be significant. It also asserted that unexpected outages for repairs not only increase the total unit costs but can also dramatically increase the per-megawatt-hour cost, and that such outages can be prolonged.

2. Market Risks

For each applicant, PSEG Nuclear included the cost of market risks in its projections at a rate of \$4.2/megawatt hours for Hope Creek and Salem 1, and \$4.3/megawatt hours for Salem 2. PSEG Nuclear divided its market risks into two categories: forced outage risk and price volatility risk. In each application, PSEG Nuclear explained that forced outage risk is:

that actual generation will fall short of forecasted generation, resulting in lower than expected revenues or a mismatch between previously contracted sales and actual generation so that the generation owner will have to "cover" its contracted sales during outages by purchasing energy in the spot market at prices potentially much higher than the contracted price – or hedged price.

It further explained that price volatility risk is the risk that the forecasted generation output from the nuclear power plant may not be able to be sold at projected prices – or forward prices.

To assess each applicant's market risks, PSEG Nuclear utilized an energy risk modeling software application, Lacima Analytics. It explained how it used the same software application, inputs, and modeling approach that it uses in the ordinary course of business to assess market risk for its entire portfolio. In keeping with its normal business practice to assess and manage portfolio market risk at the ninety-five-percent confidence level, PSEG Nuclear used that same level to assess the cost of market risks in each application.

3. Spent Fuel Costs

Spent fuel costs arise from a charge imposed by the United States Department of Energy (DOE) on nuclear plants for the costs of fulfilling its legal obligation to dispose of the nuclear fuel used to generate power. Because this charge was most recently assessed at a rate of \$0.955 per megawatt-hour, that rate was used in each applicant's cost projections.

When the federal Yucca Mountain Nuclear Waste Repository was defunded, this fee was suspended, at which point PSEG Nuclear ceased accruing for that expense in its financial statements. It explained that it nonetheless included spent fuel costs in its cost projections because DOE still has a legal obligation to dispose of nuclear fuel and will need to pay for the costs of whatever that ultimate solution is through a fee on nuclear generators.

4. Support Services and Overhead Costs

For each applicant, PSEG Nuclear included support services and fully allocated overhead in its cost projections, which represented:

[A]ccounting, legal, communications, procurement, human resources, information technology, treasury and financial, investor relations, stockholder services, real estate, insurance, risk management, tax, security and claims, corporate secretarial and certain planning, budgeting, forecasting services, and general administrative expenses and other corporate overhead costs.

5. Capital Expenditures

For each applicant, PSEG Nuclear included fuel and non-fuel capital expenditures in its cost projections. It described fuel capital expenditures as the fuel capital expenditures associated with refueling outages and non-fuel capital expenditures as spending on long-lived plant equipment required to maintain safe and reliable operations.

The Board considered comments from Rate Counsel, Monitoring Analytics, P3 and NJLEUC, among others, on the applications, along with reply comments from PSEG Nuclear and others. Rate Counsel contended the applicants' financial projections overstated costs and understated revenues. The comments also focused upon the \$2.9 billion in "stranded costs" previously paid by ratepayers for the nuclear units as a result of electric public utility deregulation in 1999 and asserted that the Board was required to determine not only whether a ZEC is warranted, but also whether the rate set forth in the statute is just and reasonable.

The comments pertaining to overstated costs and understated revenues echoed the findings of Rate Counsel's experts, who submitted two certifications. First, a certification from Andrea Crane, president of the Columbia Group, Inc., a consulting firm specializing in utility regulation, primarily addressed the applicants' overstated costs. A certification from Bob

Fagan and Maximilian Chang of Synapse Energy Economics (Synapse), a consulting firm that provides economic and expert advice to public interest clients on electricity matters, primarily addressed the applicants' understated revenues.

These experts both criticized the methodologies used by PSEG Nuclear to assess the financial viability of each plant and conducted independent assessments in which they eliminated the assumption of operational and market risks from the financial projections. With those categories excluded entirely, they opined that each plant would be financially viable for the next three years and that, therefore, none of the applicants qualified for the ZEC program.

Rate Counsel argued PSEG Nuclear's financial projections pertaining to costs for each applicant were flawed because the methodologies used for forecasting operational and market risks were speculative and unverifiable, and because PSEG Nuclear included capital expenditures as "costs" and included improper and inflated operational costs such as spent fuel, support services, and overhead costs. Rate Counsel and Crane acknowledged that PSEG Nuclear's estimates may be the best indicator of expected future costs but nonetheless maintained that this approach placed an unreasonable burden on ratepayers.

As to PSEG Nuclear's market risks methodology, Rate Counsel and Crane asserted that it virtually guaranteed the claimed "cost" will cover all contingencies despite the fact the ZEC Act does not provide for ratepayers to be guarantors for all possible contingencies relating to market risks. They urged the Board to consider the history of these deregulated units and the fact that they have earned profits significantly higher than anticipated since deregulation occurred approximately twenty years ago.

Rate Counsel and Crane also argued the cash flow approach utilized by PSEG Nuclear violates a basic accounting principle that costs which provide a benefit over multiple years should be recovered over a multi-year period. The cash flow approach burdens ratepayers by funding one hundred percent of capital expenditures for these supposedly unregulated entities, but provides no right to benefit from any excess returns on those investments.

Rate Counsel and Crane objected to the inclusion of spent fuel costs since the spent fuel charge for Yucca Mountain was suspended in May 2014. They also claimed that the variable portion of the support services and overhead costs which PSEG Nuclear included was inflated and it was unlikely that most of these costs will go away if the nuclear units are shut down.

Citing the Synapse certification, Rate Counsel contended that PSEG Nuclear understated each applicant's energy price projections and capacity

price projections and failed to account for other sources of revenue. They argued recent actual energy prices were higher than those projected by the applicants and that the applicants failed to look at future natural gas prices, which are generally viewed as a good indication of where future energy prices will fall, and failed to analyze the price impacts if only one or two of the units shuts down, rather than all three.

In further support of its objection to the ZEC program, Rate Counsel discussed the 1999 enactment of the Electric Discount and Energy Competition Act (EDECA), N.J.S.A. 48:3-49 to -98, which mandated the restructuring of the electric and natural gas industry in order to lower prices through competition. Overall, Rate Counsel contended that the historical impact of the EDECA and the restructuring process on ratepayers should be considered by the Board in connection with the ZEC applications.

During restructuring under the EDECA, electric companies divested most of their generation fleets but continued to transmit and deliver power to customers. The divestitures created "stranded costs" because the value of some plants on a utility's books was higher than what the electric utility received when divesting its asset. PSE&G had divested its ownership share of Salem 1, Salem 2 and Hope Creek to its affiliate. Rate Counsel asserted that the affiliate assumed the risks of ownership and operation of the nuclear plants

as part of this transaction, which allowed it to earn unregulated returns on the assets being transferred. According to Rate Counsel, PSE&G already recovered approximately \$2.9 billion in stranded costs from ratepayers, which included costs from the nuclear plants and other fossil fuel plants that it divested.

Finally, Rate Counsel's comments also addressed the reasonableness of the \$0.004-per-kilowatt-hour charge mandated in the ZEC Act, claiming the Board has an obligation to determine not only whether a ZEC is warranted, but also whether the rate set forth in the statute is just and reasonable pursuant to a different statute, N.J.S.A. 48:2-21(b). It criticized the Act for failing to explain how the charge was calculated and contended that the Board should interpret the ZEC Act in *pari materia* with N.J.S.A. 48:2-21(b), a public utilities statute concerning ratemaking. Rate Counsel further contended that unless the Board finds that a nuclear plant's application demonstrates that the \$0.004 rate is just and reasonable, the Board must either deny the ZEC in its entirety or approve some lesser amount.

Monitoring Analytics's comments echoed Rate Counsel's assertions of overstated costs, understated revenues and that none of the units required subsidies. P3 agreed with Rate Counsel and Monitoring Analytics that the applicants' nuclear plants are highly profitable and do not need ZECs. It also

noted several pending PJM market reforms that could lead to additional revenue for the applicants, asserting that if New Jersey rejoins the Regional Greenhouse Gas Initiative (RGGI), power prices will increase and nuclear units will make an additional thirty to seventy million dollars a year in profits. P3 maintained that abandoning the competitive market, and awarding unnecessary ZECs, will make New Jersey's high electricity rates even higher and agreed with Rate Counsel and Monitoring Analytics that, ultimately, the Board should reject the ZEC applications. To support its position, P3 submitted a sworn affidavit from its expert, Paul M. Sotkiewicz, PhD, President and Founder of E-Cubed Policy Associates, LLC, and former Chief Economist in the Market Service Division of PJM Interconnection, LLC.

NJLEUC also contended that the ZEC program will have a detrimental effect on large businesses in the State, which consume a much greater number of kilowatt hours of electricity than residential customers. Based upon a poll of its member businesses, it argued that the average cost of the ZEC program to large businesses will be \$570,000 per year.

On April 17, 2019, the ET, which consisted of Board staff, New Jersey Department of Environmental Protection (NJDEP) staff, and the Board consultant, Levitan, submitted three memoranda to the Board that addressed each applicant's eligibility for ZECs. The ET submitted two other documents

with each memorandum that it had reviewed, incorporated, and relied upon to support its recommendations: the Application Eligibility Report from Levitan, and a memorandum from NJDEP addressing the applicants' environmental eligibility under the second statutory criterion.

The ET found all three applications were complete, and based on the submitted applications, each applicant had satisfied the first, fourth, and fifth statutory criteria since: (1) each unit was licensed to operate beyond 2030; (2) each unit has not and was not currently receiving any other subsidies; and (3) each applicant paid the requisite application fee. Thus, the ET determined that eligibility for ZECs came down to the environmental and financial determinations, the second and third statutory criteria.

Overall, the ET found that the closing of each unit would require the use of substitute capacity resources to supplement PSEG Nuclear's committed energy in the three-year ahead capacity market and that solar and wind energy resources could not replace the base load from the nuclear units. Consequently, the supplemental energy would most likely come from natural gas-fired plants within PJM and quite possibly from its own inventory. NJDEP agreed in its memo that, within the three-year study period, replacement generation would come from existing fossil-fuel-fired facilities.

The ET determined that closure of Salem 1, Salem 2, and Hope Creek will have a negative impact on air quality in New Jersey based on increased emissions, including harmful emissions, from electric-generating sources, and will not significantly and negatively impact New Jersey's ability to comply with 2020 Global Warming requirements, but may make New Jersey's ability to comply with 2050 Global Warming requirements more challenging and would likely make New Jersey's ability to comply with ozone air quality standards more challenging.

However, the ET agreed with Rate Counsel, Monitoring Analytics, and P3 that a unit's avoidable costs is the proper focus of the evaluation of the unit's financial viability under the ZEC Act. It noted that in other proceedings, the Board has supported a net avoidable cost rate as an appropriate measure of a generator's competitive offer into the markets.

The ET excluded one-half of projected labor costs, one-half of projected non-labor costs and all projected spent fuel costs from PSEG Nuclear's cost projections for each applicant. It cited Levitan's analysis and concluded that because the cost of handling spent fuel is not a true cost that is incurred, it is not a cost that would be avoided by ceasing operations. After making various adjustments to the applicants' cost projections, the ET concluded that all three

units would operate profitably through May 2022 and would therefore not need to cease operations within the next three years.

The Board did not agree and on April 18, 2019, determined that the applicants had satisfied the ZEC Act's eligibility criteria to receive ZECs. In Sections I and II of its comprehensive decision, the Board summarized the matter's background and procedural history. And in Section III, the Board summarized the commenters' respective positions, along with PSEG Nuclear's reply thereto.

In its decision, the Board outlined the eligibility process, incorporated the majority of the ET's findings, and summarized the ET's determination on the applications. The Board analyzed the ET's six key determinations pertaining to the third criterion, financial eligibility, as follows:

[1] The market and operational "risks" included by PSEG [Nuclear] (and Exelon as part owner for Salem 1 and 2) in the applications should be excluded. These "risks" are planning projection tools used by the applicant and are not true "costs" that would be incurred by PSEG [Nuclear] beyond their normal [operating and marketing] costs. These "risks" are not costs that can be avoided by ceasing operations because they are not incurred. . . .

[2] Staff determined that evaluating whether a unit is covering its avoidable costs with revenues is the appropriate approach to assessing whether the unit has met the financial criterion under the [ZEC] Act, based on staff's interpretation of the [ZEC] Act. . . .

[3] The spent fuel costs . . . are based on an unrealized and unpaid fee established in a DOE order for future storage as spent fuel. PSEG [Nuclear] demonstrated that these costs have not been historically paid or accounted for in historical finances since 2014. In summary, the spent fuel cost is not in effect, is not an avoidable cost, and should also be excluded from the financial analysis.

[4] Avoided costs by shutting down the units would not be as simple as zero labor and materials savings. The units must be maintained by personnel, at approximately a [fifty percent] level for five to seven years, until all decommissioning is completed and all spent fuel is secured. Because one-half of the unit's projected labor and non-labor costs are avoidable, they should be considered at this level in the financial analysis.

[5] The Board has traditionally used a net avoidable cost rate method to measure a generator's competitive offer into the markets.

[6] Levitan and staff concluded that, if the above referenced questionable costs such as risks and spent fuel . . . along with other adjustments – are removed from the financial projections, the units are financially viable as they stand.

The Board also noted the ET considered factors beyond the five main criteria of N.J.S.A. 48:3-87.5(e), including, in part, fuel resilience, fuel diversity, and PJM market changes.

The Board concluded that the Legislature was clear and specific regarding the criteria according to which the applicants were to be evaluated, and said criteria included consideration of operational and market risks as per

the ZEC Act's plain language. The Board found that the ZEC Act required an applicant to demonstrate that the nuclear power plant is projected to not fully cover its costs and risks and that "risks" as defined in the ZEC Act included "operational risks, [such as] operating costs higher than anticipated," along with "market risks, [such as] market energy and capacity price volatility." The Board cited numerous cases in support of its plain language interpretation of the ZEC Act and recognized it may not, under the guise of interpretation, give the statute any greater effect than the statutory language allows.

The Board further found that the ZEC Act required it to consider other outside factors and legitimate policy goals of the state such as fuel diversity, resilience and the impact of nuclear power plant retirement on RGGI, New Jersey's economy, carbon and global warming. While the Board acknowledged the ET's finding that closure of the three nuclear power plants may have a relatively small impact on fuel diversity, the Board found that it was also important to consider that the nuclear power plants in New Jersey currently supply the equivalent of thirty-two percent of our power needs.

Concerning the environmental impact of closure, the Board found that neither solar nor offshore wind energy had the capacity to replace the loss of base load from the nuclear units. As a result, replacement power would increase carbon, which is in contravention of the state's stated goal of carbon

reduction, and New Jersey would become reliant on fossil fuel plants to make up for the loss of zero-emission capacity over the next three years. Consequently, the Board concluded that if the plants retire, it would likely be more difficult for New Jersey to meet its obligations to reach the state's goal of one-hundred percent clean energy by 2050.

As to the economic impact of closure, the Board addressed Levitan's conclusion about potential for negative resultant economic impact to the region. It explained that Levitan's economic impact analysis was based on a report concerning the Indian Point Nuclear Station in Westchester County, New York, an area with different demographics and a different economy than Salem County. According to the report, the relative impact of plant retirement in Salem County would likely be much greater compared to Westchester County and result in direct job loss not only to employees of the units but also to the ancillary businesses in the area. The Board concluded Salem County cannot afford this type of potential economic loss and that there are not enough employers in the county to support the layoffs from the closing units.

Ultimately, the Board concluded had the ET and Levitan considered the two risk factors as well as the other externalities, and had they reviewed the financial filings as submitted by the applicants, the plants would have been deemed eligible to receive subsidies, as a matter of fact. The Board

determined that Salem 1, Salem 2 and Hope Creek were eligible to receive ZECs and directed the EDCs to submit final tariffs consistent with its order.³ This appeal followed.

V.

On appeal, Rate Counsel argues that the Board's decision is arbitrary, capricious, and unreasonable because the record does not support the conclusion that the applicants satisfied the financial eligibility requirement codified at N.J.S.A. 48:3-87.5(e)(3), and advances other general adequacy challenges. Notably, Rate Counsel does not contend on appeal that the applicants failed to satisfy any of the four remaining statutory criteria.

Monitoring Analytics, P3 and NJLEUC also support reversal of the Board's decision, as does amicus curiae AARP. PSEG Nuclear, Exelon, PSE&G, JCP&L, ACE and the Board, along with amicus curiae NEI, ask us to affirm the Board's decision.⁴

³ One Board member, Commissioner Upendra J. Chivukula, dissented from the eligibility determination. Chivukula asserted the Board heavily considered the overall policy goal of achieving fifty-percent clean energy by 2030 and did not adequately consider its role as an economic regulator.

⁴ Amicus curiae IPI advocates for neither affirmation nor reversal but explains why the social cost of carbon referenced in the ZEC Act at N.J.S.A. 48:3-87.3(b)(8) is the best available estimate for valuing the harm caused by carbon dioxide emissions. Similarly, Clean Air explains how nuclear plants contribute to cleaner air in New Jersey.

"Judicial review of agency determinations is limited." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "[We] afford[] a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." In re Restrepo, Dep't of Corr., 449 N.J. Super. 409, 417 (App. Div. 2017) (quoting Lavezzi v. State, 219 N.J. 163, 171 (2014)); see In re N.J. Am. Water Co., 169 N.J. 181, 195 (2001) ("[A]n agency's administrative action is presumptively valid."). Thus, "[a]n administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Allstars Auto, 234 N.J. at 157 (quoting Russo, 206 N.J. at 27); see also N.J.S.A. 48:2-46 (explaining that this court may "review any order of the board [of Public Utilities] and . . . set aside such order in whole or in part when it clearly appears that there was no evidence before the board to support the same reasonably.").

Rate Counsel argues there was error in the Board's rejection of its experts and methodology excluding operational risks, market risks and other non-realized costs from the applicants' certified cost projections. Rate Counsel also contends the ZEC Act's plain language required the applicants to

demonstrate that the nuclear power plant is projected to not fully cover its costs and risks, including operational risks, such as, operating costs higher than anticipated, along with market risks, such as market energy and capacity price volatility.

"The goal in cases of statutory construction is simple. It is the court's duty to seek and give effect to the Legislature's intent." Nw. Bergen Cty. Utils. Auth. v. Donovan, 226 N.J. 432, 443-44 (2016). A "statute's plain language . . . is the 'best indicator' of legislative intent." State v. Rodriguez, 238 N.J. 105, 113 (2019) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "When the Legislature's chosen words lead to one clear and unambiguous result, the interpretive process comes to a close, without the need to consider extrinsic aids." State v. Shelley, 205 N.J. 320, 323 (2011). "Only if there is ambiguity in the statutory language will we turn to extrinsic evidence," including legislative history. Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195-96 (2007).

If a statute's plain language is ambiguous, we "are . . . warranted in placing considerable weight on the construction of the statute . . . by the administrative agency charged by the statute with the responsibility of making it work." In re PSE&G Co.'s Rate Unbundling, 167 N.J. 377, 384 (2001) (quoting Passaic Daily News v. Blair, 63 N.J. 474, 484 (1973)). Under those

circumstances, we "defer to 'the agency's interpretation . . . provided it is not plainly unreasonable.'" Ibid. (quoting Merin v. Maglaki, 126 N.J. 430, 437 (1992)). "Deference is particularly appropriate when, as here, the agency must construe and implement a new statute, 'or when the agency has been delegated discretion to determine the specialized and technical procedures for its tasks.'" In re Adoption of N.J.A.C. 7:26E-1.13, 377 N.J. Super. 78, 98-99 (App. Div. 2005) (citation omitted). "However, a reviewing court is 'in no way bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue.'" Allstars Auto, 234 N.J. at 158 (quoting Dep't of Children & Families v. T.B., 207 N.J. 294, 302 (2011)).

Here, the ZEC Act's financial eligibility criterion states that an applicant must:

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

The plain language of the subsection makes clear that the Legislature intended for the Board to consider the applicants' "costs and risks" when determining eligibility. Had the Legislature intended for the Board to exclude the applicants' operational and market risks when analyzing financial eligibility under subsection (e)(3) and to instead assess only whether the applicants were "projected to not fully cover [their] costs," it would not have included the words "and risks" after "costs." In our view, to adopt Rate Counsel's position that the Board should have accepted the experts' methodology would render the Legislature's use of the words "and risks" in subsection (e)(3) meaningless, contrary to established principles of statutory construction.

