



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. BOX 003  
TRENTON, NEW JERSEY 08625

PHIL MURPHY  
*Governor*

SHEILA OLIVER  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

**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  
BPU Docket No. EO 18080899**

**Comments of Stefanie A. Brand,  
Director, New Jersey Division of Rate Counsel  
At Public Hearing, Hackensack, N.J.  
October 4, 2018**

Good afternoon, my name is Stefanie Brand and I am the Director of the New Jersey Division of Rate Counsel. I want to thank you for the opportunity to appear before you today on behalf of New Jersey ratepayers.

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

This hearing is intended to solicit input on certain aspects of the Zero Emission Certificate or “ZEC” Program, which Governor Murphy signed into law on May 23, 2018. The ZEC Program will provide financial incentives to certain eligible nuclear operators inside or outside the state for the continued operation of their nuclear units. Nuclear operators have argued that these incentives are necessary or else their nuclear units will be forced to shut down. They maintain that declining energy prices at PJM are not sufficient to ensure continued operation. The Legislature enacted legislation providing for these incentives because it believes that these nuclear units provide environmental and other benefits to the State that would be lost if they shut down in the near future. Ratepayers would pay for these incentives through a surcharge on their electric bills, which, if there are nuclear plants that are deemed eligible, would initially be set at .4 cents per kwh which would translate to \$4 per month for a household using 1,000 kWh per month.

In my comments today I will first address Rate Counsel’s views on the filing requirements that should be imposed on applicants who are seeking ZECs in order for the Board to be able to determine eligibility. Second, I will also discuss Rate Counsel’s views on how eligibility should be determined based on the language of the statute. Finally, I will discuss other provisions of the statute and how Rate Counsel believes the Board should interpret and administer those provisions. In

the interest of time, these comments will provide an overview only. We will provide more detailed comments in our written comments.

Under the legislation's eligibility requirements, the Board determines whether a particular plant provides "fuel diversity, air quality and other environmental benefits" to New Jersey, and whether those benefits are at risk of loss because the financial condition of the plant will, unless there is a "material financial change," cause the plant to cease operations within three years. P.L. 2018, ch. 16, section 3. the legislation requires the Board to answer the following questions:

- What is the minimum reasonable revenue requirement that the nuclear operator needs over the next three years in order to cover its cost of operations and capital upgrades?
- How likely is it that a particular nuclear unit will recover its minimum reasonable revenue requirement, and will it shut down in the next three years if the operator is unable to recover this minimum revenue requirement?
- What impact does the nuclear unit have on air quality, "fuel diversity," or other environmental benefits in New Jersey?
- If a particular unit did shut down, what are the likely resources and costs for replacement power and what impact would the replacement resources have on air quality or "fuel diversity" and other environmental benefits in New Jersey?

With regard to the first question, Rate Counsel believes that any nuclear plant filing an application for the ZEC Program should provide extensive financial

information. This financial information should include information on both historical and projected revenues and operating costs as well as capital costs. The nuclear operator should also provide information about the return or income that it believes is necessary in order to keep the unit open. While we recognize that nuclear operators would like to earn as much money as possible, it is important to remember that their rates and revenues are unregulated. When they were earning substantial profits in the past, they were free to keep those earnings. As a result, the ZEC Program should not be based on their desired earnings, but on the minimum reasonable operating income necessary to keep the plan open. The inquiry should take into account not only the returns available to other entities in the industry but also the returns earned by the other business ventures being undertaken by the nuclear operator or its affiliates. The operator should also provide information about the cost of shutting down the unit and what costs it would avoid if the unit were shut down.

The operator should also provide information about any amounts that it received when restructuring was adopted in compensation for stranded costs. We want to ensure that New Jersey ratepayers are not being forced to compensate a nuclear operator for costs that they already recovered through stranded cost payments.

On the revenue side, the operator should provide information about current and future market prices and the future income that it anticipates if the unit is operational. In determining future revenues, the Board should consider not only energy sales and capacity payments, but also other sources of incentive payments that may be available from governmental entities or other sources to promote nuclear energy, and/or carbon-free energy. The Board should review these forecasts based on reasonable and objective expectations of future market prices and get input from PJM and/or the PJM Independent Market Monitor to ensure that the projections are reasonable. Our filed written comments will include a specific list of proposed filing requirements. We urge the Board to make the filing requirements comprehensive, since the statute provides a very short time period for review, leaving little time for follow-up discovery.

Once the Board reviews and assesses this documentation, it will have to make a decision regarding how likely it is that a particular nuclear unit will shut down unless a ZEC Program incentive is provided. This analysis must be done on a unit specific basis, and should take into account the price impact if one unit shuts down. For example, based on basic principles of supply and demand, if one of the nuclear units in Salem County shuts down, that will likely increase energy and capacity prices for the other remaining units. The Board must take that price

impact into account when deciding whether the other units at that location will continue to have insufficient revenue to stay open.