The plain language of N.J.S.A. 48:3-87.5(a) lends further support to the Board's interpretation of the ZEC Act and its rejection of the experts' opinions. Subsection (a) mandates that the applicants' certified cost projections include "operation and maintenance expenses, fuel expenses, including spent fuel expenses, non-fuel capital expenses, fully allocated overhead costs, [and] the costs of operational risks and market risks that would be avoided by ceasing operations," along with "any other information . . . to demonstrate that . . . the nuclear power plant is projected to not fully cover its costs and risks" N.J.S.A. 48:3-87.5(a). It defines operational risks as including "the risk that

operating costs will be higher than anticipated because of new regulatory mandates or equipment failures and the risk that per-megawatt-hour costs will be higher than anticipated because of a lower than expected capacity factor."

Ibid. It defines market risks as including "the risk of a forced outage and the associated costs arising from contractual obligations, and the risk that output from the nuclear power plant may not be able to be sold at projected levels."

Ibid.

Had the Legislature intended for the Board to exclude the applicants' operational and market risks from their certified cost projections when analyzing financial eligibility under subsection (e)(3), there would have been no need for the Legislature to require applicants to provide information about their operational and market risks in subsection (a), or to define those terms. Similarly, had the Legislature intended for the Board to exclude operation and maintenance expenses, fuel expenses, including spent fuel expenses, non-fuel capital expenses and fully allocated overhead costs from the "costs" referenced in subsection (e)(3) when analyzing financial eligibility, there would have been no need for the Legislature to require applicants to provide this information to the Board.

In sum, the experts' methodology was inconsistent with the ZEC Act's plain language, which does not exclude operational risks, market risks and

other non-realized costs from the financial eligibility analysis. Thus, it was reasonable for the Board to reject the experts' opinions and to consider those categories of costs and risks. The Board was under no obligation to adopt the opinions of respondents' experts or the expert consultant that it retained to assist its staff. Board staff are charged with making recommendations to the Board. N.J. Dep't of Pub. Advocate v. Bd. of Pub. Utils., 189 N.J. Super. 491, 518 (App. Div. 1983). But per the plain language of N.J.S.A. 48:3-87.5, the ultimate eligibility determination for ZECs is to be made by the Board alone.

Additionally, the Board's decision concerning the applicants' financial eligibility for ZECs is amply supported by the voluminous financial submissions contained in the record, including but not limited to, the applications and the comments. In compliance with N.J.S.A. 48:3-87.5(e)(3), PSEG Nuclear certified on behalf of each applicant that each plant's projected costs exceeded its projected revenues and that each plant will cease operations within three years unless it experiences a material financial change. PSEG Nuclear submitted extensive financial information to support each plant's certified cost projections, summarized in charts listing various subcategories of costs and revenues showing that its costs and risks were projected to exceed its revenues by millions of dollars each year. PSEG Nuclear explained its inclusion of operational and market risks, consistent with the ZEC Act's

definition of those terms, along with its inclusion of spent fuel, support services, fully allocated overhead and capital expenditures as part of each plant's certified cost projections.

Consistent with the ZEC Act's plain language, the Board properly considered the applicants' operational and market risks, spent fuel costs, support services costs, fully allocated overhead costs, and capital expenditures included in their certified cost projections as part of its financial eligibility determination. The Board also considered the ET's recommendations, the experts' independent analyses, the comments, among other information, and came to the reasoned conclusion that each plant is projected to not fully cover its costs and risks, and will cease operations within three years absent a material financial change, in satisfaction of N.J.S.A. 48:3-87.5(e)(3).

Although Rate Counsel does not contend that the applicants failed to satisfy the four remaining statutory eligibility criteria, it nonetheless asserts other general adequacy challenges pertaining to the Board's findings and conclusions. Rate Counsel claims the Board: (1) failed to acknowledge that each of the five eligibility criteria must be met; (2) allowed "considerations beyond the five statutory criteria to color its analysis" by giving them greater weight; and (3) based its decision on a "fear" that PSEG Nuclear would close all three plants if it did not receive ZECs for each of them. We disagree.

Despite the fact that the Board's discussion focused primarily upon the financial eligibility criterion, N.J.S.A. 48:3-87.5(e)(3), as it disagreed with the ET's findings and conclusions pertaining to financial eligibility, it also explained that applicants must satisfy all five statutory criteria. The Board summarized each of them in its decision in three different places, and recounted the ET's determination that the applicants had satisfied the first, fourth, and fifth criteria, explaining: (1) the units were "licensed to operate beyond 2030"; (2) the units "have not [or] are not receiving any other subsidies"; and (3) "the appropriate application fees were received."

The determinations track the plain language of the eligibility criteria found at N.J.S.A. 48:3-87.5(e)(1), (4), and (5). Although the Board did not expressly state that it was adopting the ET's findings as to the first, fourth, and fifth criteria, it did not disagree with those findings, which are adequately supported by the record and not disputed on appeal. Thus, we can infer from the broader context of the Board's decision that it incorporated those findings and conclusions as to the first, fourth, and fifth criteria.

Although the Board did not expressly state that the applicants had satisfied N.J.S.A. 48:3-87.5(e)(2), the Board's findings, coupled with the ET's more detailed determinations, support the implied conclusion that each plant, as a zero-emission facility, makes a significant and material contribution to the

air quality in the State by minimizing emissions that result from electricity consumed in New Jersey, minimizes harmful emissions that adversely affect the citizens of the State, and that retirement would significantly and negatively impact New Jersey's ability to comply with state air emissions reduction requirements, particularly with regard to global warming and ambient air quality. N.J.S.A. 48:3-87.5(e)(2).

Rate Counsel's assertion that the Board weighed certain other considerations, including fuel diversity, fuel security, and the economic impact of closure on the region and the State, more heavily than the eligibility criteria codified at N.J.S.A. 48:3-87.5(e), is unsupported by the record. There is nothing in the Board's decision to indicate that it weighed these factors more heavily than the statutory criteria. The extensive record in this case belies Rate Counsel's contention that the Board's decision is based on a fear that regardless of whether the eligibility criteria were met PSEG Nuclear would close the plants if it did not get subsidies for all three units.

Accordingly, Rate Counsel has not made a clear showing that the Board's ZEC eligibility determination is arbitrary, capricious, or unreasonable, or lacks fair support in the record. Allstars Auto, 234 N.J. at 157 (quoting Russo, 206 N.J. at 27).

VI.

In its second point, Rate Counsel contends the Board's decision is arbitrary, capricious, and unreasonable because it failed to reduce the \$0.004-per-kilowatt-hour charge established in the ZEC Act at N.J.S.A. 48:3-87.5(j)(1). Rate Counsel relies on a different section of the statute, N.J.S.A. 48:2-21(b), to support its contention, claiming that it mandates that the Board "[f]ix just and reasonable" rates to be imposed "by any public utility" and that the Board was required to harmonize N.J.S.A. 48:2-21(b) with the ZEC Act. Respondent NJLEUC and amicus curiae AARP support reversal for the same reasons. We reject this argument for the following reasons.

Citing N.J.S.A. 48:3-87.5(j), the Board found the ZEC Act required each EDC to file with the Board a tariff to recover from its retail distribution customers a charge in the amount of \$0.004 per kilowatt-hour, which, according to the ZEC Act, reflects the emissions avoidance benefits associated with the continued operation of selected nuclear power plants. It further found that the ZEC Act provided that the Board shall approve the appropriate tariff after notice, the opportunity for comment, and public hearings, within sixty days after the EDCs' tariffs were filed. The applicants for ZECs are not regulated utilities and do not have authorized rates of return, nor are they subject to rate cases. Upon finding that each applicant was eligible to receive

ZECs, the Board directed the EDCs to submit final tariffs consistent with the Board's order.

"Administrative agency power derives solely from a grant of authority by the Legislature." Gen. Assembly of N.J. v. Byrne, 90 N.J. 376, 393 (1982). "An administrative agency exercises its delegated authority and applies its intended expertise pursuant to the Legislature's enabling act that frames the performance of the agency's assigned tasks." Acoli v. N.J. State Parole Bd., 224 N.J. 213, 226 (2016). We "review de novo an agency's interpretation of a statute and legal conclusions." Kaminskas v. State of N.J., Dep't of Law & Pub. Safety, 236 N.J. 415, 422 (2019). As noted, "[w]hen considering the meaning of a statutory provision, absent any legislative intent to the contrary, courts must give effect to the language of the provision." PSE&G's Rate Unbundling, 167 N.J. at 383-84. "If a statute's plain language is clear, we apply that plain meaning and end our inquiry." Garden State Check Cashing Serv., Inc., v. State Dep't of Banking & Ins., 237 N.J. 482, 489 (2019).

The ZEC Act's plain language makes clear that the Legislature did not authorize the Board to alter the \$0.004-per-kilowatt-hour charge at the time of its initial eligibility determination. Under the plain meaning rule of statutory construction, "the Legislature's choice of the word 'shall,' . . . is ordinarily intended to be mandatory, not permissive." Jersey Cent. Power & Light Co. v.

Melcar Utility Co., 212 N.J. 576, 587-88 (2013). Thus, N.J.S.A. 48:3-87.5(j)(1), through its use of the word "shall," requires the Board to effectuate the \$0.004-per-kilowatt-hour charge to fund the ZEC program as follows:

The [B]oard shall order the full recovery of all costs associated with the electric public utility's required procurement of ZECs and with the board's implementation of the ZEC program under this act, through a non-bypassable, irrevocable charge imposed on the electric public utility's retail distribution customers. Within 150 days after the date of enactment of this act, each electric public utility shall file with the [B]oard a tariff to recover from its retail distribution customers a charge in the amount of \$0.004 per kilowatt-hour which reflects the emissions avoidance benefits associated with the continued operation of selected nuclear power plants. Within [sixty] days after the tariff filing required pursuant to this paragraph, after notice, the opportunity for comment, and public hearing, the [B]oard shall approve the tariff, provided that it is consistent with the provisions of this subsection. No later than the date of the [B]oard's order establishing the initial selected nuclear power plants to receive ZECs, each electric public utility shall implement the tariff and begin collecting from its retail distribution customers the approved charge.

Subsection (j)(3) of N.J.S.A. 48:3-87.5 specifies two limited scenarios under which the Board may reduce the per-kilowatt-hour charge to ensure that the ZEC program remains affordable to New Jersey retail distribution customers after its initial eligibility determination. These may apply if the Board determines that a reduced charge will nonetheless be sufficient to

achieve the state's air quality and other environmental objectives by preventing the retirement of the nuclear power plants that meet the eligibility criteria established pursuant to subsections (d) and (e) of this section. Neither scenario is present here.

Under the first scenario, if the above criteria are met, "the [B]oard may, in its discretion, reduce the per-kilowatt hour charge imposed by paragraph (1) of this subsection starting in the second three year eligibility period and for each subsequent three year eligibility period thereafter" N.J.S.A. 48:3-87.5(j)(3)(a). Under the second scenario, if the above criteria are met, and "the [B]oard does not certify any nuclear power plants for a subsequent eligibility period pursuant to this Act, the [B]oard may, in its discretion, reduce the per kilowatt-hour charge imposed pursuant to paragraph (1) of this subsection . . . in the final year of the first eligibility period" N.J.S.A. 48:3-87.5(j)(3)(c).

Had the Legislature intended to grant the Board authority to reduce the \$0.004-per-kilowatt-hour charge at the time of its initial eligibility determination, it would have said so. Instead, it carefully limited the Board's authority to alter the \$0.004-per-kilowatt-hour charge. In short, the Board does not have the authority to override the Legislature's imposition of the \$0.004-per-kilowatt-hour charge at the time of its initial eligibility determinations. See Jersey Cent. Power & Light Co., 212 N.J. at 600 ("[A]n

administrative agency can only act reasonably within the scope of its delegated authority.").

N.J.S.A. 48:2-21(b), last amended in 1962, states, in relevant part:

The [B]oard may after hearing, upon notice, by order in writing:

1. Fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility, whenever the [B]oard shall determine any existing rate, toll, charge or schedule thereof . . . to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential. In every such proceeding the [B]oard shall complete and close the hearing within [six] months and enter its final order within [eight] months after the filing of the order of the [B]oard initiating such proceeding, when such proceeding is on the [B]oard's own motion; or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint.

It is clear from the plain language of N.J.S.A. 48:2-21(b) that it applies to rate hearings involving public utilities either initiated on the Board's own motion or by complaint. "A rate hearing involves (a) the determination of the value of utility property (rate base), (b) an examination of utility expenses, and (c) the fixing of a fair rate of return to investors. The result is the base rate which the utility may charge its customers." In re Jersey Cent. Power & Light Co., 85 N.J. 520, 529 (1981).

The matter before the Board was not a rate hearing pursuant to N.J.S.A. 48:2-21(b). But rather, it was implementation of the ZEC program under the ZEC Act, which was enacted decades after N.J.S.A. 48:2-21(b), and eligibility determinations on the three ZEC applications made by unregulated nuclear power plants. Although N.J.S.A. 48:2-21(b) and N.J.S.A. 48:3-87.5(j) are both included in Title 48, they do not reference each other and were not designed to serve a common purpose. Marino v. Marino, 200 N.J. 315, 331 (2009). Therefore, it is unnecessary to interpret these two provisions in pari materia with each other. See Richard's Auto City v. Dir., Div. of Taxation, 140 N.J. 523, 540 (1995) ("Aside from the[ir] clearly distinct purposes . . . the fact that the acts were not enacted during the same time and make no specific references to each other further indicates that they were not intended to be read in pari materia.").

Rate Counsel's reliance on In re Proposed Increase Intrastate Industrial Sand Rates, 66 N.J. 12, 14 (1974), is similarly unavailing. There, Central Railroad Company of New Jersey initiated a rate proceeding for a freight carriage rate increase affecting "the transportation of industrial sand from point of origin to several glass manufacturing companies in Northern New Jersey." Id. at 16. The Board found that the rate increase was "just and reasonable," approving it without establishing a rate base and the fair rate of

return. Id. at 17-18. We reversed and remanded the matter because the Board failed to establish "a rate base and a fair rate of return thereon." Id. at 18. The Supreme Court affirmed. Id. at 19, 29.

Based on our review, Industrial Sand also does not support the proposition urged by Rate Counsel that the Board had authority to reduce the statutorily mandated \$0.004-per-kilowatt-hour charge to ensure its constitutionality during the ZEC proceedings. The only relevant takeaway from Industrial Sand is that aggrieved parties may seek relief via other remedies, either "in the legislative halls" or in the courts by way of an action to restrain enforcement of a statute alleged to be unconstitutional, where a rate is set either unreasonably low and confiscatory, or unreasonably high and extortionate upon the public. 66 N.J. at 23-24, 29.

The parties' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

STEFANIE A BRAND, Esq.
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET 4TH FL
TRENTON, NJ, 08625
609-984-1460
SBRAND@RPA.NJ.GOV
Attorney Bar ID: 032331986

SUPREME COURT OF NEW JERSEY
App. Div. # A-003939-18
Supreme Court #

CIVIL ACTION

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 ETC

**NOTICE OF PETITION
FOR CERTIFICATION**

The Appellate Division erred by upholding BPU's award of \$300 million per year in "Zero Emissions Credits" (ZECs) to unregulated nuclear power plants based on factors other than the eligibility criteria in N.J.S.A. 48:3-87.3; by adopting the Applicants' quantification of operational and market risks and costs rather than analyzing the evidence regarding those risks and costs or remanding for the Board to do so; by ignoring the transcript of the Board's Agenda meeting and the statements of the Commissioners regarding the bases of their decision; by making no effort to harmonize the ZEC Act and the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq.; and by effectively overruling the decision in *In re Proposed Increase in Industrial Sand Rates*, 66 N.J. 12 (1974) which requires that rates be just and reasonable even when set by the Legislature, foreclosing any realistic path to challenge the ZEC rate set by the Legislature contrary to ratepayers' right to due process.

Dated: 04/07/2021

S/ STEFANIE A BRAND

In The Matter Of:
BPU BOARD AGENDA
ITEM 9A

April 18, 2019

J.H. Buehrer & Associates
884 Breezy Oaks Drive
Toms River, NJ 08732
732-295-1975

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
TRENTON, NEW JERSEY

BOARD AGENDA

DATE: THURSDAY, APRIL 18, 2019

ITEM 9A

MISCELLANEOUS

DOCKET NO.: EO18080899
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.: EO18121338
APPLICATION FOR ZERO EMISSIONS CERTIFICATES OF
SALEM 1 NUCLEAR POWER PLANT;

DOCKET NO.: EO18121339
APPLICATION FOR ZERO EMISSIONS CERTIFICATES OF
SALEM 2 NUCLEAR POWER PLANT;

DOCKET NO.: EO18121337
APPLICATION FOR ZERO EMISSIONS CERTIFICATES OF HOPE
CREEK NUCLEAR POWER PLANT;

DOCKET NO.: EO18091002
IN THE MATTER OF JERSEY CENTRAL POWER AND LIGHT
COMPANY FOR REVIEW AND APPROVAL OF A ZERO EMISSION
CERTIFICATE RECOVERY CHARGE; CHARGE AND TARIFF
PAGE(S) RELATED THERETO IN SUPPORT OF THE ZEC
PROGRAM AUTHORIZED BY N.J.S.A. 48:3-87.3 ET SEQ.
AND A BOARD ORDER INITIATING THE ZEC PROGRAM DATED
8/29/18;

DOCKET NO.: EO18091003
IN THE MATTER OF THE APPLICATION OF ATLANTIC CITY
ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A ZERO
EMISSION CERTIFICATE ("ZEC") CHARGE AND TARIFF
PAGE(S) RELATED THERETO IN SUPPORT OF THE ZEC
PROGRAM AUTHORIZED BY N.J.S.A. 48:3-87.3 ET SEQ.
AND A BOARD ORDER INITIATING THE ZEC PROGRAM DATED
8/29/18;

1 DOCKET NO.: EO18091004
2 IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS
3 COMPANY'S REQUEST FOR APPROVAL OF A ZERO EMISSION
4 CERTIFICATE RECOVERY CHARGE;

5 DOCKET NO.: EO18091005
6 IN THE MATTER OF ROCKLAND ELECTRIC COMPANY'S FILING
7 FOR REVIEW AND APPROVAL OF THE ZERO EMISSION
8 CERTIFICATE RECOVERY CHARGE; AND

9 DOCKET NO.: EO18091018
10 IN THE MATTER OF THE APPLICATION OF BUTLER ELECTRIC
11 UTILITY FOR APPROVAL TO IMPLEMENT A ZERO EMISSION
12 CERTIFICATE ("ZEC") CHARGE AND TARIFF PAGE(S)
13 RELATED THERETO IN SUPPORT OF THE ZEC PROGRAM
14 AUTHORIZED BY N.J.S.A. 48:3-87.3 ET SEQ. AND A
15 BOARD ORDER INITIATING THE ZEC PROGRAM, DATED
16 AUGUST 29, 2018 - EXECUTIVE SESSION.

17 -----

18 BEFORE: PRESIDENT JOSEPH L. FIORDALISO
19 COMMISSIONER MARY-ANNA HOLDEN
20 COMMISSIONER DIANNE SOLOMON
21 COMMISSIONER UPENDRA J. CHIVUKULA
22 COMMISSIONER BOB GORDON

23 J.H. BUEHRER & ASSOCIATES
24 884 BREEZY OAKS DRIVE
25 TOMS RIVER, NJ 08753
(732) 295-1975

1 PRESIDENT FIORDALISO: And that brings us to
2 the item I think most of you are here for.

3 And, Tom.

4 And that's 9A.

5 MR. WALKER: Good afternoon, Commissioners.

6 COMMISSIONER HOLDEN: Good afternoon.

7 PRESIDENT FIORDALISO: Good afternoon.

8 MR. WALKER: Yes.

9 Item 9A is regarding the ZEC Program.
10 Specifically 9A involves the main program and docket
11 numbers for three applications that were received to be
12 reviewed under the program. The applications were
13 requesting eligibility to receive the certificates.

14 Those three applications were for Salem
15 Nuclear Unit 1, Salem Nuclear Unit 2, and Hope Creek
16 Nuclear Unit. All three are owned by PSEG. In part,
17 Salem 1 and 2 are also co-owned by Exelon.

18 Just, I know everybody knows the background,
19 but I'll just go through it. If it's acceptable to the
20 Board, I'm going to talk about all three applications
21 in general in our analysis because the individual
22 applications are just that, individual, and each one
23 analysis was done on each individual unit. However, a
24 lot of the conclusions were the same considering so I
25 will differentiate.

1 Overall, as everybody is aware, that
2 Governor Murphy signed the ZEC Act back in May of 2018.
3 With that, the Board created a program based on the
4 orders that were approved by the Board in August and
5 November. This program encompassed a process to review
6 to any applications received, how the applications were
7 to be received, the application itself, as well as the
8 process going forward the two teams: The eligibility
9 team; the ranking team.

10 The Act also gave the Board a deadline of
11 330 days to make a determination, whether any units
12 would be eligible for ZECs. Ironically that's today so
13 that's why we're here.

14 During the process, like, as I said, three
15 applications were received. They were received on
16 December 19th of last year.

17 The eligibility team and the ranking teams
18 were separate but working concurrently as we went
19 through. The eligibility team had the primary focus of
20 reviewing completeness of all the applications and also
21 to review whether the applications met the five main
22 criteria in the act.

23 The five main criteria in the Act are:
24 Whether the unit would still be eligible to operate as
25 of 2030; whether the unit contributed significant and

1 materially to the air quality in New Jersey; whether
2 the unit was at financial risk of shutdown without a
3 material change; whether the unit was receiving any
4 other state, federal subsidies; and the fifth
5 requirement being did they pay the application fee.

6 So the eligibility team went through all
7 three applications individually. The team comprised of
8 board staff, staff from NJ DEP, and staff from Levitan,
9 who was our hired consultant approved by the Board.

10 Comments were allowed and received on each
11 individual application. They were due January 31st and
12 several parties, including the PJM Independent Market
13 Monitor, New Jersey Rate Counsel, P3, also known as the
14 PJM Power Providers Group, and the New Jersey Large
15 Energy Users Coalition.

16 In summation, most of those comments revolved
17 around whether the cost submitted by PSEG for the
18 applications concerned high costs and low revenues. A
19 lot of the commenters had mentioned that no subsidies
20 were required based on their own individual analysis.
21 They were questioning whether the company had met the
22 obligation to demonstrate an environmental impact of
23 the units. Some commenters also indicated the Board's
24 authority to modify parts of the Act, especially the
25 subsidy amount, and there was a lot of concerns about

1 extreme risks and cost to ratepayers without an assumed
2 risk to the company.

3 PS also did respond to all these comments
4 noted in the ZEC Act and what the intention or their
5 thoughts of the intention of the Act were.

6 It should be noted, there was a lot of
7 voluntary discovery process between the groups, even
8 though it wasn't part of the Board's schedule so the
9 eligibility team did consider those comments as well
10 and that information.

11 As I indicated, the eligibility process
12 reviewed was required to review the five main
13 requirements of the Act. Three of them were easily met
14 by all three applicants. All applicants have licensure
15 through 2030 and will be eligible to operate. None of
16 the applicants currently are receiving any subsidies
17 from any state or federal grants for programs. And all
18 of them did pay the application fee.

19 That means that the eligibility team's
20 determination primarily came down to whether the
21 applicant unit was going to provide a significant and
22 material contribution in New Jersey air quality, as
23 well as the final -- financial -- excuse me --
24 financial -- financial status and viability of the
25 unit.

1 On the environmental review, in general,
2 let's be blunt, if you shut down three units that
3 aren't producing any carbon emissions and they have to
4 be taken up by other units to make up the energy and
5 the capacity there will be an air quality impact. The
6 question becomes how much.

7 It was determined that the majority, if these
8 units were to shut down, any one of them, the majority
9 of their capacity and energy commitments would have to
10 be taken up by natural-gas-fired units, some of which
11 in New Jersey may be 14 to 18 percent. The rest would
12 most likely be out of Pennsylvania.

13 I'm saying that, just to understand, PJM does
14 their own, you know, on-site dispatching, but that's
15 generally the conclusion we had come to.

16 Now, with the units shutting down, if you
17 assume all three units shut down, we saw increase of
18 9.6 percent carbon dioxide in-state.

19 PRESIDENT FIORDALISO: Excuse me, Tom.

20 Is your mic on?

21 MR. WALKER: Is that better?

22 PRESIDENT FIORDALISO: Thank you.

23 MR. WALKER: Okay. Sorry, sir.

24 So, as I indicated, if assuming all
25 three units were to shut down, there would be a 9.6

1 percent carbon dioxide increase within the state and
2 then a larger impact throughout the region -- excuse
3 me -- through 2022. That equates to 11 percent carbon
4 dioxide equivalent, assuming other particulates and
5 other emissions.

6 With a shutdown of all three plants, the
7 State would still meet its 2020 green -- I'm sorry --
8 Global Warming recovery act --

9 COMMISSIONER CHIVUKULA: Global Warming
10 Response Act.

11 MR. WALKER: Sorry.

12 -- Response Act.

13 I knew I'd forget that.

14 It has already met those goals. However,
15 going forward, it would be more difficult without those
16 units in operation to meet the 2050 Global Warming
17 Response Act.

18 It's also uncertain going forward that if
19 these units shut down, especially looking forward into
20 the 2050 realm, what generation would take over.

21 The Board has initiatives for offshore wind.
22 There's the solar programs. But until those are fully
23 up and running and operational, there would still be a
24 primary backup of natural gas-fired and potentially
25 some coal.

1 So, in essence, the eligibility team
2 determined that there would be impact to the emissions
3 if these units were to shut down. However, we would
4 leave it to the Board's discretion whether that would
5 be considered significant and material. There's really
6 no industry standard to do so. Even in conjunction
7 with the aid, we can just say there will be an impact.
8 The significance of it would be debated.

9 As for the financial review, the eligibility
10 team deviated slightly from the Act. The Act says that
11 the application should be made and the financial
12 analysis should be done in one of the two ways:

13 For the applicant unit to cover its costs and
14 its risks -- and it defines risks as the market and
15 operational risks -- or the unit applying and trying to
16 cover its costs and its risks adjusted cost of capital.

17 PSE&G put their -- put their applications in
18 under the former, which would just be costs and risks,
19 and that's what the team evaluated it on.

20 What I can say is that the team did not feel
21 it was appropriate to just accept the costs and the
22 projected risk of the company. To follow what is more
23 historically done in the industry, as well as what the
24 Board has itself promoted in filings with FERC and
25 continues to do so, the team determined that the

1 avoided costs is the appropriate way to determine
2 whether a unit is financially viable.

3 So it would basically be, if the units shut
4 down, what would they avoid, what would they not avoid,
5 and we used that ratio and those determinations to
6 figure out if the plant is profitable or making money
7 or if it is in significant financial health.

8 Along those lines and because we took that
9 method, the eligibility team in staff's review, we
10 omitted several costs that were included with the
11 application. We omitted outright the risks for market
12 and operations. Those are not borne by any other --
13 I'm sorry. Those risks are naturally and inherently
14 borne by a generator when they're bidding into a
15 market. The generator can determine how much they want
16 to account for that. It is not something that is just
17 to be covered and it's basically done through hedging
18 sometimes to cover that. It's done through planning
19 and economics and those risks really are for planning
20 purposes. We found those not as a valid cost.

21 Additionally, PSEG's filing for spent fuel
22 costs, we found them to be an invalid cost as well.
23 Based on a DOE ruling, the company's -- PS and other
24 nuclear generation companies are not paying into that
25 fund and are not accruing that fund. So while it is

1 included in the application, it hasn't been accounted
2 for since 2014 and it's not accountable in any
3 projections.

4 We also, as part of avoidable costs, looked
5 at the labor and material operations in overhead if the
6 plants were to shut down. And based on the fact that
7 the units will still have viable material on-site, it
8 will take five to seven years to probably bring the
9 plants based on what we understand into a safe state.
10 So they would still be staffed at least 50 percent for
11 five to seven years until all fuels in the state are
12 stored. And along with labor units, still have
13 costs -- overhead costs, projects, and materials. So
14 we cut those in half as part of our avoidable cost
15 calculations.

16 There are other things that we also
17 questioned in the applications as far as costs go.
18 And, again, this is universal for all three
19 applications. They were all consistent.

20 How capitalized cost were treated; i.e.,
21 recovery of capitalized project costs in one year,
22 rather than amortized over the year of the project
23 construction until it's used and useful, as well as
24 generalized overhead costs within PSEG Power as well.

25 So based on all that information, the

1 eligibility team, quite frankly, determined that the
2 units are financially viable as they stand now in the
3 current market conditions and that they were not in
4 need of this subsidy.

5 Now, there are other things to take into
6 account going forward. There are several market
7 changes pending either on the PJM and FERC level.
8 These include capacity market pricing, energy price
9 formation, variable O&M increases, fast-start pricing.
10 All these will impact prices going forward. It's
11 projected they will increase prices, be more beneficial
12 to the generators.

13 However, the team evaluated the applications
14 on the status quo. We did not want to speculate what
15 might happen in the market. We tried to keep realtime
16 conditions.

17 So, all that said, I know I've been going on
18 for a while here.

19 The team, again, evaluated all three plants
20 at the end.

21 For licensure, we determined that Salem 1,
22 Salem 2, and Hope Creek did meet that criteria of the
23 Act for significant material contribution to air
24 quality.

25 We determined that all three units, most

1 likely, but we did not make a definitive conclusion, we
2 just know there is an impact to the emissions if they
3 shut down.

4 Financial risk of plants shutting down
5 without material changes, we determined that they did
6 not qualify for that requirement of the Act.

7 Lack of subsidies from external sources, all
8 three did qualify for that portion.

9 And the application fee, obviously, all three
10 qualified.

11 So that's where staff stands.

12 PRESIDENT FIORDALISO: Thank you very much,
13 Tom, for that comprehensive review.

14 And in order to get a motion on the floor so
15 that we're able to make our statements, discuss it, and
16 so on, I'm going to ask or entertain a motion to award
17 the ZECs and direct the EDCs to implement tariffs
18 consistent with the statutory requirement for
19 collection of 4 mils.

20 COMMISSIONER HOLDEN: I'll move it for
21 discussion.

22 COMMISSIONER SOLOMON: Second.

23 PRESIDENT FIORDALISO: Thank you.

24 I would like to make a statement, and then I
25 will obviously allow my colleagues the opportunity to

1 let their thoughts be known.

2 And I think I'm probably -- I'm not speaking
3 for anyone, but I think I'm probably going to -- what I
4 say is probably universal among all of us: That this
5 has been a very difficult process for us; and when we
6 started this administration back in January of '18,
7 first thing that hit us in the face were ZECs.

8 So this has been very difficult for me. And
9 I hope I'm able to convey to you, the audience, the --
10 and to the people in the State of New Jersey, the
11 reason I have come to the conclusion I have come to.

12 Twelve years, that's how long leading
13 scientists tell us we have to act on global warming
14 before the risks of draught, floods, extreme heat,
15 poverty, and related health risks increase for hundreds
16 of millions of people.

17 That means to me, at least -- and I've said
18 this many times in public -- that we collectively, all
19 of us, have a moral obligation to our fellow citizens
20 to do everything we can to decrease carbon emissions.

21 Right now, nuclear power in New Jersey
22 provides approximately 32 percent of our State's energy
23 and makes up 90 percent of our clean energy portfolio.

24 As Legislature noted in the law enacting
25 ZECs, and I quote: The abrupt retirement of existing

1 licensed and operating nuclear power plants within and
2 outside the State that provide electricity to customers
3 in New Jersey and any concomitant increase in that
4 proportion of New Jersey's electricity demand met by
5 natural gas and coal will result in substantial
6 increase in emissions of several pollutants and
7 associated adverse public health and environmental
8 impacts. The pollutants resulting from increased
9 fossil-fuel generation and drilling, possibly, include
10 emissions of carbon dioxide, methane, carbon monoxide,
11 and I can go on and on with a number of different
12 compounds.

13 Not only would that situation contradict
14 Governor Murphy's commitment to a hundred percent of
15 clean energy by 2050, it would be counter to everything
16 I think we are trying to do as a community to mitigate
17 the impacts of climate change.

18 PSEG, which owns Hope Creek, and with Exelon
19 Salem 1 and 2, has told the Board of Public Utilities
20 that they will be unable to continue operating the
21 nuclear plants without material financial change for
22 the units and they provided documentation.

23 PSE&G's applications were received by Levitan
24 & Associates, the Board's consultant on ZEC matters,
25 and the report that I think Tom referred to in his

1 presentation also.

2 The BPU's own eligibility team reviewed the
3 application documents, comments on the application, and
4 the Levitan report, and provided analysis and
5 determinations.

6 Separately, the Independent Market Monitor
7 and Rate Counsel reviewed the applications and made
8 recommendations.

9 To briefly recap, both Levitan and the BPU
10 eligibility team, adopted the Board's more traditional
11 view that operational and market risks should not be
12 considered in the analysis of the need for ZECs.

13 The eligibility team also identified a number
14 of proposed energy market changes that may be
15 implemented by PJM and/or FERC, which could
16 substantially increase the units future profitability.

17 Considering these factors, the eligibility
18 team concluded that none of these three units met the
19 financial threshold necessary to be awarded ZECs.

20 The Board appreciates, I appreciate, the
21 difficult task and thank staff and the eligibility
22 team, in particular, in setting up the ZEC proceedings
23 and in evaluating the applications and comments
24 received from interested parties and Levitan's report.

25 Based on the specific language of the

1 legislation, however, I believe that the intent of the
2 legislation was for the Board, as the ultimate
3 decision-makers, to consider operational risks and
4 market risks in its evaluation of these applications.
5 And that it is squarely within the Board's authority to
6 determine the weight that should be given to these
7 factors; namely, risks.

8 We're defining in the ZEC Act to include
9 operational risks, i.e., operational costs or operating
10 costs higher than anticipated and market risks, i.e.,
11 market energy and capacity price volatility.

12 I further believe that we must balance
13 protecting ratepayers with our responsibility to the
14 citizens of the State; and in making this decision, I
15 believe the Board must, therefore, also consider other
16 outside factors, including fuel diversity, resiliency,
17 impact on RGGI, New Jersey's economy, increasing
18 carbon, environmental impact, and the Global Warming
19 Response Act.

20 As noted, nuclear power currently makes up
21 approximately 32 percent of the State's energy mix and
22 90 percent of our clean energy.

23 Other than increasing the supply of natural
24 gas, there are no other viable immediate, immediate
25 replacements for nuclear power at this time.

1 Additionally, closing down the plants is
2 predicted to cost 750 to 1,500 jobs, impact the grid on
3 a regional basis, and significantly increase carbon
4 emissions.

5 PSEG has made it quite clear that they will
6 not continue to operate the nuclear facilities absent
7 the subsidies. I believe the plants do minimize
8 harmful emissions that adversely affect the citizens of
9 the State of New Jersey.

10 If the nuclear power plants were to be
11 retired, that retirement would significantly and
12 negatively impact New Jersey's ability to comply with
13 state air emissions reductions requirements,
14 particularly, until our proposed offshore wind projects
15 are in service.

16 Also factoring into my decision is the
17 irreversible nature of this action. If the plants are
18 decommissioned, the process cannot be undone.

19 I do not make this decision lightly and
20 recognize there is disagreement, even among members of
21 this Board.

22 That said, in light of the factors I
23 delineated, notably environmental impact and the
24 dangers climate change poses to our collective
25 well-being, I believe that now is not the time to move

1 forward in a way that would remove nuclear energy from
2 our entire energy mix.

3 I, therefore, recommend a vote in favor of
4 awarding ZECs to Salem 1, Salem 2, and Hope Creek.

5 Any of my colleagues have any comments?

6 COMMISSIONER GORDON: Commissioner?

7 PRESIDENT FIORDALISO: I'm sorry.

8 You want to go?

9 Go.

10 COMMISSIONER GORDON: I defer to Commissioner
11 Solomon.

12 PRESIDENT FIORDALISO: We can defer to you.

13 COMMISSIONER SOLOMON: Thank you.

14 We, at the BPU, are fortunate to have a staff
15 that is incredibly knowledgeable, thoughtful, and
16 thorough. They have worked very hard to analyze the
17 proposal before us by considering carefully the
18 applicants' information and analysis and the analysis
19 of the expert we retain to give us an objective
20 evaluation of the proposal. They are to be commended.

21 First, we all agree with the Governor,
22 Legislature, and PS that nuclear generation is the only
23 truly reliable carbon-free baseload generation and is
24 necessary to move New Jersey for the Governor's clean
25 energy goals.

1 To the extent that a subsidy is required to
2 keep nuclear generators operating profitably, the ZEC
3 is necessary. We understand that PS, unquestionably,
4 has a responsibility to shareholders to make certain
5 that its nuclear generation is profitable and
6 competitive with other baseload generation.

7 Because the ZEC concept achieves that goal,
8 it is an appropriate method to make sure that nuclear
9 power plants remain operational and justify PS's
10 investment in those plants.

11 The Legislature and Governor provided very
12 specific criteria for determining whether a nuclear
13 generator is entitled to ZECs. Specifically, it
14 requires that PS show that their costs and risks exceed
15 their revenues or that PS could not cover adjusted cost
16 of capital and would cease operation within three years
17 without material financial change.

18 In the event that revenues are greater than
19 PS's cost and risk, we do not have the authority under
20 the legislation tool for ZECs.

21 I remind everyone that it has been this
22 Board's consistent opinion for a number of years that
23 subsidies should be handled regionally so that
24 New Jersey residents do not bear a disproportionate
25 share of the cost for supplying necessary energy and

1 its delivery. Awarding a subsidy in this fashion is
2 contrary to the operation of a competitive market.
3 Such interference should not be entered into lightly.

4 Nevertheless, because regional and national
5 regulators have failed to address the issues, we are
6 once again confronted with the problem.

7 Our responsibility as public utility
8 regulators is to be certain that safe, reliable service
9 is provided at reasonable rates. All of us acknowledge
10 that safe includes environmentally responsible
11 generation. Nuclear generation is all of the things we
12 seek to ensure. It is zero-carbon generation and it is
13 reliable.

14 Recognizing our responsibility as public
15 utility regulators and to make sure that nuclear
16 generation is part of our energy mix, the Legislature
17 passed and the Governor signed the ZEC Bill.

18 The legislation requires that the BPU, as
19 economic regulators, review any application under the
20 law to make certain that the eligibility requirements
21 spelled out in the Bill are met.

22 We all recognize that PS, because it is a
23 generator, is an unregulated for-profit business
24 entity. Even though that makes this request outside of
25 our general responsibility, we consider it, because the

1 Legislature has directed us to undertake this review.
2 Therefore, we are required to analyze PS's request here
3 and not simply accept its representations.

4 This is because, while we expect energy
5 generators to appreciate the environmental impacts of
6 what they are doing, their responsibility is to their
7 bottom line and their shareholders; ours is to
8 New Jersey residents, ratepayers, and those we
9 regulate.

10 The professionals we selected to review the
11 application, who is, without question, objective,
12 renowned, and has consulted on similar applications in
13 other states, along with our staff, concluded that the
14 application does not meet the requirement of the
15 Legislature mandate because some of the risks of
16 nuclear generation included by the applicant are not
17 properly attributable in their calculations of costs.

18 The question on which our decision turns is
19 whether PS's included risks are real and represent a
20 cost of operation.

21 I have struggled deciding this issue.

22 If PS is correct, the survival of in-state
23 clean, reliable, baseload generation is threatened, not
24 to mention the impact that plant closures will have
25 particularly on my neighbors in South Jersey.

1 If PS is not correct, cost to ratepayers,
2 including businesses that are responsible for
3 significant tax revenue will bear a burden that may
4 compel them to relocate. The realization of either
5 risk is intolerable.

6 Unfortunately, the Legislature and the
7 Governor did not give us the authority to determine the
8 amount of the subsidy for nuclear generators that will
9 enable nuclear generation to be profitable and
10 competitive, while accounting for the unique, but
11 verifiable risks, as my -- as President Fiordaliso
12 spelled out, and environmental benefits attributable to
13 nuclear generation. The legislation does not give us
14 that authority.