The review will require a certain subjective analysis by the Board. This analysis must, however, be based on credible information and analysis provided by the applicant. A mere certification is not sufficient. No unit should be determined eligible without a clear showing by the applicant that anticipated revenues will be insufficient to keep the unit in operation for the next three years.

The Board must also assess whether the 0.4 cents per kwh surcharge would result in just and reasonable rates. Under settled New Jersey law, utility ratepayers have the right to utility rates that are not excessive. This is a principle grounded in constitutional due process protections. The Board has an overriding obligation to ensure that rates are just and reasonable that was not, and cannot, be superseded by the ZEC statute. If, after examining the revenue requirement needed for the nuclear plant, the Board finds that the subsidy resulting from the charge is substantially in excess of the amount required to keep the unit in operation, then the \$.004 rate is not just and reasonable and the Board should reject it.

The Board must also assess the impact the closure of a nuclear unit will have on New Jersey air quality, “fuel diversity,” and other environmental benefits. The legislation specifically references concerns that the retirement of nuclear units will adversely impact New Jersey’s ability to meet federal and state air quality

standards for ozone. Therefore, a nuclear operator requesting participation in the ZEC Program will need to demonstrate not only that they will shut down a nuclear unit without an incentive, but also that the replacement resources will have a detrimental impact on New Jersey air quality that is significant enough to justify payment of the incentive.

This demonstration must include detailed regional air dispersion modeling and an examination of the replacement resources that would be required in the event that the unit does shut down. This must be done on a unit specific basis, as the impact will likely be different depending on the size and location of the unit. A reasonable assessment must be made regarding what types of generation might replace the nuclear unit. For the last four or five years, renewables have accounted for at least half of the new generation built in this country. According to the U.S. Energy Information Administration, in 2017, renewables accounted for 55% of the 21 GW of U.S. capacity additions. So an assumption cannot be made that if a nuclear plant shuts down it will be replaced by a natural gas or coal plant. It is just as likely that the lost capacity will be replaced by a renewable resource. To the extent that energy from the nuclear facility is replaced with renewable resources, the loss of the nuclear plant may have no adverse impact on air quality or other environmental benefits in New Jersey. In fact, the impact may be positive.

The legislation is unclear what the definition of “fuel diversity” is. However, it should be noted that PJM has repeatedly and consistently stated that its capacity auctions are attracting “diverse, competitive resources,” and it has not identified any specific threat to “fuel diversity,” even though some nuclear plants have already shut down. The PJM Independent Market Monitor has also not identified any threat to New Jersey from a lack of “fuel diversity.” Absent some specific, credible threat to our supply of generation, the Board should not grant hundreds of millions of dollars in ratepayer subsidies based on a threat to some undefined goal of “fuel diversity.”

If the Board finds that a nuclear unit is in financial distress to the point that it will shut down, and that its closure will threaten New Jersey’s air quality or result in other environmental detriment, then there are still additional factors that the Board must consider. First, the Board is not required to award ZECs for a full 40% of New Jersey’s generation. It may award a substantially lower amount if the evidence before it does not justify providing subsidies to such a large amount of generation.

The Board must also consider other efforts that are ongoing that may change the financial status of a unit or require a credit for ratepayers or a reduction in the ZEC amount awarded to the nuclear unit. New Jersey is in the process of re-entering the Regional Greenhouse Gas Initiative, and payments or revenues that



result from that initiative must be considered, as it provides a way of “leveling the playing field” for non-carbon generating sources that will provide a specific benefit to the nuclear units seeking ZECs. In addition, FERC is currently considering a variety of proposals to modify its capacity market to promote competitiveness in the face of ever-increasing state policy-driven subsidies. FERC is concerned about the impact of incentive payments for various types of resources on both the energy and capacity markets. FERC has opened a proceeding to determine what market rule changes are required to ensure the minimum offer price rule (“MOPR”) applies to new and existing capacity resources. There can be no doubt that these proposals will impact – and likely increase- capacity prices paid to the nuclear units and those increases, pursuant to Section 3(i)(3) of the Act, must be quantified and deducted from any award of ZEC revenues. In addition, PJM is considering changes to energy price formation in response to calls from resources such as the nuclear plants that claim they are not being appropriately valued in the current energy markets. Any price increases and corresponding additional revenues that result from changes in the energy markets should also be deducted from the ZEC revenues to avoid windfall payments. Finally, any program established by the Board should also make clear that if FERC or the U.S. Department of Energy or PJM make any other changes that impact the way nuclear plants are compensated

for their environmental or “fuel diversity” attributes, that those additional revenues will be deducted from ZEC revenues.

In closing, I would like to mention that Rate Counsel filed a Motion on September 21 with the BPU and the Attorney General seeking access to the confidential information submitted by applicants subject to a non-disclosure agreement. The statute in this case included unprecedented language that required us to do so even though we routinely get such information and have always complied with the governing non-disclosure agreement. To my knowledge, no one has objected to our motion and given that the time to object has passed we expect to participate fully in the proceedings going forward. We very much appreciate the opportunity to speak today and look forward to participating in all future proceedings on behalf of ratepayers.