15 I am, therefore, required to make a Hobson's
16 choice. Because I believe that some level of subsidy
17 is warranted and I believe that the risk of losing our
18 in-state generation and the resulting loss of jobs and
19 costs to ratepayers and the environment, as well as
20 system reliability, outweighs the cost of the proposal,
21 I will reluctantly vote yes.

22 I hope that the Legislature and Governor will
23 consider ways to lessen the impacts on businesses and
24 other ratepayers so that we do not lose jobs and suffer
25 other related losses to the ultimate detriment of our

1 State, and I will be happy to assist in that effort.

2 PRESIDENT FIORDALISO: Thank you.

3 And since you were more of a gentleman than
4 I, I will recognize you.

5 COMMISSIONER GORDON: Thank you,
6 Mr. President.

7 I do too have a brief statement I would like
8 to make.

9 I can say without hesitation that this vote
10 is the most difficult I have cast in my public life,
11 including my 14 years in the State Legislature.

12 The statute governing our decision-making
13 process provided very little flexibility.

14 I believe all members of the Board recognize
15 that the three nuclear plants in question are
16 associated with a number of public benefits. They
17 supply between 30 and 40 percent of electricity
18 generation in the State. And by doing so, with zero
19 emission, providing a strong foundation in our quest to
20 be carbon-free by the year 2050.

21 In addition, the plants attribute greatly to
22 energy diversity and fuel security. And I believe a
23 majority of the Board, if not all members, would
24 support a significant subsidy to support these societal
25 benefits. And yet, the statute did not give us the

1 freedom to even offer a subsidy we deemed appropriate.

2 It was \$4 a megawatt hour or nothing.

3 I would characterize the choices we face as
4 genuinely awful. On the one hand, we could reject the
5 mandated subsidy and see the three plants shut down.
6 And I have no doubt that the owners would carry out
7 their threat.

8 The replacement power, as we've heard, would
9 be generated by natural gas and coal-fired facilities,
10 which would greatly increase greenhouse gas emissions
11 and other hazardous pollutants. The increase in
12 nitrogen oxides would raise ambient ozone
13 concentrations and, in combination with higher
14 particulates, would contribute to respiratory disease
15 in the State.

16 Alternatively, we could approve the subsidy,
17 really an energy tax, and add to the already heavy and
18 growing burden borne by New Jersey's ratepayers.

19 In addition to the implications for our
20 seniors living on fixed incomes, I am particularly
21 concerned about the impact on large energy users in the
22 manufacturing sector, as well as hospitals,
23 universities, and other public institutions. I believe
24 this energy tax will lead to job losses, plant
25 closings, and will make New Jersey even less

1 competitive than it is now.

2 As I considered my vote, I recall the meeting
3 I had in late 2017 when the ZEC legislation was first
4 proposed and when I was still a member of the Senate.

5 I was visited by the manager of a paper
6 manufacturer, one of the largest employers in Bergen
7 County and a heavy energy user. I was told that the
8 ZECs would add \$2 million to the company's operating
9 costs. And because the firm's major competitor already
10 had the advantage of operating in low-cost Iowa, my
11 constituent told me the ZEC surcharge would kill his
12 business. I have no doubt that the nuclear subsidy
13 will adversely affect large energy users.

14 In my view, the Board is being directed to
15 pay ransom and the hostages are the citizens of
16 New Jersey.

17 PSE&G and Exelon contend that the three
18 plants are operating at a loss; and without a subsidy,
19 they have no choice but to close the facilities.

20 It should be noted that every independent
21 analyst that has submitted an assessment to the
22 Board -- and that includes Levitan Associates, our
23 consultant, the Independent Market Monitor of PJM, and
24 others -- disagrees. All report that the applicants'
25 cost figures are grossly inflated. And when the

1 figures are adjusted to conform to Generally Accepted
2 Accounting Principles, the three plants are not
3 operating at a loss. In fact, the independent analysts
4 report that each plant is covering its so-called
5 avoidable or going forward costs, which means that it
6 is economically rational to keep those plants in
7 operation.

8 Let me say at this point that I think Levitan
9 did an excellent job in conducting its financial
10 analysis.

11 And today I want to thank Tom Walker and his
12 team at the BPU for their stellar work.

13 I believe the ZEC legislation was enacted and
14 we are here today, not because these three plants are
15 losing money, but because they are not profitable
16 enough. Absent a subsidy, PSE&G and Exelon can make a
17 higher return by deploying capital to alternative
18 investments.

19 While a strict reading of the ZEC legislation
20 links eligibility for the subsidy to a determination of
21 operating losses, I am compelled to take a more
22 expansive view of the factors that should drive this
23 decision and what constitute the public interest. In
24 making my decision, I felt a need to weigh the economic
25 impact of the proposed energy tax against the likely

1 environmental climate and public health impacts
2 associated with the plant closures.

3 I am particularly concerned about likely
4 impact on ozone levels and respiratory disease.
5 Ultimately, for me, the environmental and health risks
6 outweigh the economic implications.

7 And so I will be supporting the ZEC subsidies
8 for each of these plants.

9 Let me hasten to add that, as I indicated, I
10 am keenly sensitive to the potential impact of this
11 additional cost on large energy users and those
12 residential ratepayers that may not qualify for
13 existing assistance programs.

14 I believe strongly that this Board or the
15 Legislature needs to take action to mitigate the impact
16 on vulnerable ratepayers, as well as manufacturers,
17 public institutions, and other large consumers of
18 electricity. I have good reason to believe that the
19 leadership of both the General Assembly and the Senate
20 would be receptive to advancing legislation for that
21 purpose.

22 To the extent that I can facilitate that
23 process, I will gladly do so.

24 Thank you, Mr. President.

25 PRESIDENT FIORDALISO: Thank you,

1 Commissioner.

2 Commissioner Chivukula.

3 COMMISSIONER CHIVUKULA: I would just want to
4 ask some -- I'd like to ask some questions.

5 I don't want to make statements.

6 PRESIDENT FIORDALISO: Okay.

7 COMMISSIONER CHIVUKULA: Tom, the question
8 before us is to determine whether the zero emissions
9 certificates for environmental benefit, I think you
10 articulated quite well, they increase by 9.6 percent.
11 And we have already met the Global Warming Response
12 Act, which required 30 percent reduction of greenhouse
13 gas reductions by 2020. We're only in 2019.

14 And then we have a great -- the independent
15 Rate Counsel, Stefanie Brand, has clearly articulated
16 in terms of why the plants don't need the subsidy at
17 this time, maybe they can come back at a future date.

18 And also, the Independent Market Monitor,
19 which we use periodically and regularly, to fight some
20 of the decisions coming from PJM and the FERC in terms
21 of the high transmission costs that we are using. So
22 they have come up with saying that none of these units
23 meet the standard for a subsidy under the ZEC Program.

24 And similarly the PJM Power Providers Group,
25 a participant in this matter, specifically found that

1 the projected New Jersey nuclear units revenues exceed
2 their going forward/avoidable costs.

3 So I think you talked about avoidable costs
4 and the economic measure.

5 Then, I have received letters from AARP and
6 the coalition and they're talking about how the impact
7 it's going to have on residential customers .004 cents
8 per kilowatt hour.

9 And also we received the letters from
10 New Jersey Large Energy Users saying that the average
11 member -- that average member with an energy use of
12 with 8,282 million kilowatt hours and gas of 789,000
13 decatherms will pay 328,000 annually because of all the
14 other rates and other proceedings that are in front of
15 the Board. And one member, it's higher than average,
16 pays about \$900,000. It's almost a million dollars.

17 Now -- and then you look at some of the
18 letters from the residents, we'll talk about it.

19 You know, Ralph Izzo, the chairman of --
20 chairman and CEO -- President and CEO of Public Service
21 Enterprise Group, he made last year, in 2018,
22 \$10.4 million in total compensation and translates to
23 about \$2,500 per hour every day of the hour. I mean
24 \$2,500, and a lot of people we represent may not make
25 in a month.

1 Now, so you have -- you have time -- that
2 New Jersey rates are quite high, among all the nations.

3 Now, when I look at this thing and our own
4 economist came up with the numbers and saying the ZEC
5 subsidy is borne by the New Jersey ratepayers for first
6 three years at 100 percent of .004 cents per kilowatt
7 hour.

8 And given all these things, when you look at
9 it, you know, RGGI is not a benefit and RGGI is for the
10 other that is a tax put on other generation.

11 In 1999, the State of New Jersey chose to go
12 to deregulate and try to separate the generation from
13 the distribution.

14 And now we had the LCAPP legislation a few
15 years ago. And the same company that fought us in the
16 court -- in the federal courts and they won based on
17 the Minimum Offer Price Rule of the FERC.

18 And, now, it's just exactly the shoe is on
19 the other foot and so they're asking for this benefit.

20 And, you know, we can talk about
21 environmental and all that, we fight for the people,
22 poor people. There won't be enough poor people who are
23 going to be worried about the ozone concentration and
24 ozone may have been compromised.

25 And, you know, I know. I'm going to share a

1 personal story.

2 I grew up in India. And I come from a very
3 poor family. And to buy 5 pounds of rice, I remember,
4 I was 8 years old, my sister was 10 years old, we stood
5 in the line for over 9 hours to get 5 pounds of rice.

6 I know it's different in the United States.
7 I'm very fortunate to the United States for giving me
8 this opportunity to rise through the ranks. And one
9 pledge I made to myself is that I will never forget the
10 poverty where I started and I will not forget. I will
11 not let down the poor people of the State of New Jersey
12 or poor people anywhere. I made that commitment.

13 Today, when I look at this thing, I think
14 this is highway robbery. And one of the most powerful
15 companies in New Jersey, in the United States is
16 holding, you know, as well as -- said, holding over to
17 the head and I talked about that.

18 The -- here, you can, you know, skin the cat
19 whatever way you want.

20 It's very clear that based on your testimony,
21 these three units, along with Independent Market
22 Monitor, along with the ratepayer counsel and advocate,
23 so they all say that, that they do not need the subsidy
24 at this time.

25 And we also know there are other proceedings

1 that are in front of the FERC, federal agencies, and
2 they're going to be coming in and those are distributed
3 across. They're not going to be benefitting the State
4 of New Jersey alone.

5 And these -- these subsidies are going to
6 directly hit ratepayers of the State of New Jersey.

7 And the environmental benefits, I don't know,
8 it's an Artificial Island. I guess emissions are going
9 to go into the ocean. And what we are worried about
10 are the ones coming from other states west of us.

11 And I -- I don't understand the logic of the
12 120-member Legislature. I do not understand the logic
13 of the State Governor, the State of New Jersey. How
14 would they allow this thing? They're punting the ball
15 to the Board of Public Utilities and the Commissioners.

16 I'm very sad to say that my colleagues, you
17 know, who are supporting this legislation, this -- I
18 guess action required by the legislation. And so
19 another -- I'm very -- I'm really disappointed.

20 I think -- I have been living in the United
21 States for 45 years.

22 I knew that a lot of things happen, but this
23 type of thing, to hurt the people directly, hurt the
24 businesses. As it is, businesses are moving out, with
25 whatever the taxes that are there. And this is an

1 undue burden on the ratepayers of the State of
2 New Jersey, while there are other options are
3 available.

4 2020 greenhouse gas requirement is already
5 met. We have 30 years. To 2050, we have 30 years. We
6 have many technologies. A lot of things that can
7 happen.

8 And I am really saddened, and I don't know, I
9 want to ask you lots of questions, but I don't want to
10 waste anybody's time. I know the votes are there.

11 But when -- when will the real people stand
12 up and say we want to fight for the people of the State
13 of New Jersey, people who have tough times.

14 If you are a poor person, you have I think
15 8 percent or so -- energy is 8 percent or so of your
16 budget and these things would push it up double digits.
17 And how are we going to look them in the face and say
18 that we have done right by you.

19 And I think it's a very, very sad day for me,
20 and I think it's a sad day for the State of New Jersey,
21 and it's a sad day for the United States of America.

22 PRESIDENT FIORDALISO: Thank you,
23 Commissioner.

24 Commissioner Holden.

25 COMMISSIONER HOLDEN: So there are two

1 schools of thought in this matter: Eligibility versus
2 ineligibility.

3 Beyond the obvious, the guaranteed increase
4 in carbon emissions by losing 32 percent of reliable
5 carbon-emission-free baseload generation to increased
6 reliance on fossil-fuel generated baseload would put
7 constraints upon in-state generation, raise natural gas
8 prices, and add reliance upon imports of coal and
9 natural gas generation from the west. And thus pancake
10 those imports with supply constraints, vulnerabilities,
11 and increased congestion pricing.

12 If we look ahead to a decommissioning
13 scenario, one would have to factor in nearly
14 \$300 million in costs in today's dollars.
15 Decommissioning is a several-years process. It takes
16 three years alone to just cool the fuel rods in cooling
17 pools before dry-cask storage, plus plant disassembly.
18 Once a nuclear plant is closed, it cannot reopen.
19 That's it.

20 Other costs further compound the problem.
21 Much like Titusville and Melbourne, Florida, were
22 decimated and still struggle to redefine themselves by
23 the decline of the space program, nuclear
24 plant-surrounding communities would experience
25 widespread job loss, loss of tax base, and state and

1 local income. Allegedly, this could be hundreds of
2 millions of dollars of economic loss.

3 The legislated charge to continue operation
4 is 4 mils, or .004 cents, per kilowatt hour. This
5 translates to the average residential customer using
6 6,920 kilowatt hours per year to \$27.68 for the year.
7 That's roughly 7 and a half cents per day.

8 Reviewing all reports and opinions, clearly
9 the zero emission certificate legislation directed the
10 Board. Consideration of air attributes was certainly
11 important; but more so, costs and risks, including risk
12 adjusted cost of capital, operational risks, and market
13 risks -- most notably, if output were unable to be sold
14 at projected levels -- being key factors of
15 eligibility.

16 In some opinions, assumptions were made if
17 the plant was not operating, there would be no
18 operational risks. That seems intuitively obvious.
19 The goal, to me, is to keep these valued assets
20 operational. Therefore, inherent logic has to assume
21 there is quantifiable risk that cannot be zeroed out.

22 In another opinion, market risk was deemed
23 ineligible because true cost could not be assessed
24 until the risk was realized. Then, by that logic, it
25 would no longer be risk but a sure thing. I thought

1 market risk was the legislative driver, in not only
2 New Jersey, but Illinois, Ohio, Pennsylvania,
3 Connecticut, and New York legislation.

4 This decision then relies upon the preferred
5 methodology one would choose in a standard rate case.

6 Do you prefer a historic test year where
7 everything is known and measurable or future test year
8 where revenues and expenditures are projected?

9 I, for one, will not play the equivalent of a
10 generation chicken game with our nuclear power plants.
11 We are talking about the future. What will happen in
12 three years from now? We must project, as in a future
13 test year case.

14 Reality is that PSEG has already begun the
15 filing process with PJM to decommission these plants.
16 There is no mothballing of nuclear plants for another
17 time.

18 Only our hope today, based upon the complete
19 understanding and totalling of all costs and risks, can
20 save our nuclear fleet, protect the state's fuel
21 diversity and fuel security, and take avoiding action
22 to protect the more than 90 percent carbon-free energy
23 they produce.

24 I am voting in favor of eligibility.

25 PRESIDENT FIORDALISO: First of all, I want

1 to thank my colleagues for the thoughtfulness and in
2 some ways painful process in coming to their decisions.

3 And the motion on the floor --

4 COMMISSIONER CHIVUKULA: One more question,
5 please.

6 PRESIDENT FIORDALISO: Yes.

7 Yes.

8 COMMISSIONER CHIVUKULA: Okay.

9 Suppose you give the ZECs as -- it looks like
10 they're going to be -- one unit is licensed in 2036,
11 another unit in 2040, another unit is licensed till
12 2046. So every three years, it will be going through
13 this, applicants who apply, come back. They are going
14 to -- another billion, another billion, another
15 billion.

16 Is that correct?

17 MR. WALKER: I can't speculate on how much
18 they'll be asking for but, yes, every three years, if a
19 unit proceeds today, every three years from now,
20 they're allowed to apply for a second three-year period
21 of receiving the subsidy.

22 The difference being, at that time, the Board
23 can adjust the amount that they feel is necessary.

24 MR. FLANAGAN: I was going to say the same
25 thing. The obligation to grant 300 million at that

1 point, it is up to the Board. They can adjust that
2 now.

3 So you can make a determination that they
4 weren't entitled to the full amount.

5 COMMISSIONER CHIVUKULA: The ZEC Act only
6 said the first three years you have to give.

7 MR. FLANAGAN: Yes.

8 MR. WALKER: Yes.

9 COMMISSIONER CHIVUKULA: But the requirement,
10 basically in the calculation was based on 42 percent,
11 the nuclear generation. Because in 2017, the 4 units
12 available: Oyster Creek, Hope Creek, Salem 1, and
13 Salem 2. So the calculation is based on 42 percent.

14 MR. WALKER: Well, 42 percent would include
15 Oyster Creek. But the Act basically it dictates
16 everything will be -- yeah, it's 40 percent under the
17 Act.

18 The Act basically determined that 2017 energy
19 year, not calendar year, but energy year was the
20 numbers that would be used to calculate that
21 percentage.

22 COMMISSIONER CHIVUKULA: Is there anywhere in
23 the statute that you -- if you gave the subsidies,
24 there's no guaranty that they'll shut it down because
25 this is not financially viable, that rate of return is

1 not up to expectations?

2 MR. WALKER: There are several reasons why
3 the plant can be excused for not producing because the
4 Act does require a certain level of production. Just a
5 financial determination does not qualify.

6 So if they determine financially they don't
7 want to continue to operate the plant for the next
8 three years, for all of the next three years, then they
9 will stop the unit from receiving any subsidy according
10 to the Act.

11 COMMISSIONER CHIVUKULA: The decommissioning,
12 that filing that Commissioner Holden mentioned, that
13 can be withdrawn any time, it's just that -- it doesn't
14 mean that once you -- unless you go through the whole
15 decommissioning process.

16 MR. WALKER: Are you talking about the one
17 that was filed Tuesday with the FERC?

18 COMMISSIONER CHIVUKULA: Right. And then
19 they asked for a -- and that was passed --

20 MR. WALKER: Correct. They've been
21 withdrawn, sir.

22 COMMISSIONER CHIVUKULA: And also at the same
23 time, saying they're going to shut down the nuclear
24 generation, but you are building transmission on
25 Artificial Island, transmission for Delaware and

1 Maryland.

2 Right?

3 MR. WALKER: Yes.

4 Yes. That's a separate proceeding.

5 COMMISSIONER CHIVUKULA: That's a separate
6 proceeding. It comes with additional costs on that,
7 where, you know, we're dealing with FERC on that rule.
8 We have lost our appeals. And it's going to be borne
9 mostly by the ratepayers of the State of New Jersey.

10 MR. WALKER: Yes, sir.

11 COMMISSIONER CHIVUKULA: Thank you.

12 MR. MOREAU: Excuse me, just one
13 clarification, Commissioner Chivukula.

14 Actually, once the unit --

15 PRESIDENT FIORDALISO: Put your mic on.

16 MR. MOREAU: Just to clarify, once the unit
17 has been awarded ZECs, it can return to the BPU
18 13 months before the end of the first eligibility
19 period.

20 COMMISSIONER CHIVUKULA: Right.

21 The other point about that fuel, you know,
22 that spent fuel, currently there's no place to go from
23 the hot swimming pool, it has to go into the casks.
24 That's it. There's no other place to go on-site
25 storage. So we haven't incurred that cost year, but

1 that was included. A lot of costs are padded up and
2 boosted.

3 PRESIDENT FIORDALISO: Again, Tom, I want to
4 thank you and the committees that were involved in
5 this. You did a yeoman's job. I know it took a lot of
6 time, a lot effort, and a lot of expertise.

7 So on behalf of the Board, I thank you.

8 MR. WALKER: Thank you.

9 PRESIDENT FIORDALISO: The motion on the
10 floor is to award the ZECs and to direct the EDC to
11 implement tariffs consistent with the statutory
12 requirement for collection of the 4 mils.

13 If there are no other comments, roll call.

14 SECRETARY CAMACHO-WELCH: On the motion to
15 approve staff's recommendation,

16 Commissioner Holden?

17 COMMISSIONER HOLDEN: Yes.

18 SECRETARY CAMACHO-WELCH: Commissioner
19 Solomon?

20 COMMISSIONER SOLOMON: Yes.

21 MS. VACHIER: I'm sorry.

22 MR. FLANAGAN: Typically, the vote is on the
23 motion of the staff. There is no motion of staff. It
24 was the proposal of -- I think it just has to be
25 clarified for the record that the vote will be on the

1 motion of the President to open and --

2 PRESIDENT FIORDALISO: Correct.

3 Because staff did not make a recommendation
4 to this Board.

5 MR. FLANAGAN: Right. Right.

6 Just to clarify for the record that the
7 transcript will reflect that it was that motion and not
8 the motion of staff.

9 COMMISSIONER CHIVUKULA: I think that staff
10 made the recommendation to deny the ZECs.

11 PRESIDENT FIORDALISO: No, it did not.

12 MR. FLANAGAN: There was no recommendation.

13 There is a staff report that will, as part of
14 this, under the order, would be released. But there is
15 no recommendation from staff to vote one way or the
16 other. That remains open.

17 PRESIDENT FIORDALISO: Okay. Now, do I have
18 to repeat what you just said?

19 COMMISSIONER CHIVUKULA: Why did you spend
20 all that money?

21 PRESIDENT FIORDALISO: Excuse me.

22 COMMISSIONER CHIVUKULA: Well, why did you
23 spend all that money?

24 PRESIDENT FIORDALISO: Excuse me.

25 One moment.

1 Do I have to repeat what you just said?

2 MR. FLANAGAN: I think I just clarified it.

3 PRESIDENT FIORDALISO: Okay. So it's on my
4 motion --

5 MR. FLANAGAN: Yes.

6 PRESIDENT FIORDALISO: -- that we're voting
7 on.

8 MR. FLANAGAN: Yes.

9 PRESIDENT FIORDALISO: Okay.

10 SECRETARY CAMACHO-WELCH: Commissioner
11 Holden?

12 COMMISSIONER HOLDEN: Yes.

13 SECRETARY CAMACHO-WELCH: Commissioner
14 Solomon?

15 COMMISSIONER SOLOMON: Yes.

16 SECRETARY CAMACHO-WELCH: Commissioner
17 Chivukula?

18 COMMISSIONER CHIVUKULA: Emphatically no.

19 And it's -- it's a disgrace.

20 Thank you.

21 SECRETARY CAMACHO-WELCH: Commissioner
22 Gordon?

23 COMMISSIONER GORDON: Yes.

24 SECRETARY CAMACHO-WELCH: President
25 Fiordaliso?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

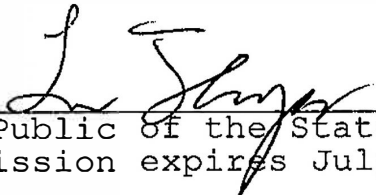
PRESIDENT FIORDALISO: Yes.
(Whereupon Item 9A was approved.)
(Item 9A - Miscellaneous Concluded.)

CERTIFICATE

I, Lorin Thompson, a Notary Public and
Shorthand Reporter of the State of New Jersey, do
hereby certify as follows:

I do further certify that the foregoing is a
true and accurate transcript of the testimony as taken
stenographically by and before me at the time, place
and on the date hereinbefore set forth.

I do further certify that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither a
relative nor employee of such attorney or counsel, and
that I am not financially interested in the action.



Notary Public of the State of New Jersey
My commission expires July 26, 2021

Dated: April 18, 2019

	Actually (1) 41:14	33:4;35:16	9:21;10:1;20:8; 25:1	award (2) 13:16;42:10
\$	add (4) 25:17;26:8;28:9; 35:8	Along (5) 10:8;11:12;22:13; 32:21,22	approve (2) 25:16;42:15	awarded (2) 16:19;41:17
\$10.4 (1) 30:22	addition (2) 24:21;25:19	alternative (1) 27:17	approved (2) 4:4;5:9	awarding (2) 19:4;21:1
\$2 (1) 26:8	additional (2) 28:11;41:6	Alternatively (1) 25:16	approximately (2) 14:22;17:21	aware (1) 4:1
\$2,500 (2) 30:23,24	Additionally (2) 10:21;18:1	ambient (1) 25:12	around (1) 5:17	awful (1) 25:4
\$27.68 (1) 36:6	address (1) 21:5	America (1) 34:21	articulated (2) 29:10,15	B
\$300 (1) 35:14	adjust (2) 38:23;39:1	among (3) 14:4;18:20;31:2	Artificial (2) 33:8;40:25	back (4) 4:2;14:6;29:17; 38:13
\$4 (1) 25:2	adjusted (4) 9:16;20:15;27:1; 36:12	amortized (1) 11:22	Assembly (1) 28:19	background (1) 3:18
\$900,000 (1) 30:16	administration (1) 14:6	amount (4) 5:25;23:8;38:23; 39:4	assessed (1) 36:23	backup (1) 8:24
A	adopted (1) 16:10	analysis (9) 3:21,23;5:20;9:12; 16:4,12;19:18,18; 27:10	assessment (1) 26:21	balance (1) 17:12
AARP (1) 30:5	advancing (1) 28:20	analyst (1) 26:21	assets (1) 36:19	ball (1) 33:14
ability (1) 18:12	advantage (1) 26:10	analysts (1) 27:3	assist (1) 24:1	base (1) 35:25
able (2) 13:15;14:9	adverse (1) 15:7	analyze (2) 19:16;22:2	assistance (1) 28:13	based (12) 4:3;5:20;10:23; 11:6,9,25;16:25; 31:16;32:20;37:18; 39:10,13
abrupt (1) 14:25	adversely (2) 18:8;26:13	and/or (1) 16:15	associated (3) 15:7;24:16;28:2	baseline (5) 19:23;20:6;22:23; 35:5,6
absent (2) 18:6;27:16	advocate (1) 32:22	annually (1) 30:13	Associates (2) 15:24;26:22	basically (5) 10:3,17;39:10,15, 18
accept (2) 9:21;22:3	affect (2) 18:8;26:13	anticipated (1) 17:10	assume (2) 7:17;36:20	basis (1) 18:3
acceptable (1) 3:19	afternoon (3) 3:5,6,7	appeals (1) 41:8	assumed (1) 6:1	bear (2) 20:24;23:3
Accepted (1) 27:1	again (4) 11:18;12:19;21:6; 42:3	applicant (3) 6:21;9:13;22:16	assuming (2) 7:24;8:4	becomes (1) 7:6
according (1) 40:9	against (1) 27:25	applicants (4) 6:14,14,16;38:13	assumptions (1) 36:16	begun (1) 37:14
account (2) 10:16;12:6	agencies (1) 33:1	applicants' (2) 19:18;26:24	attributable (2) 22:17;23:12	behalf (1) 42:7
accountable (1) 11:2	ago (1) 31:15	application (13) 4:7;5:5,11;6:18; 9:11;10:11;11:1;13:9; 16:3,3;21:19;22:11, 14	attribute (1) 24:21	beneficial (1) 12:11
accounted (1) 11:1	agree (1) 19:21	applications (21) 3:11,12,14,20,22; 4:6,6,15,20,21;5:7,18; 9:17;11:17,19;12:13; 15:23;16:7,23;17:4; 22:12	attributes (1) 36:10	benefit (3) 29:9;31:9,19
accounting (2) 23:10;27:2	ahead (1) 35:12	apply (2) 38:13,20	audience (1) 14:9	benefits (4) 23:12;24:16,25; 33:7
accruing (1) 10:25	aid (1) 9:7	applying (1) 9:15	August (1) 4:4	benefitting (1) 33:3
achieves (1) 20:7	air (6) 5:1;6:22;7:5;12:23; 18:13;36:10	appreciate (2) 16:20;22:5	authority (5) 5:24;17:5;20:19; 23:7,14	Bergen (1) 26:6
acknowledge (1) 21:9	Allegedly (1) 36:1	appreciates (1) 16:20	available (2) 34:3;39:12	better (1) 7:21
across (1) 33:3	allow (2) 13:25;33:14	appropriate (4)	average (4) 30:10,11,15;36:5	Beyond (1) 35:3
Act (26) 4:2,10,22,23;5:24; 6:4,5,13;8:8,10,12,17; 9:10,10;12:23;13:6; 14:13;17:8,19;29:12; 39:5,15,17,18;40:4,10	allowed (2) 5:10;38:20		avoid (2) 10:4,4	bidding (1)
action (4) 18:17;28:15;33:18; 37:21	almost (1) 30:16		avoidable (4) 11:4,14;27:5;30:3	
	alone (2)		avoided (1) 10:1	
			avoiding (1) 37:21	

10:14 Bill (2) 21:17,21 billion (3) 38:14,14,15 blunt (1) 7:2 Board (25) 3:20;4:3,4,10;5:8,9; 8:21;9:24;15:19; 16:20;17:2,15;18:21; 24:14,23;26:14,22; 28:14;30:15;33:15; 36:10;38:22;39:1; 42:7;43:4 Board's (7) 5:23;6:8;9:4;15:24; 16:10;17:5;20:22 boosted (1) 42:2 borne (5) 10:12,14;25:18; 31:5;41:8 both (2) 16:9;28:19 bottom (1) 22:7 BPU (5) 16:9;19:14;21:18; 27:12;41:17 BPU's (1) 16:2 Brand (1) 29:15 brief (1) 24:7 briefly (1) 16:9 bring (1) 11:8 brings (1) 3:1 budget (1) 34:16 building (1) 40:24 burden (3) 23:3;25:18;34:1 business (2) 21:23;26:12 businesses (4) 23:2,23;33:24,24 buy (1) 32:3	calendar (1) 39:19 call (1) 42:13 CAMACHO-WELCH (7) 42:14,18;44:10,13, 16,21,24 came (2) 6:20;31:4 can (20) 9:7,20;10:15;14:20; 15:11;19:12;24:9; 27:16;28:22;29:17; 31:20;32:18;34:6; 37:19;38:23;39:1,3; 40:3,13;41:17 capacity (4) 7:5,9;12:8;17:11 capital (4) 9:16;20:16;27:17; 36:12 capitalized (2) 11:20,21 carbon (10) 7:3,18;8:1,3;14:20; 15:10,10;17:18;18:3; 35:4 carbon-emission-free (1) 35:5 carbon-free (3) 19:23;24:20;37:22 carefully (1) 19:17 carry (1) 25:6 case (2) 37:5,13 casks (1) 41:23 cast (1) 24:10 cat (1) 32:18 cease (1) 20:16 cents (4) 30:7;31:6;36:4,7 CEO (2) 30:20,20 certain (4) 20:4;21:8,20;40:4 certainly (1) 36:10 certificate (1) 36:9 certificates (2) 3:13;29:9 chairman (2) 30:19,20 change (5) 5:3;15:17,21;18:24; 20:17 changes (3)	12:7;13:5;16:14 characterize (1) 25:3 charge (1) 36:3 chicken (1) 37:10 CHIVUKULA (21) 8:9;29:2,3,7;38:4,8; 39:5,9,22;40:11,18, 22;41:5,11,13,20; 43:9,19,22;44:17,18 choice (2) 23:16;26:19 choices (1) 25:3 choose (1) 37:5 chose (1) 31:11 citizens (4) 14:19;17:14;18:8; 26:15 clarification (1) 41:13 clarified (2) 42:25;44:2 clarify (2) 41:16;43:6 clean (5) 14:23;15:15;17:22; 19:24;22:23 clear (2) 18:5;32:20 clearly (2) 29:15;36:8 climate (3) 15:17;18:24;28:1 close (1) 26:19 closed (1) 35:18 closing (1) 18:1 closings (1) 25:25 closures (2) 22:24;28:2 coal (3) 8:25;15:5;35:8 coal-fired (1) 25:9 Coalition (2) 5:15;30:6 colleagues (4) 13:25;19:5;33:16; 38:1 collection (2) 13:19;42:12 collective (1) 18:24 collectively (1) 14:18	combination (1) 25:13 coming (4) 29:20;33:2,10;38:2 commended (1) 19:20 commenters (2) 5:19,23 Comments (8) 5:10,16;6:3,9;16:3, 23;19:5;42:13 COMMISSIONER (45) 3:6;8:9;13:20,22; 19:6,6,10,10,13;24:5; 29:1,2,3,7;34:23,24, 25;38:4,8;39:5,9,22; 40:11,12,18,22;41:5, 11,13,20;42:16,17,18, 20;43:9,19,22;44:10, 12,13,15,16,18,21,23 Commissioners (2) 3:5;33:15 commitment (2) 15:14;32:12 commitments (1) 7:9 committees (1) 42:4 communities (1) 35:24 community (1) 15:16 companies (2) 10:24;32:15 company (4) 5:21;6:2;9:22; 31:15 company's (2) 10:23;26:8 compel (1) 23:4 compelled (1) 27:21 compensation (1) 30:22 competitive (4) 20:6;21:2;23:10; 26:1 competitor (1) 26:9 complete (1) 37:18 completeness (1) 4:20 comply (1) 18:12 compound (1) 35:20 compounds (1) 15:12 comprehensive (1) 13:13 comprised (1)	5:7 compromised (1) 31:24 concentration (1) 31:23 concentrations (1) 25:13 concept (1) 20:7 concerned (3) 5:18;25:21;28:3 concerns (1) 5:25 concluded (2) 16:18;22:13 conclusion (3) 7:15;13:1;14:11 conclusions (1) 3:24 concomitant (1) 15:3 concurrently (1) 4:18 conditions (2) 12:3,16 conducting (1) 27:9 conform (1) 27:1 confronted (1) 21:6 congestion (1) 35:11 conjunction (1) 9:6 Connecticut (1) 37:3 consider (5) 6:9;17:3,15;21:25; 23:23 Consideration (1) 36:10 considered (3) 9:5;16:12;26:2 considering (3) 3:24;16:17;19:17 consistent (4) 11:19;13:18;20:22; 42:11 constituent (1) 26:11 constitute (1) 27:23 constraints (2) 35:7,10 construction (1) 11:23 consultant (3) 5:9;15:24;26:23 consulted (1) 22:12 consumers (1) 28:17
C				
calculate (1) 39:20 calculation (2) 39:10,13 calculations (2) 11:15;22:17				

<p>contend (1) 26:17 continue (4) 15:20;18:6;36:3; 40:7 continues (1) 9:25 contradict (1) 15:13 contrary (1) 21:2 contribute (1) 25:14 contributed (1) 4:25 contribution (2) 6:22;12:23 convey (1) 14:9 cool (1) 35:16 cooling (1) 35:16 co-owned (1) 3:17 cost (19) 5:17;6:1;9:16; 10:20,22;11:14,20; 18:2;20:15,19,25; 22:20;23:1,20;26:25; 28:11;36:12,23;41:25 costs (30) 5:18;9:13,16,18,21; 10:1,10,22;11:4,13, 13,17,21,24;17:9,10; 20:14;22:17;23:19; 26:9;27:5;29:21;30:2, 3;35:14,20;36:11; 37:19;41:6;42:1 Counsel (4) 5:13;16:7;29:15; 32:22 counter (1) 15:15 County (1) 26:7 court (1) 31:16 courts (1) 31:16 cover (4) 9:13,16;10:18; 20:15 covered (1) 10:17 covering (1) 27:4 created (1) 4:3 Creek (7) 3:15;12:22;15:18; 19:4;39:12,12,15 criteria (4)</p>	<p>4:22,23;12:22; 20:12 current (1) 12:3 currently (3) 6:16;17:20;41:22 customer (1) 36:5 customers (2) 15:2;30:7 cut (1) 11:14</p> <p style="text-align: center;">D</p> <p>dangers (1) 18:24 date (1) 29:17 day (5) 30:23;34:19,20,21; 36:7 days (1) 4:11 deadline (1) 4:10 dealing (1) 41:7 debated (1) 9:8 decatherms (1) 30:13 December (1) 4:16 deciding (1) 22:21 decimated (1) 35:22 decision (7) 17:14;18:16,19; 22:18;27:23,24;37:4 decision-makers (1) 17:3 decision-making (1) 24:12 decisions (2) 29:20;38:2 decline (1) 35:23 decommission (1) 37:15 decommissioned (1) 18:18 decommissioning (4) 35:12,15;40:11,15 decrease (1) 14:20 deemed (2) 25:1;36:22 defer (2) 19:10,12 defines (1) 9:14</p>	<p>defining (1) 17:8 definitive (1) 13:1 Delaware (1) 40:25 delineated (1) 18:23 delivery (1) 21:1 demand (1) 15:4 demonstrate (1) 5:22 deny (1) 43:10 DEP (1) 5:8 deploying (1) 27:17 deregulate (1) 31:12 determination (5) 4:11;6:20;27:20; 39:3;40:5 determinations (2) 10:5;16:5 determine (6) 10:1,15;17:6;23:7; 29:8;40:6 determined (8) 7:7;9:2,25;12:1,21, 25;13:5;39:18 determining (1) 20:12 detriment (1) 23:25 deviated (1) 9:10 dictates (1) 39:15 difference (1) 38:22 different (2) 15:11;32:6 differentiate (1) 3:25 difficult (5) 8:15;14:5,8;16:21; 24:10 digits (1) 34:16 dioxide (4) 7:18;8:1,4;15:10 direct (2) 13:17;42:10 directed (3) 22:1;26:14;36:9 directly (2) 33:6,23 disagreement (1) 18:20 disagrees (1)</p>	<p>26:24 disappointed (1) 33:19 disassembly (1) 35:17 discovery (1) 6:7 discretion (1) 9:4 discuss (1) 13:15 discussion (1) 13:21 disease (2) 25:14;28:4 disgrace (1) 44:19 dispatching (1) 7:14 disproportionate (1) 20:24 distributed (1) 33:2 distribution (1) 31:13 diversity (3) 17:16;24:22;37:21 docket (1) 3:10 documentation (1) 15:22 documents (1) 16:3 DOE (1) 10:23 dollars (3) 30:16;35:14;36:2 done (6) 3:23;9:12,23;10:17, 18;34:18 double (1) 34:16 doubt (2) 25:6;26:12 down (17) 6:20;7:2,8,16,17, 25;8:19;9:3;10:4; 11:6;13:3,4;18:1; 25:5;32:11;39:24; 40:23 draught (1) 14:14 drilling (1) 15:9 drive (1) 27:22 driver (1) 37:1 dry-cask (1) 35:17 due (1) 5:11 During (1)</p>	<p>4:14</p> <p style="text-align: center;">E</p> <p>easily (1) 6:13 economic (5) 21:19;27:24;28:6; 30:4;36:2 economically (1) 27:6 economics (1) 10:19 economist (1) 31:4 economy (1) 17:17 EDC (1) 42:10 EDCs (1) 13:17 effort (2) 24:1;42:6 either (2) 12:7;23:4 electricity (4) 15:2,4;24:17;28:18 eligibility (23) 3:13;4:8,17,19;5:6; 6:9,11,19;9:1,9;10:9; 12:1;16:2,10,13,17, 21;21:20;27:20;35:1; 36:15;37:24;41:18 eligible (3) 4:12,24;6:15 emission (2) 24:19;36:9 emissions (14) 7:3;8:5,9;2;13:2; 14:20;15:6,10;18:4,8, 13;25:10;29:8;33:8; 35:4 Emphatically (1) 44:18 employers (1) 26:6 enable (1) 23:9 enacted (1) 27:13 enacting (1) 14:24 encompassed (1) 4:5 end (2) 12:20;41:18 Energy (31) 5:15;7:4,9;12:8; 14:22,23;15:15; 16:14;17:11,21,22; 19:1,2,25;20:25; 21:16;22:4;24:22; 25:17,21,24;26:7,13;</p>
---	--	--	---	--

<p>27:25;28:11;30:10, 11:34;15:37;22; 39:18,19 enough (2) 27:16;31:22 ensure (1) 21:12 entered (1) 21:3 Enterprise (1) 30:21 entertain (1) 13:16 entire (1) 19:2 entitled (2) 20:13;39:4 entity (1) 21:24 environment (1) 23:19 environmental (12) 5:22;7:1;15:7; 17:18;18:23;22:5; 23:12;28:1,5;29:9; 31:21;33:7 environmentally (1) 21:10 equates (1) 8:3 equivalent (2) 8:4;37:9 especially (2) 5:24;8:19 essence (1) 9:1 evaluated (3) 9:19;12:13,19 evaluating (1) 16:23 evaluation (2) 17:4;19:20 even (6) 6:7;9:6;18:20; 21:24;25:1,25 event (1) 20:18 everybody (2) 3:18;4:1 everyone (1) 20:21 exactly (1) 31:18 exceed (2) 20:14;30:1 excellent (1) 27:9 excuse (6) 6:23;7:19;8:2; 41:12;43:21,24 excused (1) 40:3 Exelon (4)</p>	<p>3:17;15:18;26:17; 27:16 existing (2) 14:25;28:13 expansive (1) 27:22 expect (1) 22:4 expectations (1) 40:1 expenditures (1) 37:8 experience (1) 35:24 expert (1) 19:19 expertise (1) 42:6 extent (2) 20:1;28:22 external (1) 13:7 extreme (2) 6:1;14:14</p>	<p>felt (1) 27:24 FERC (8) 9:24;12:7;16:15; 29:20;31:17;33:1; 40:17;41:7 few (1) 31:14 fifth (1) 5:4 fight (3) 29:19;31:21;34:12 figure (1) 10:6 figures (2) 26:25;27:1 filed (1) 40:17 filing (3) 10:21;37:15;40:12 filings (1) 9:24 final (1) 6:23 financial (13) 5:2;6:23,24,24;9:9, 11;10:7;13:4;15:21; 16:19;20:17;27:9; 40:5 financially (4) 10:2;12:2;39:25; 40:6 FIORDALISO (27) 3:1,7;7:19,22; 13:12,23;19:7,12; 23:11;24:2;28:25; 29:6;34:22;37:25; 38:6;41:15;42:3,9; 43:2,11,17,21,24; 44:3,6,9,25 firm's (1) 26:9 first (7) 14:7;19:21;26:3; 31:5;37:25;39:6; 41:18 five (5) 4:21,23;6:12;11:8, 11 fixed (1) 25:20 FLANAGAN (8) 38:24;39:7;42:22; 43:5,12;44:2,5,8 fleet (1) 37:20 flexibility (1) 24:13 floods (1) 14:14 floor (3) 13:14;38:3;42:10 Florida (1)</p>	<p>35:21 focus (1) 4:19 follow (1) 9:22 foot (1) 31:19 forget (3) 8:13;32:9,10 formation (1) 12:9 former (1) 9:18 for-profit (1) 21:23 fortunate (2) 19:14;32:7 forward (8) 4:8;8:15,18,19; 12:6,10;19:1;27:5 forward/avoidable (1) 30:2 fossil-fuel (2) 15:9;35:6 fought (1) 31:15 found (3) 10:20,22;29:25 foundation (1) 24:19 frankly (1) 12:1 freedom (1) 25:1 front (2) 30:14;33:1 fuel (8) 10:21;17:16;24:22; 35:16;37:20,21; 41:21,22 fuels (1) 11:11 full (1) 39:4 fully (1) 8:22 fund (2) 10:25,25 further (2) 17:12;35:20 future (5) 16:16;29:17;37:7, 11,12</p>	<p>8:24 gave (2) 4:10;39:23 general (4) 3:21;7:1;21:25; 28:19 generalized (1) 11:24 generally (2) 7:15;27:1 generated (2) 25:9;35:6 generation (25) 8:20;10:24;15:9; 19:22,23;20:5,6; 21:11,11,12,16;22:16, 23;23:9,13,18;24:18; 31:10,12;35:5,7,9; 37:10;39:11;40:24 generator (4) 10:14,15;20:13; 21:23 generators (4) 12:12;20:2;22:5; 23:8 gentleman (1) 24:3 genuinely (1) 25:4 given (2) 17:6;31:8 giving (1) 32:7 gladly (1) 28:23 Global (6) 8:8,9,16;14:13; 17:18;29:11 goal (2) 20:7;36:19 goals (2) 8:14;19:25 Good (4) 3:5,6,7;28:18 GORDON (5) 19:6,10;24:5;44:22, 23 governing (1) 24:12 Governor (8) 4:2;15:14;19:21; 20:11;21:17;23:7,22; 33:13 Governor's (1) 19:24 grant (1) 38:25 grants (1) 6:17 great (1) 29:14 greater (1) 20:18</p>
	F			
	<p>face (3) 14:7;25:3;34:17 facilitate (1) 28:22 facilities (3) 18:6;25:9;26:19 fact (2) 11:6;27:3 factor (1) 35:13 factoring (1) 18:16 factors (6) 16:17;17:7,16; 18:22;27:22;36:14 failed (1) 21:5 family (1) 32:3 far (1) 11:17 fashion (1) 21:1 fast-start (1) 12:9 favor (2) 19:3;37:24 federal (4) 5:4;6:17;31:16; 33:1 fee (3) 5:5;6:18;13:9 feel (2) 9:20;38:23 fellow (1) 14:19</p>			
			G	
			<p>game (1) 37:10 gas (9) 15:5;17:24;25:9,10; 29:13;30:12;34:4; 35:7,9 gas-fired (1)</p>	

<p>greatly (2) 24:21;25:10</p> <p>green (1) 8:7</p> <p>greenhouse (3) 25:10;29:12;34:4</p> <p>grew (1) 32:2</p> <p>grid (1) 18:2</p> <p>grossly (1) 26:25</p> <p>Group (3) 5:14;29:24;30:21</p> <p>groups (1) 6:7</p> <p>growing (1) 25:18</p> <p>guaranteed (1) 35:3</p> <p>guaranty (1) 39:24</p> <p>guess (2) 33:8,18</p>	<p>higher (4) 17:10;25:13;27:17; 30:15</p> <p>highway (1) 32:14</p> <p>hired (1) 5:9</p> <p>historic (1) 37:6</p> <p>historically (1) 9:23</p> <p>hit (2) 14:7;33:6</p> <p>Hobson's (1) 23:15</p> <p>HOLDEN (9) 3:6;13:20;34:24,25; 40:12;42:16,17; 44:11,12</p> <p>holding (2) 32:16,16</p> <p>Hope (8) 3:15;12:22;14:9; 15:18;19:4;23:22; 37:18;39:12</p> <p>hospitals (1) 25:22</p> <p>hostages (1) 26:15</p> <p>hot (1) 41:23</p> <p>hour (6) 25:2;30:8,23,23; 31:7;36:4</p> <p>hours (3) 30:12;32:5;36:6</p> <p>hundred (1) 15:14</p> <p>hundreds (2) 14:15;36:1</p> <p>hurt (2) 33:23,23</p>	<p>13:17;42:11</p> <p>implemented (1) 16:15</p> <p>implications (2) 25:19;28:6</p> <p>important (1) 36:11</p> <p>imports (2) 35:8,10</p> <p>include (4) 12:8;15:9;17:8; 39:14</p> <p>included (5) 10:10;11:1;22:16, 19;42:1</p> <p>includes (2) 21:10;26:22</p> <p>including (5) 5:12;17:16;23:2; 24:11;36:11</p> <p>income (1) 36:1</p> <p>incomes (1) 25:20</p> <p>increase (12) 7:17;8:1;12:11; 14:15;15:3,6;16:16; 18:3;25:10,11;29:10; 35:3</p> <p>increased (3) 15:8;35:5,11</p> <p>increases (1) 12:9</p> <p>increasing (2) 17:17,23</p> <p>incredibly (1) 19:15</p> <p>incurred (1) 41:25</p> <p>Independent (8) 5:12;16:6;26:20,23; 27:3;29:14,18;32:21</p> <p>India (1) 32:2</p> <p>indicated (4) 5:23;6:11;7:24; 28:9</p> <p>individual (5) 3:21,22,23;5:11,20</p> <p>individually (1) 5:7</p> <p>industry (2) 9:6,23</p> <p>ineligibility (1) 35:2</p> <p>ineligible (1) 36:23</p> <p>inflated (1) 26:25</p> <p>information (3) 6:10;11:25;19:18</p> <p>inherent (1) 36:20</p>	<p>inherently (1) 10:13</p> <p>initiatives (1) 8:21</p> <p>in-state (4) 7:18;22:22;23:18; 35:7</p> <p>institutions (2) 25:23;28:17</p> <p>intent (1) 17:1</p> <p>intention (2) 6:4,5</p> <p>interest (1) 27:23</p> <p>interested (1) 16:24</p> <p>interference (1) 21:3</p> <p>into (9) 8:19;10:14,24;11:9; 12:5;18:16;21:3;33:9; 41:23</p> <p>intolerable (1) 23:5</p> <p>intuitively (1) 36:18</p> <p>invalid (1) 10:22</p> <p>investment (1) 20:10</p> <p>investments (1) 27:18</p> <p>involved (1) 42:4</p> <p>involves (1) 3:10</p> <p>Iowa (1) 26:10</p> <p>Ironically (1) 4:12</p> <p>irreversible (1) 18:17</p> <p>Island (2) 33:8;40:25</p> <p>issue (1) 22:21</p> <p>issues (1) 21:5</p> <p>item (2) 3:2,9</p> <p>Izzo (1) 30:19</p>	<p>30:1,10;31:2,5,11; 32:11,15;33:4,6,13; 34:2,13,20;37:2;41:9</p> <p>Jersey's (4) 15:4;17:17;18:12; 25:18</p> <p>job (4) 25:24;27:9;35:25; 42:5</p> <p>jobs (3) 18:2;23:18,24</p> <p>justify (1) 20:9</p>
H				K
<p>half (2) 11:14;36:7</p> <p>hand (1) 25:4</p> <p>handled (1) 20:23</p> <p>happen (4) 12:15;33:22;34:7; 37:11</p> <p>happy (1) 24:1</p> <p>hard (1) 19:16</p> <p>harmful (1) 18:8</p> <p>hasten (1) 28:9</p> <p>hazardous (1) 25:11</p> <p>head (1) 32:17</p> <p>health (5) 10:7;14:15;15:7; 28:1,5</p> <p>heard (1) 25:8</p> <p>heat (1) 14:14</p> <p>heavy (2) 25:17;26:7</p> <p>hedging (1) 10:17</p> <p>hesitation (1) 24:9</p> <p>high (3) 5:18;29:21;31:2</p>	<p>identified (1) 16:13</p> <p>ie (3) 11:20;17:9,10</p> <p>Illinois (1) 37:2</p> <p>immediate (2) 17:24,24</p> <p>impact (19) 5:22;7:5;8:2;9:2,7; 12:10;13:2;17:17,18; 18:2,12,23;22:24; 25:21;27:25;28:4,10, 15;30:6</p> <p>impacts (5) 15:8,17;22:5;23:23; 28:1</p> <p>implement (2)</p>	<p>India (1) 32:2</p> <p>indicated (4) 5:23;6:11;7:24; 28:9</p> <p>individual (5) 3:21,22,23;5:11,20</p> <p>individually (1) 5:7</p> <p>industry (2) 9:6,23</p> <p>ineligibility (1) 35:2</p> <p>ineligible (1) 36:23</p> <p>inflated (1) 26:25</p> <p>information (3) 6:10;11:25;19:18</p> <p>inherent (1) 36:20</p>	<p>January (2) 5:11;14:6</p> <p>Jersey (30) 5:1,13,14;6:22; 7:11;14:10,21;15:3; 18:9;19:24;20:24; 22:8,25;25:25;26:16;</p>	<p>keenly (1) 28:10</p> <p>keep (4) 12:15;20:2;27:6; 36:19</p> <p>key (1) 36:14</p> <p>kill (1) 26:11</p> <p>kilowatt (5) 30:8,12;31:6;36:4,6</p> <p>knew (2) 8:13;33:22</p> <p>knowledgeable (1) 19:15</p> <p>known (3) 5:13;14:1;37:7</p> <p>knows (1) 3:18</p>
I				L
			J	<p>labor (2) 11:5,12</p> <p>Lack (1) 13:7</p> <p>language (1) 16:25</p> <p>Large (6) 5:14;25:21;26:13; 28:11,17;30:10</p> <p>larger (1) 8:2</p> <p>largest (1) 26:6</p> <p>last (2) 4:16;30:21</p> <p>late (1) 26:3</p> <p>law (2) 14:24;21:20</p> <p>LCAPP (1) 31:14</p> <p>lead (1) 25:24</p> <p>leadership (1) 28:19</p>

<p>leading (1) 14:12</p> <p>least (2) 11:10;14:17</p> <p>leave (1) 9:4</p> <p>legislated (1) 36:3</p> <p>legislation (14) 17:1,2;20:20;21:18; 23:13;26:3;27:13,19; 28:20;31:14;33:17, 18;36:9;37:3</p> <p>legislative (1) 37:1</p> <p>Legislature (11) 14:24;19:22;20:11; 21:16;22:1,15;23:6, 22;24:11;28:15;33:12</p> <p>less (1) 25:25</p> <p>lessen (1) 23:23</p> <p>letters (3) 30:5,9,18</p> <p>level (3) 12:7;23:16;40:4</p> <p>levels (2) 28:4;36:14</p> <p>Levitan (6) 5:8;15:23;16:4,9; 26:22;27:8</p> <p>Levitan's (1) 16:24</p> <p>licensed (3) 15:1;38:10,11</p> <p>licensure (2) 6:14;12:21</p> <p>life (1) 24:10</p> <p>light (1) 18:22</p> <p>lightly (2) 18:19;21:3</p> <p>likely (4) 7:12;13:1;27:25; 28:3</p> <p>line (2) 22:7;32:5</p> <p>lines (1) 10:8</p> <p>links (1) 27:20</p> <p>little (1) 24:13</p> <p>living (2) 25:20;33:20</p> <p>local (1) 36:1</p> <p>logic (4) 33:11,12;36:20,24</p> <p>long (1) 14:12</p>	<p>longer (1) 36:25</p> <p>look (6) 30:17;31:3,8;32:13; 34:17;35:12</p> <p>looked (1) 11:4</p> <p>looking (1) 8:19</p> <p>looks (1) 38:9</p> <p>lose (1) 23:24</p> <p>losing (3) 23:17;27:15;35:4</p> <p>loss (6) 23:18;26:18;27:3; 35:25,25;36:2</p> <p>losses (3) 23:25;25:24;27:21</p> <p>lost (1) 41:8</p> <p>lot (11) 3:24;5:19,25;6:6; 30:24;33:22;34:6; 42:1,5,6,6</p> <p>lots (1) 34:9</p> <p>low (1) 5:18</p> <p>low-cost (1) 26:10</p>	<p>26:23;29:18;32:21; 36:12,22;37:1</p> <p>Maryland (1) 41:1</p> <p>material (9) 5:3;6:22;9:5;11:5, 7;12:23;13:5;15:21; 20:17</p> <p>materially (1) 5:1</p> <p>materials (1) 11:13</p> <p>matter (2) 29:25;35:1</p> <p>matters (1) 15:24</p> <p>May (7) 4:2;7:11;16:14; 23:3;28:12;30:24; 31:24</p> <p>maybe (1) 29:17</p> <p>mean (2) 30:23;40:14</p> <p>means (3) 6:19;14:17;27:5</p> <p>measurable (1) 37:7</p> <p>measure (1) 30:4</p> <p>meet (5) 8:7,16;12:22;22:14; 29:23</p> <p>meeting (1) 26:2</p> <p>megawatt (1) 25:2</p> <p>Melbourne (1) 35:21</p> <p>member (4) 26:4;30:11,11,15</p> <p>members (3) 18:20;24:14,23</p> <p>mention (1) 22:24</p> <p>mentioned (2) 5:19;40:12</p> <p>met (9) 4:21;5:21;6:13; 8:14;15:4;16:18; 21:21;29:11;34:5</p> <p>methane (1) 15:10</p> <p>method (2) 10:9;20:8</p> <p>methodology (1) 37:5</p> <p>mic (2) 7:20;41:15</p> <p>might (1) 12:15</p> <p>million (6) 26:8;30:12,16,22;</p>	<p>35:14;38:25</p> <p>millions (2) 14:16;36:2</p> <p>mils (3) 13:19;36:4;42:12</p> <p>minimize (1) 18:7</p> <p>Minimum (1) 31:17</p> <p>mitigate (2) 15:16;28:15</p> <p>mix (3) 17:21;19:2;21:16</p> <p>modify (1) 5:24</p> <p>moment (1) 43:25</p> <p>money (4) 10:6;27:15;43:20, 23</p> <p>Monitor (5) 5:13;16:6;26:23; 29:18;32:22</p> <p>monoxide (1) 15:10</p> <p>month (1) 30:25</p> <p>months (1) 41:18</p> <p>moral (1) 14:19</p> <p>more (9) 8:15;9:22;12:11; 16:10;24:3;27:21; 36:11;37:22;38:4</p> <p>MOREAU (2) 41:12,16</p> <p>most (7) 3:2;5:16;7:12; 12:25;24:10;32:14; 36:13</p> <p>mostly (1) 41:9</p> <p>mothballing (1) 37:16</p> <p>motion (11) 13:14,16;38:3;42:9, 14,23,23;43:1,7,8; 44:4</p> <p>move (3) 13:20;18:25;19:24</p> <p>moving (1) 33:24</p> <p>much (5) 7:6;10:15;13:12; 35:21;38:17</p> <p>Murphy (1) 4:2</p> <p>Murphy's (1) 15:14</p> <p>must (3) 17:12,15;37:12</p> <p>myself (1)</p>	<p>32:9</p>
				N
				<p>namely (1) 17:7</p> <p>national (1) 21:4</p> <p>nations (1) 31:2</p> <p>natural (6) 8:24;15:5;17:23; 25:9;35:7,9</p> <p>natural-gas-fired (1) 7:10</p> <p>naturally (1) 10:13</p> <p>nature (1) 18:17</p> <p>nearly (1) 35:13</p> <p>necessary (5) 16:19;19:24;20:3, 25;38:23</p> <p>need (5) 12:4;16:12;27:24; 29:16;32:23</p> <p>needs (1) 28:15</p> <p>negatively (1) 18:12</p> <p>neighbors (1) 22:25</p> <p>Nevertheless (1) 21:4</p> <p>New (34) 5:1,13,14;6:22; 7:11;14:10,21;15:3,4; 17:17;18:9,12;19:24; 20:24;22:8;25:18,25; 26:16;30:1,10;31:2,5, 11;32:11,15;33:4,6, 13;34:2,13,20;37:2,3; 41:9</p> <p>next (2) 40:7,8</p> <p>nitrogen (1) 25:12</p> <p>NJ (1) 5:8</p> <p>None (3) 6:15;16:18;29:22</p> <p>notably (2) 18:23;36:13</p> <p>noted (5) 6:4,6;14:24;17:20; 26:20</p> <p>November (1) 4:5</p> <p>Nuclear (33) 3:15,15,16;10:24; 14:21;15:1,21;17:20, 25;18:6,10;19:1,22;</p>

<p>20:2,5,8,12;21:11,15; 22:16;23:8,9,13; 24:15;26:12;30:1; 35:18,23;37:10,16,20; 39:11;40:23 number (4) 15:11;16:13;20:22; 24:16 numbers (3) 3:11;31:4;39:20</p>	<p>operational (10) 8:23;9:15;16:11; 17:3,9,9;20:9;36:12, 18,20 operations (2) 10:12;11:5 opinion (2) 20:22;36:22 opinions (2) 36:8,16 opportunity (2) 13:25;32:8 options (1) 34:2 order (2) 13:14;43:14 orders (1) 4:4 others (1) 26:24 ours (1) 22:7 out (7) 7:12;10:6;21:21; 23:12;25:6;33:24; 36:21 output (1) 36:13 outright (1) 10:11 outside (3) 15:2;17:16;21:24 outweigh (1) 28:6 outweighs (1) 23:20 over (4) 8:20;11:22;32:5,16 Overall (1) 4:1 overhead (3) 11:5,13,24 own (4) 5:20;7:14;16:2; 31:3 owned (1) 3:16 owners (1) 25:6 owns (1) 15:18 oxides (1) 25:12 Oyster (2) 39:12,15 ozone (4) 25:12;28:4;31:23, 24</p>	<p>padded (1) 42:1 painful (1) 38:2 pancake (1) 35:9 paper (1) 26:5 part (6) 3:16;6:8;11:4,14; 21:16;43:13 participant (1) 29:25 particular (1) 16:22 particularly (4) 18:14;22:25;25:20; 28:3 particulates (2) 8:4;25:14 parties (2) 5:12;16:24 parts (1) 5:24 passed (2) 21:17;40:19 pay (4) 5:5;6:18;26:15; 30:13 paying (1) 10:24 pays (1) 30:16 pending (1) 12:7 Pennsylvania (2) 7:12;37:2 people (12) 14:10,16;30:24; 31:21,22,22;32:11,12; 33:23;34:11,12,13 per (6) 30:8,23;31:6;36:4, 6,7 percent (22) 7:11,18;8:1,3; 11:10;14:22,23; 15:14;17:21,22; 24:17;29:10,12;31:6; 34:15,15;35:4;37:22; 39:10,13,14,16 percentage (1) 39:21 period (2) 38:20;41:19 periodically (1) 29:19 person (1) 34:14 personal (1) 32:1 PJM (9) 5:12,14;7:13;12:7;</p>	<p>16:15;26:23;29:20, 24;37:15 place (2) 41:22,24 planning (2) 10:18,19 plant (10) 10:6;22:24;25:24; 27:4;28:2;35:17,18; 36:17;40:3,7 plants (25) 8:6;11:6,9;12:19; 13:4;15:1,21;18:1,7, 10,17;20:9,10;24:15, 21;25:5;26:18;27:2,6, 14;28:8;29:16;37:10, 15,16 plant-surrounding (1) 35:24 play (1) 37:9 please (1) 38:5 pledge (1) 32:9 plus (1) 35:17 point (3) 27:8;39:1;41:21 pollutants (3) 15:6,8;25:11 pool (1) 41:23 pools (1) 35:17 poor (6) 31:22,22;32:3,11, 12;34:14 portfolio (1) 14:23 portion (1) 13:8 poses (1) 18:24 possibly (1) 15:9 potential (1) 28:10 potentially (1) 8:24 pounds (2) 32:3,5 poverty (2) 14:15;32:10 Power (11) 5:14;11:24;14:21; 15:1;17:20,25;18:10; 20:9;25:8;29:24; 37:10 powerful (1) 32:14 predicted (1) 18:2</p>	<p>prefer (1) 37:6 preferred (1) 37:4 presentation (1) 16:1 PRESIDENT (31) 3:1,7;7:19,22; 13:12,23;19:7,12; 23:11;24:2,6;28:24, 25;29:6;30:20;34:22; 37:25;38:6;41:15; 42:3,9;43:1,2,11,17, 21,24;44:3,6,9,24 price (3) 12:8;17:11;31:17 prices (3) 12:10,11;35:8 pricing (3) 12:8,9;35:11 primarily (1) 6:20 primary (2) 4:19;8:24 Principles (1) 27:2 probably (4) 11:8;14:2,3,4 problem (2) 21:6;35:20 proceeding (2) 41:4,6 proceedings (3) 16:22;30:14;32:25 proceeds (1) 38:19 process (13) 4:5,8,14;6:7,11; 14:5;18:18;24:13; 28:23;35:15;37:15; 38:2;40:15 produce (1) 37:23 producing (2) 7:3;40:3 production (1) 40:4 professionals (1) 22:10 profitability (1) 16:16 profitable (4) 10:6;20:5;23:9; 27:15 profitably (1) 20:2 Program (7) 3:9,10,12;4:3,5; 29:23;35:23 programs (3) 6:17;8:22;28:13 project (3) 11:21,22;37:12</p>
O				
<p>O&M (1) 12:9 objective (2) 19:19;22:11 obligation (3) 5:22;14:19;38:25 obvious (2) 35:3;36:18 obviously (2) 13:9,25 ocean (1) 33:9 offer (2) 25:1;31:17 offshore (2) 8:21;18:14 Ohio (1) 37:2 old (2) 32:4,4 omitted (2) 10:10,11 once (5) 21:6;35:18;40:14; 41:14,16 one (18) 3:22;7:8,9;12; 11:21;25:4;26:6; 30:15;32:8,14;35:13; 37:5,9;38:4,10;40:16; 41:12;43:15,25 ones (1) 33:10 only (6) 15:13;19:22;29:13; 37:1,18;39:5 on-site (3) 7:14;11:7;41:24 open (2) 43:1,16 operate (4) 4:24;6:15;18:6; 40:7 operating (10) 15:1,20;17:9;20:2; 26:8,10,18;27:3,21; 36:17 operation (6) 8:16;20:16;21:2; 22:20;27:7;36:3</p>	P			
	<p>P3 (1) 5:13</p>			

<p>projected (5) 9:22;12:11;30:1; 36:14;37:8</p> <p>projections (1) 11:3</p> <p>projects (2) 11:13;18:14</p> <p>promoted (1) 9:24</p> <p>properly (1) 22:17</p> <p>proportion (1) 15:4</p> <p>proposal (4) 19:17,20;23:20; 42:24</p> <p>proposed (4) 16:14;18:14;26:4; 27:25</p> <p>protect (2) 37:20,22</p> <p>protecting (1) 17:13</p> <p>provide (2) 6:21;15:2</p> <p>provided (5) 15:22;16:4;20:11; 21:9;24:13</p> <p>Providers (2) 5:14;29:24</p> <p>provides (1) 14:22</p> <p>providing (1) 24:19</p> <p>PS (9) 6:3;10:23;19:22; 20:3,14,15;21:22; 22:22;23:1</p> <p>PSE&G (3) 9:17;26:17;27:16</p> <p>PSE&G's (1) 15:23</p> <p>PSEG (6) 3:16;5:17;11:24; 15:18;18:5;37:14</p> <p>PSEG's (1) 10:21</p> <p>PS's (4) 20:9,19;22:2,19</p> <p>public (13) 14:18;15:7,19;21:7, 14;24:10,16;25:23; 27:23;28:1,17;30:20; 33:15</p> <p>punting (1) 33:14</p> <p>purpose (1) 28:21</p> <p>purposes (1) 10:20</p> <p>push (1) 34:16</p> <p>put (5)</p>	<p>9:17,17;31:10;35:6; 41:15</p> <p style="text-align: center;">Q</p> <p>qualified (1) 13:10</p> <p>qualify (4) 13:6,8;28:12;40:5</p> <p>quality (4) 5:1;6:22;7:5;12:24</p> <p>quantifiable (1) 36:21</p> <p>quest (1) 24:19</p> <p>quite (4) 12:1;18:5;29:10; 31:2</p> <p>quo (1) 12:14</p> <p>quote (1) 14:25</p> <p style="text-align: center;">R</p> <p>raise (2) 25:12;35:7</p> <p>Ralph (1) 30:19</p> <p>ranking (2) 4:9,17</p> <p>ranks (1) 32:8</p> <p>ransom (1) 26:15</p> <p>Rate (5) 5:13;16:7;29:15; 37:5;39:25</p> <p>ratepayer (1) 32:22</p> <p>ratepayers (13) 6:1;17:13;22:8; 23:1,19,24;25:18; 28:12,16;31:5;33:6; 34:1;41:9</p> <p>rates (3) 21:9;30:14;31:2</p> <p>rather (1) 11:22</p> <p>ratio (1) 10:5</p> <p>rational (1) 27:6</p> <p>reading (1) 27:19</p> <p>real (2) 22:19;34:11</p> <p>Reality (1) 37:14</p> <p>realization (1) 23:4</p> <p>realized (1) 36:24</p>	<p>really (5) 9:5;10:19;25:17; 33:19;34:8</p> <p>realm (1) 8:20</p> <p>realtime (1) 12:15</p> <p>reason (2) 14:11;28:18</p> <p>reasonable (1) 21:9</p> <p>reasons (1) 40:2</p> <p>recall (1) 26:2</p> <p>recap (1) 16:9</p> <p>receive (1) 3:13</p> <p>received (10) 3:11;4:6,7,15,15; 5:10;15:23;16:24; 30:5,9</p> <p>receiving (4) 5:3;6:16;38:21; 40:9</p> <p>receptive (1) 28:20</p> <p>recognize (4) 18:20;21:22;24:4, 14</p> <p>Recognizing (1) 21:14</p> <p>recommend (1) 19:3</p> <p>recommendation (5) 42:15;43:3,10,12, 15</p> <p>recommendations (1) 16:8</p> <p>record (2) 42:25;43:6</p> <p>recovery (2) 8:8;11:21</p> <p>redefine (1) 35:22</p> <p>reduction (1) 29:12</p> <p>reductions (2) 18:13;29:13</p> <p>referred (1) 15:25</p> <p>reflect (1) 43:7</p> <p>regarding (1) 3:9</p> <p>region (1) 8:2</p> <p>regional (2) 18:3;21:4</p> <p>regionally (1) 20:23</p> <p>regularly (1)</p>	<p>29:19</p> <p>regulate (1) 22:9</p> <p>regulators (4) 21:5,8,15,19</p> <p>reject (1) 25:4</p> <p>related (2) 14:15;23:25</p> <p>released (1) 43:14</p> <p>reliability (1) 23:20</p> <p>reliable (5) 19:23;21:8,13; 22:23;35:4</p> <p>reliance (2) 35:6,8</p> <p>relies (1) 37:4</p> <p>relocate (1) 23:4</p> <p>reluctantly (1) 23:21</p> <p>remain (1) 20:9</p> <p>remains (1) 43:16</p> <p>remember (1) 32:3</p> <p>remind (1) 20:21</p> <p>remove (1) 19:1</p> <p>renowned (1) 22:12</p> <p>reopen (1) 35:18</p> <p>repeat (2) 43:18;44:1</p> <p>replacement (1) 25:8</p> <p>replacements (1) 17:25</p> <p>report (6) 15:25;16:4,24; 26:24;27:4;43:13</p> <p>reports (1) 36:8</p> <p>represent (2) 22:19;30:24</p> <p>representations (1) 22:3</p> <p>request (2) 21:24;22:2</p> <p>requesting (1) 3:13</p> <p>require (1) 40:4</p> <p>required (7) 5:20;6:12;20:1; 22:2;23:15;29:12; 33:18</p>	<p>requirement (7) 5:5;13:6,18;22:14; 34:4;39:9;42:12</p> <p>requirements (3) 6:13;18:13;21:20</p> <p>requires (2) 20:14;21:18</p> <p>residential (3) 28:12;30:7;36:5</p> <p>residents (3) 20:24;22:8;30:18</p> <p>resiliency (1) 17:16</p> <p>respiratory (2) 25:14;28:4</p> <p>respond (1) 6:3</p> <p>Response (5) 8:10,12,17;17:19; 29:11</p> <p>responsibility (6) 17:13;20:4;21:7,14, 25;22:6</p> <p>responsible (2) 21:10;23:2</p> <p>rest (1) 7:11</p> <p>result (1) 15:5</p> <p>resulting (2) 15:8;23:18</p> <p>retain (1) 19:19</p> <p>retired (1) 18:11</p> <p>retirement (2) 14:25;18:11</p> <p>return (3) 27:17;39:25;41:17</p> <p>revenue (1) 23:3</p> <p>revenues (5) 5:18;20:15,18;30:1; 37:8</p> <p>review (10) 4:5,21;6:12;7:1; 9:9;10:9;13:13;21:19; 22:1,10</p> <p>reviewed (4) 3:12;6:12;16:2,7</p> <p>reviewing (2) 4:20;36:8</p> <p>revolved (1) 5:16</p> <p>RGGI (3) 17:17;31:9,9</p> <p>rice (2) 32:3,5</p> <p>Right (7) 14:21;34:18;40:18; 41:2,20;43:5,5</p> <p>rise (1) 32:8</p>
---	--	---	---	---

<p>risk (13) 5:2;6:2;9:22;13:4; 20:19;23:5,17;36:11, 21,22,24,25;37:1</p> <p>risks (27) 6:1;9:14,14,15,16, 18;10:11,13,19;14:14, 15;16:11;17:3,4,7,9, 10;20:14;22:15,19; 23:11;28:5;36:11,12, 13,18;37:19</p> <p>robbery (1) 32:14</p> <p>rods (1) 35:16</p> <p>roll (1) 42:13</p> <p>roughly (1) 36:7</p> <p>Rule (2) 31:17;41:7</p> <p>ruling (1) 10:23</p> <p>running (1) 8:23</p>	<p>security (2) 24:22;37:21</p> <p>seek (1) 21:12</p> <p>seems (1) 36:18</p> <p>selected (1) 22:10</p> <p>Senate (2) 26:4;28:19</p> <p>seniors (1) 25:20</p> <p>sensitive (1) 28:10</p> <p>separate (4) 4:18;31:12;41:4,5</p> <p>Separately (1) 16:6</p> <p>service (3) 18:15;21:8;30:20</p> <p>setting (1) 16:22</p> <p>seven (2) 11:8,11</p> <p>several (5) 5:12;10:10;12:6; 15:6;40:2</p> <p>several-years (1) 35:15</p> <p>share (2) 20:25;31:25</p> <p>shareholders (2) 20:4;22:7</p> <p>shoe (1) 31:18</p> <p>show (1) 20:14</p> <p>shut (12) 7:2,8,17,25;8:19; 9:3;10:3;11:6;13:3; 25:5;39:24;40:23</p> <p>shutdown (2) 5:2;8:6</p> <p>shutting (2) 7:16;13:4</p> <p>signed (2) 4:2;21:17</p> <p>significance (1) 9:8</p> <p>significant (7) 4:25;6:21;9:5;10:7; 12:23;23:3;24:24</p> <p>significantly (2) 18:3,11</p> <p>similar (1) 22:12</p> <p>similarly (1) 29:24</p> <p>simply (1) 22:3</p> <p>sister (1) 32:4</p> <p>situation (1) 15:13</p>	<p>skin (1) 32:18</p> <p>slightly (1) 9:10</p> <p>so-called (1) 27:4</p> <p>societal (1) 24:24</p> <p>solar (1) 8:22</p> <p>sold (1) 36:13</p> <p>SOLOMON (7) 13:22;19:11,13; 42:19,20;44:14,15</p> <p>sometimes (1) 10:18</p> <p>Sorry (6) 7:23;8:7,11;10:13; 19:7;42:21</p> <p>sources (1) 13:7</p> <p>South (1) 22:25</p> <p>space (1) 35:23</p> <p>speaking (1) 14:2</p> <p>specific (2) 16:25;20:12</p> <p>Specifically (3) 3:10;20:13;29:25</p> <p>speculate (2) 12:14;38:17</p> <p>spelled (2) 21:21;23:12</p> <p>spend (2) 43:19,23</p> <p>spent (2) 10:21;41:22</p> <p>squarely (1) 17:5</p> <p>staff (14) 5:8,8,8;13:11; 16:21;19:14;22:13; 42:23,23;43:3,8,9,13, 15</p> <p>staffed (1) 11:10</p> <p>staff's (2) 10:9;42:15</p> <p>stand (2) 12:2;34:11</p> <p>standard (3) 9:6;29:23;37:5</p> <p>stands (1) 13:11</p> <p>started (2) 14:6;32:10</p> <p>state (26) 5:4;6:17;8:1,7;11:9, 11;14:10;15:2;17:14;</p>	<p>18:9,13;24:1,11,18; 25:15;31:11;32:11; 33:3,6,13,13;34:1,12, 20;35:25;41:9</p> <p>statement (2) 13:24;24:7</p> <p>statements (2) 13:15;29:5</p> <p>states (7) 22:13;32:6,7,15; 33:10,21;34:21</p> <p>State's (3) 14:22;17:21;37:20</p> <p>status (2) 6:24;12:14</p> <p>statute (3) 24:12,25;39:23</p> <p>statutory (2) 13:18;42:11</p> <p>Stefanie (1) 29:15</p> <p>stellar (1) 27:12</p> <p>still (8) 4:24;8:7,23;11:7, 10,12;26:4;35:22</p> <p>stood (1) 32:4</p> <p>stop (1) 40:9</p> <p>storage (2) 35:17;41:25</p> <p>stored (1) 11:12</p> <p>story (1) 32:1</p> <p>strict (1) 27:19</p> <p>strong (1) 24:19</p> <p>strongly (1) 28:14</p> <p>struggle (1) 35:22</p> <p>struggled (1) 22:21</p> <p>submitted (2) 5:17;26:21</p> <p>subsidies (9) 5:4,19;6:16;13:7; 18:7;20:23;28:7;33:5; 39:23</p> <p>subsidy (20) 5:25;12:4;20:1; 21:1;23:8,16;24:24; 25:1,5,16;26:12,18; 27:16,20;29:16,23; 31:5;32:23;38:21; 40:9</p> <p>substantial (1) 15:5</p> <p>substantially (1) 16:16</p>	<p>suffer (1) 23:24</p> <p>summation (1) 5:16</p> <p>supply (3) 17:23;24:17;35:10</p> <p>supplying (1) 20:25</p> <p>support (2) 24:24,24</p> <p>supporting (2) 28:7;33:17</p> <p>Suppose (1) 38:9</p> <p>surcharge (1) 26:11</p> <p>sure (3) 20:8;21:15;36:25</p> <p>survival (1) 22:22</p> <p>swimming (1) 41:23</p> <p>system (1) 23:20</p>
S				
<p>sad (4) 33:16;34:19,20,21</p> <p>saddened (1) 34:8</p> <p>safe (3) 11:9;21:8,10</p> <p>Salem (10) 3:14,15,17;12:21, 22;15:19;19:4,4; 39:12,13</p> <p>same (4) 3:24;31:15;38:24; 40:22</p> <p>save (1) 37:20</p> <p>saw (1) 7:17</p> <p>saying (5) 7:13;29:22;30:10; 31:4;40:23</p> <p>scenario (1) 35:13</p> <p>schedule (1) 6:8</p> <p>schools (1) 35:1</p> <p>scientists (1) 14:13</p> <p>Second (2) 13:22;38:20</p> <p>SECRETARY (7) 42:14,18;44:10,13, 16,21,24</p> <p>sector (1) 25:22</p>	<p>several (5) 5:12;10:10;12:6; 15:6;40:2</p> <p>several-years (1) 35:15</p> <p>share (2) 20:25;31:25</p> <p>shareholders (2) 20:4;22:7</p> <p>shoe (1) 31:18</p> <p>show (1) 20:14</p> <p>shut (12) 7:2,8,17,25;8:19; 9:3;10:3;11:6;13:3; 25:5;39:24;40:23</p> <p>shutdown (2) 5:2;8:6</p> <p>shutting (2) 7:16;13:4</p> <p>signed (2) 4:2;21:17</p> <p>significance (1) 9:8</p> <p>significant (7) 4:25;6:21;9:5;10:7; 12:23;23:3;24:24</p> <p>significantly (2) 18:3,11</p> <p>similar (1) 22:12</p> <p>similarly (1) 29:24</p> <p>simply (1) 22:3</p> <p>sister (1) 32:4</p> <p>situation (1) 11:14;10:15;2;17:14;</p>	<p>speaking (1) 14:2</p> <p>specific (2) 16:25;20:12</p> <p>Specifically (3) 3:10;20:13;29:25</p> <p>speculate (2) 12:14;38:17</p> <p>spelled (2) 21:21;23:12</p> <p>spend (2) 43:19,23</p> <p>spent (2) 10:21;41:22</p> <p>squarely (1) 17:5</p> <p>staff (14) 5:8,8,8;13:11; 16:21;19:14;22:13; 42:23,23;43:3,8,9,13, 15</p> <p>staffed (1) 11:10</p> <p>staff's (2) 10:9;42:15</p> <p>stand (2) 12:2;34:11</p> <p>standard (3) 9:6;29:23;37:5</p> <p>stands (1) 13:11</p> <p>started (2) 14:6;32:10</p> <p>state (26) 5:4;6:17;8:1,7;11:9, 11;14:10;15:2;17:14;</p>	<p>stood (1) 32:4</p> <p>stop (1) 40:9</p> <p>storage (2) 35:17;41:25</p> <p>stored (1) 11:12</p> <p>story (1) 32:1</p> <p>strict (1) 27:19</p> <p>strong (1) 24:19</p> <p>strongly (1) 28:14</p> <p>struggle (1) 35:22</p> <p>struggled (1) 22:21</p> <p>submitted (2) 5:17;26:21</p> <p>subsidies (9) 5:4,19;6:16;13:7; 18:7;20:23;28:7;33:5; 39:23</p> <p>subsidy (20) 5:25;12:4;20:1; 21:1;23:8,16;24:24; 25:1,5,16;26:12,18; 27:16,20;29:16,23; 31:5;32:23;38:21; 40:9</p> <p>substantial (1) 15:5</p> <p>substantially (1) 16:16</p>	<p style="text-align: center;">T</p> <p>talk (3) 3:20;30:18;31:20</p> <p>talked (2) 30:3;32:17</p> <p>talking (3) 30:6;37:11;40:16</p> <p>tariffs (2) 13:17;42:11</p> <p>task (1) 16:21</p> <p>tax (6) 23:3;25:17,24; 27:25;31:10;35:25</p> <p>taxes (1) 33:25</p> <p>team (22) 4:9,9,17,19;5:6,7; 6:9;9:1,10,19,20,25; 10:9;12:1,13,19;16:2, 10,13,18,22;27:12</p> <p>teams (2) 4:8,17</p> <p>team's (1) 6:19</p> <p>technologies (1) 34:6</p> <p>terms (2) 29:16,20</p> <p>test (3) 37:6,7,13</p> <p>testimony (1) 32:20</p> <p>therefore (5) 17:15;19:3;22:2; 23:15;36:20</p> <p>thorough (1)</p>

<p>19:16 though (2) 6:8;21:24 thought (2) 35:1;36:25 thoughtful (1) 19:15 thoughtfulness (1) 38:1 thoughts (2) 6:5;14:1 threat (1) 25:7 threatened (1) 22:23 three (34) 3:11,14,16,20;4:14; 5:7;6:13,14;7:2,17, 25;8:6;11:18;12:19, 25;13:8,9;16:18; 20:16;24:15;25:5; 26:17;27:2,14;31:6; 32:21;35:16;37:12; 38:12,18,19;39:6; 40:8,8 three-year (1) 38:20 threshold (1) 16:19 throughout (1) 8:2 thus (1) 35:9 till (1) 38:11 times (2) 14:18;34:13 Titusville (1) 35:21 today (6) 4:12;27:11,14; 32:13;37:18;38:19 today's (1) 35:14 told (3) 15:19;26:7,11 Tom (7) 3:3;7:19;13:13; 15:25;27:11;29:7; 42:3 took (2) 10:8;42:5 tool (1) 20:20 total (1) 30:22 totalling (1) 37:19 tough (1) 34:13 traditional (1) 16:10 transcript (1)</p>	<p>43:7 translates (2) 30:22;36:5 transmission (3) 29:21;40:24,25 treated (1) 11:20 tried (1) 12:15 true (1) 36:23 truly (1) 19:23 try (1) 31:12 trying (2) 9:15;15:16 Tuesday (1) 40:17 turns (1) 22:18 Twelve (1) 14:12 two (3) 4:8;9:12;34:25 type (1) 33:23 Typically (1) 42:22</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate (2) 17:2;23:25 Ultimately (1) 28:5 unable (2) 15:20;36:13 uncertain (1) 8:18 under (7) 3:12;9:18;20:19; 21:19;29:23;39:16; 43:14 undertake (1) 22:1 undone (1) 18:18 undue (1) 34:1 Unfortunately (1) 23:6 unique (1) 23:10 Unit (20) 3:15,15,16,23;4:24, 25;5:2,3;6:21,25; 9:13,15;10:2,38;10, 11,11,19;40:9;41:14, 16 United (5) 32:6,7,15;33:20; 34:21</p>	<p>units (24) 4:11;5:23;7:2,4,8, 10,16,17,25;8:16,19; 9:3;10:3;11:7,12; 12:2,25;15:22;16:16, 18;29:22;30:1;32:21; 39:11 universal (2) 11:18;14:4 universities (1) 25:23 unless (1) 40:14 unquestionably (1) 20:3 unregulated (1) 21:23 up (15) 7:4,4,10;8:23; 14:23;16:22;17:20; 29:22;31:4;32:2; 34:12,16;39:1;40:1; 42:1 upon (4) 35:7,8;37:4,18 use (2) 29:19;30:11 used (3) 10:5;11:23;39:20 useful (1) 11:23 user (1) 26:7 Users (5) 5:15;25:21;26:13; 28:11;30:10 using (2) 29:21;36:5 Utilities (2) 15:19;33:15 utility (2) 21:7,15</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>VACHIER (1) 42:21 valid (1) 10:20 valued (1) 36:19 variable (1) 12:9 verifiable (1) 23:11 versus (1) 35:1 viability (1) 6:24 viable (5) 10:2;11:7;12:2; 17:24;39:25 view (3)</p>	<p>16:11;26:14;27:22 visited (1) 26:5 volatility (1) 17:11 voluntary (1) 6:7 vote (7) 19:3;23:21;24:9; 26:2;42:22,25;43:15 votes (1) 34:10 voting (2) 37:24;44:6 vulnerabilities (1) 35:10 vulnerable (1) 28:16</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>WALKER (15) 3:5,8;7:21,23;8:11; 27:11;38:17;39:8,14; 40:2,16,20;41:3,10; 42:8 Warming (6) 8:8,9,16;14:13; 17:18;29:11 warranted (1) 23:17 waste (1) 34:10 way (4) 10:1;19:1;32:19; 43:15 ways (3) 9:12;23:23;38:2 weigh (1) 27:24 weight (1) 17:6 well-being (1) 18:25 weren't (1) 39:4 west (2) 33:10;35:9 whole (1) 40:14 widespread (1) 35:25 wind (2) 8:21;18:14 withdrawn (2) 40:13,21 within (5) 8:1;11:24;15:1; 17:5;20:16 without (9) 5:2;6:1;8:15;13:5; 15:21;20:17;22:11; 24:9;26:18</p>	<p>won (1) 31:16 work (1) 27:12 worked (1) 19:16 working (1) 4:18 worried (2) 31:23;33:9</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year (14) 4:16;11:21,22; 24:20;30:21;36:6,6; 37:6,7,13;39:19,19, 19;41:25 years (21) 11:8,11;14:12; 20:16,22;24:11;31:6, 15;32:4,4;33:21;34:5, 5;35:16;37:12;38:12, 18,19;39:6;40:8,8 yeoman's (1) 42:5 York (1) 37:3</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>ZEC (17) 3:9;4:2;6:4;15:24; 16:22;17:8;20:2,7; 21:17;26:3,11;27:13, 19;28:7;29:23;31:4; 39:5 ZECs (14) 4:12;13:17;14:7,25; 16:12,19;19:4;20:13, 20;26:8;38:9;41:17; 42:10;43:10 zero (3) 24:18;29:8;36:9 zero-carbon (1) 21:12 zeroed (1) 36:21</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>004 (3) 30:7;31:6;36:4</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 (6) 3:15,17;12:21; 15:19;19:4;39:12 1,500 (1) 18:2 10 (1) 32:4</p>
--	---	---	--	--

**BPU BOARD AGENDA
ITEM 9A**

April 18, 2019

<p>100 (1) 31:6 11 (1) 8:3 120-member (1) 33:12 13 (1) 41:18 14 (2) 7:11;24:11 18 (2) 7:11;14:6 1999 (1) 31:11 19th (1) 4:16</p>	<p>4 (4) 13:19;36:4;39:11; 42:12 40 (2) 24:17;39:16 42 (3) 39:10,13,14 45 (1) 33:21</p>			
2	5			
	6			
<p>2 (6) 3:15,17;12:22; 15:19;19:4;39:13 2014 (1) 11:2 2017 (3) 26:3;39:11,18 2018 (2) 4:2;30:21 2019 (1) 29:13 2020 (3) 8:7;29:13;34:4 2022 (1) 8:3 2030 (2) 4:25;6:15 2036 (1) 38:10 2040 (1) 38:11 2046 (1) 38:12 2050 (5) 8:16,20;15:15; 24:20;34:5</p>	<p>6,920 (1) 36:6 7 7 (1) 36:7 750 (1) 18:2 789,000 (1) 30:12 8 8 (3) 32:4;34:15,15 8,282 (1) 30:12 9 9 (1) 32:5 9.6 (3) 7:18,25;29:10 90 (3) 14:23;17:22;37:22 9A (3) 3:4,9,10</p>			
3				
<p>30 (4) 24:17;29:12;34:5,5 300 (1) 38:25 31st (1) 5:11 32 (3) 14:22;17:21;35:4 328,000 (1) 30:13 330 (1) 4:11</p>				
4				

In The Matter Of:
BPU BOARD AGENDA
ITEM 9B

April 18, 2019

J.H. Buehrer & Associates
884 Breezy Oaks Drive
Toms River, NJ 08732
732-295-1975

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
TRENTON, NEW JERSEY

BOARD AGENDA

DATE: THURSDAY, APRIL 18, 2019

ITEM 9B

MISCELLANEOUS

- - - - -

DOCKET NO.: EO18080899

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 - EXECUTIVE SESSION.

- - - - -

BEFORE: PRESIDENT JOSEPH L. FIORDALISO
COMMISSIONER MARY-ANNA HOLDEN
COMMISSIONER DIANNE SOLOMON
COMMISSIONER UPENDRA J. CHIVUKULA
COMMISSIONER BOB GORDON

J.H. BUEHRER & ASSOCIATES
884 BREEZY OAKS DRIVE
TOMS RIVER, NJ 08753
(732) 295-1975

1 PRESIDENT FIORDALISO: This goes to now 9B.

2 Tom, are you going to do that?

3 Paul.

4 MR. WALKER: Paul.

5 MR. FLANAGAN: Thank you.

6 Thank you.

7 COMMISSIONER SOLOMON: Excuse me.

8 This meeting is still in session.

9 Go.

10 MR. FLANAGAN: Again, and, Commissioners, I
11 just want to add my thanks to the staff who worked very
12 diligently on this.

13 I think when we got this legislation a year
14 or so ago, we all looked at it as a very daunting task.

15 And Tom, in particular, but the rest of the
16 staff, I think they need to get my thank you. They
17 really stepped up, spent a lot of time on this, as well
18 as doing their -- if you will, their normal duties
19 under -- for the Board.

20 I'd also -- I think it's appropriate to point
21 out that the EDCs were also very cooperative,
22 essentially establishing the tariffs whether or not the
23 ZECs were approved.

24 They met with us on a number of times and
25 they were willing to, you know, to do what we asked

1 them to do so we got the thing in a position to have it
2 done today. So I just wanted to say that before I
3 go --

4 PRESIDENT FIORDALISO: Thank you.

5 MR. FLANAGAN: -- to 9B.

6 In light of the fact that the Board has voted
7 to grant the ZECs, we have the ranking order in front
8 of you, which is 9B.

9 As Tom mentioned, there was a ranking
10 committee. As it turned out, in this particular
11 instance, because there were only three plants and all
12 three plants would have qualified, the specifics of the
13 ranking was not germane to who's going to get the ZECs.

14 However, the ranking committee recommended
15 that they granted:

16 First, Hope Creek; second, Salem No. 1; and
17 third, Salem No. 2.

18 Also in front of you is motion for
19 interlocutory review that was submitted by PSE&G
20 Nuclear on March 6th.

21 So you have two things in front of you to
22 vote on which are all included in the order that we
23 prepared.

24 First, I will address the motion for
25 interlocutory review.

1 In that matter, staff recommends that the
2 motion be denied as legally deficient, as it lacks a
3 legal basis for the interlocutory review.

4 And even if the motion were to be considered
5 as a motion for reconsideration, which I think is
6 really closer to what it really is, we would still have
7 to deny that as they have not met the legal standards
8 for consideration. So that's a procedural matter that
9 has to be resolved.

10 With regard to the actual rankings, on
11 February -- in February -- February 27th, the Board
12 issued an order setting forth seven ranking criteria
13 and weighted so those ranking criteria. I won't read
14 them because they're in the order.

15 But, essentially, those were what were
16 reviewed by the ranking committee in coming up with its
17 determination. And, as I said, what the ranking
18 committee was directed or was doing based on the
19 Board's direction, to establish the rank order list of
20 the power plants to be selected and which would have
21 been selected.

22 One of the reasons why we're asking the Board
23 to do this order is because in the event there is a
24 subsequent petition for or application at the end of
25 the three-year period, the criteria that are

1 established in this order would be the ones that would
2 be in front of the Board at that time.

3 So to summarize, staff is recommending,
4 number one, that the Board deny the motion for
5 interlocutory review filed by PSE&G Nuclear due to
6 legal insufficiency.

7 We are recommending that the Board adopt the
8 ranking of eligible nuclear units as determined and,
9 lastly, staff is recommending that the board direct
10 each one of the nuclear units that were mentioned
11 receive the ZECs.

12 The actual number of ZECs is not able to be
13 calculated at this point because we don't know what the
14 generation for the nuclear will be.

15 At the time of the actual payments that are
16 made, there will be a calculation that we provided
17 which will show what those are. And at that point, we
18 will know exactly the specific ZECs that each one of
19 the units will get and that will be made public at that
20 time.

21 So that's the recommendation of staff.

22 COMMISSIONER HOLDEN: So moved.

23 COMMISSIONER SOLOMON: Second.

24 PRESIDENT FIORDALISO: Comments?

25 Questions?

1 Roll call.

2 SECRETARY CAMACHO-WELCH: On the motion to
3 approve staff's recommendation,
4 Commissioner Holden?

5 COMMISSIONER HOLDEN: Yes.

6 SECRETARY CAMACHO-WELCH: Commissioner
7 Solomon?

8 COMMISSIONER SOLOMON: Yes.

9 SECRETARY CAMACHO-WELCH: Commissioner
10 Chivukula?

11 COMMISSIONER CHIVUKULA: Yes.

12 SECRETARY CAMACHO-WELCH: Commissioner
13 Gordon?

14 COMMISSIONER GORDON: Yes.

15 SECRETARY CAMACHO-WELCH: President

16 Fiordaliso?

17 PRESIDENT FIORDALISO: Yes.

18 (Whereupon recommendation of staff was approved.)

19 (Item 9B - Miscellaneous Concluded.)

20 PRESIDENT FIORDALISO: If there are no other
21 items, may I have a motion to adjourn.

22 COMMISSIONER GORDON: Gladly.

23 PRESIDENT FIORDALISO: So moved.

24 (Proceedings concluded at 1:08 p.m.)

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, Lorin Thompson, a Notary Public and Shorthand Reporter of the State of New Jersey, do hereby certify as follows:

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Lorin Thompson

Notary Public of the State of New Jersey
My commission expires July 26, 2021

Dated: April 18, 2019

A	committee (4) 3:10,14;4:16,18 Concluded (2) 6:19,24 consideration (1) 4:8 considered (1) 4:4 cooperative (1) 2:21 Creek (1) 3:16 criteria (3) 4:12,13,25	4:23 exactly (1) 5:18 Excuse (1) 2:7	6:19 items (1) 6:21	5:1 only (1) 3:11 order (7) 3:7,22;4:12,14,19, 23;5:1 out (2) 2:21;3:10
<p>able (1) 5:12 actual (3) 4:10;5:12,15 add (1) 2:11 address (1) 3:24 adjourn (1) 6:21 adopt (1) 5:7 Again (1) 2:10 ago (1) 2:14 application (1) 4:24 appropriate (1) 2:20 approve (1) 6:3 approved (2) 2:23;6:18</p>	D	F fact (1) 3:6 February (3) 4:11,11,11 filed (1) 5:5 FIORDALISO (7) 2:1;3:4;5:24;6:16, 17,20,23 First (2) 3:16,24 FLANAGAN (3) 2:5,10;3:5 forth (1) 4:12 front (4) 3:7,18,21;5:2	L lacks (1) 4:2 lastly (1) 5:9 legal (3) 4:3,7;5:6 legally (1) 4:2 legislation (1) 2:13 light (1) 3:6 list (1) 4:19 looked (1) 2:14 lot (1) 2:17	P particular (2) 2:15;3:10 Paul (2) 2:3,4 payments (1) 5:15 period (1) 4:25 petition (1) 4:24 plants (3) 3:11,12;4:20 pm (1) 6:24 point (3) 2:20;5:13,17 position (1) 3:1 power (1) 4:20 prepared (1) 3:23 PRESIDENT (7) 2:1;3:4;5:24;6:15, 17,20,23 procedural (1) 4:8 Proceedings (1) 6:24 provided (1) 5:16 PSE&G (2) 3:19;5:5 public (1) 5:19
B	daunting (1) 2:14 deficient (1) 4:2 denied (1) 4:2 deny (2) 4:7;5:4 determination (1) 4:17 determined (1) 5:8 diligently (1) 2:12 direct (1) 5:9 directed (1) 4:18 direction (1) 4:19 done (1) 3:2 due (1) 5:5 duties (1) 2:18	G generation (1) 5:14 germane (1) 3:13 Gladly (1) 6:22 goes (1) 2:1 Gordon (3) 6:13,14,22 grant (1) 3:7 granted (1) 3:15	M March (1) 3:20 matter (2) 4:1,8 may (1) 6:21 meeting (1) 2:8 mentioned (2) 3:9;5:10 met (2) 2:24;4:7 Miscellaneous (1) 6:19 motion (8) 3:18,24;4:2,4,5;5:4; 6:2,21 moved (2) 5:22;6:23	
C	E EDCs (1) 2:21 eligible (1) 5:8 end (1) 4:24 essentially (2) 2:22;4:15 establish (1) 4:19 established (1) 5:1 establishing (1) 2:22 even (1) 4:4 event (1)	H HOLDEN (3) 5:22;6:4,5 Hope (1) 3:16	N need (1) 2:16 normal (1) 2:18 Nuclear (5) 3:20;5:5,8,10,14 number (3) 2:24;5:4,12	Q qualified (1) 3:12
		I included (1) 3:22 instance (1) 3:11 insufficiency (1) 5:6 interlocutory (4) 3:19,25;4:3;5:5 issued (1) 4:12 Item (1)	O One (4) 4:22;5:4,10,18 ones (1)	R rank (1) 4:19 ranking (9) 3:7,9,13,14;4:12,13, 16,17;5:8 rankings (1) 4:10 read (1) 4:13

<p>really (3) 2:17;4:6,6 reasons (1) 4:22 receive (1) 5:11 recommendation (3) 5:21;6:3,18 recommended (1) 3:14 recommending (3) 5:3,7,9 recommends (1) 4:1 reconsideration (1) 4:5 regard (1) 4:10 resolved (1) 4:9 rest (1) 2:15 review (4) 3:19,25;4:3;5:5 reviewed (1) 4:16 Roll (1) 6:1</p>	<p>2:17 still (2) 2:8;4:6 submitted (1) 3:19 subsequent (1) 4:24 summarize (1) 5:3</p>	<p>worked (1) 2:11</p>			
			Y		
			year (1) 2:13		
			Z		
		T	ZECs (6) 2:23;3:7,13;5:11, 12,18		
		tariffs (1) 2:22			
		task (1) 2:14	1		
		thanks (1) 2:11	1 (1) 3:16		
		third (1) 3:17	1:08 (1) 6:24		
		three (2) 3:11,12	2		
		three-year (1) 4:25	2 (1) 3:17		
		times (1) 2:24	27th (1) 4:11		
		today (1) 3:2			
		Tom (3) 2:2,15;3:9	6		
	turned (1) 3:10	6th (1) 3:20			
	two (1) 3:21	9			
S	U	9B (4) 2:1;3:5,8;6:19			
<p>Salem (2) 3:16,17 second (2) 3:16;5:23 SECRETARY (5) 6:2,6,9,12,15 selected (2) 4:20,21 session (1) 2:8 setting (1) 4:12 seven (1) 4:12 show (1) 5:17 SOLOMON (4) 2:7;5:23;6:7,8 specific (1) 5:18 specifics (1) 3:12 spent (1) 2:17 staff (7) 2:11,16;4:1;5:3,9, 21;6:18 staff's (1) 6:3 standards (1) 4:7 stepped (1)</p>	<p>under (1) 2:19 units (3) 5:8,10,19 up (2) 2:17;4:16</p>				
		V			
		vote (1) 3:22			
		voted (1) 3:6			
		W			
		WALKER (1) 2:4			
		weighted (1) 4:13			
		Whereupon (1) 6:18			
		who's (1) 3:13			
		willing (1) 2:25			