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September 21, 2020

Via Email

Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Application of PSEG Nuclear, LLC and Exelon
Generation Company, LLC For the Zero Emission Certificate Program -
Salem Unit 1
Docket No. ER20080557**

**In the Matter of the Application of PSEG Nuclear, LLC and Exelon
Generation Company, LLC For the Zero Emission
Certificate Program - Salem Unit 2
Docket No. ER20080558**

**In the Matter of the Application of PSEG Nuclear, LLC For the Zero
Emission Certificate Program – Hope Creek
Docket No. ER20080559**

Dear Secretary Camacho-Welch:

This law firm represents the PJM Power Providers Group (“P3”) in the above-referenced matters. Kindly accept this letter brief, in lieu of a more formal brief on behalf of P3, in support of its motion to intervene as a Party pursuant to N.J.A.C. 1:1-16.1 et seq. before the Board of

Public Utilities (“BPU” or the “Board”). For the reasons set forth below, the BPU should grant P3, full Party intervenor status in these proceeding with access to confidential information.

The PJM Power Providers Group (“P3”) is a non-profit organization whose members are independent electric power suppliers located in the PJM market who are competitors of these nuclear plants and would suffer competitive harm by the institution of the subsidies.¹ P3’s mission it is to promote properly designed and well-functioning competitive wholesale electricity markets in the 13-state region and the District of Columbia served by PJM Interconnection. Combined, P3 members own over 67,000 megawatts of generation assets in PJM, produce enough power to supply over 50 million homes. P3 works with state and federal policymakers and other stakeholders, including PJM and the Organization of PJM States, to advance the group’s mission.

The within proceedings involve reviews of the establishment of Zero Emission Certificate Programs and approval of associated charges for eligible nuclear power plants operating in the PJM competitive markets. As such, these matters directly implicate issues impacting P3. Accordingly, and for all of the reasons set forth below, as well as in the Certification attached hereto of Glen Thomas, P3’s President, intervention is vital in these matters since its members will be directly affected by the outcome of the proceedings. Additionally, no other party represents the interests of P3 and only by intervening as a party to these proceedings can P3 ensure that its members’ interests are represented as the BPU continues to consider these matters.

Finally, if granted status as a Party-Intervenor in these matters, P3 will enter into agreements to protect the confidential nature of information submitted by the parties. Attached

¹ The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

to this motion, are the executed Non-disclosure Agreements attached to the Board's Orders on behalf of P3.

A. Background Facts and Procedural History

These matters concern L. 2018, c. 16, (N.J.S.A. 48:3-87.3, et seq.), signed into law on May 23, 2018 by Governor Murphy. The Act, among other things, requires the Board to create a Zero Emission Certificates ("ZEC") program and determine which nuclear energy generators will be eligible to receive ZEC payments under the program. PSEG, and other potential applicants, which according to legislative testimony, are seeking a subsidy of about \$1.2 billion over four years.

On October 23, 2018, P3 moved to intervene as a Party in I/M/O the Implementation of L. 2018, c. 16 Regarding the Establishment of a Zero Emission Certificate Program for Nuclear Power Plants (BPU Docket No.: EO18080899). On November 9, 2018, Rate Counsel submitted a brief in support of P3's full Party-Intervenor status. However, on November 19, 2018, the BPU granted P3 participant status only, limiting it to filing a brief as well as comments as to any applications received. P3 submitted Comments on ZEC Applications on January 31, 2019 and Reply Comments on March 19, 2019.

On April 18, 2019, the BPU Commissioners held a Board Agenda Meeting to discuss and act upon the ZEC applications filed on behalf of Salem 1, Salem 2 and Hope Creek, during which all 5 Commissioners made statements regarding their approach to the issues before them. Specifically, Commissioner Chivukula, in expressing his opposition to granting the ZECs noted that P3 had found that "the projected New Jersey nuclear units revenues exceed their going forward/avoidable costs." See Transcript, pg. 52, April 18, 2019.

Thereafter, On April 18, 2019, the Board determined that Salem 1, Salem 2, and Hope

Creek were eligible to receive ZECs (“First ZEC Eligibility Period”). On or about May 15, 2019, the Division of Rate Counsel filed an appeal with the Appellate Division from the Board’s Order of April 18, 2019.²

P3 has remained actively engaged throughout this process. P3 participated and filed comments on July 20, 2020, issuing comments on the Draft Application for the second edibility period. On August 12, 2020, the Board established the application process for the second eligibility period (June 1, 2022 – May 31, 2025) and ordered that the application period be open and remain open until October 1, 2020 (“Second ZEC Eligibility Period”). In its Order, the Board referenced the Comments submitted by P3. See Board’s August 12, 2020 Order, Docket No. Agenda Item 9A, Docket No. EO18080899.

The Board also designated President Joseph L. Fiordaliso as Presiding Commissioner, authorized to rule on all matters that arise during the proceeding, and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues, subject to ratification by the full Board in any final decision. See Board’s Order, dated September 15, 2020, Docket No. ER20080557.

On August 19, 2020, Exelon Generation Company, LLC (“Exelon Generation”) and PSEG Nuclear, LLC (“PSEG Nuclear”) submitted a Notice of Intent to File Applications for the Zero Emissions Certificate Program for Salem Unit 1 and Salem Unit 2. With respect to Hope Creek, on August 19, 2020, PSEG Nuclear, LLC (“PSEG Nuclear”) filed a Notice of Intent to File Applications in connection with the ZEC proceeding. PSEG Nuclear provided that it is the sole owner of the Hope Creek Plant. See Orders in Dockets ER20080557, ER20080558 and

² P3 is also currently a party to this appeal, and notes that nothing contained herein, shall constitute a waiver of any issue regarding the P3 appeal of the underlying April 18, 2019 decision.

ER20080559.

For all of the reasons set forth below, as well as those were set forth in the first ZEC proceeding, P3 should be granted full Party status with access to confidential information.

B. P3 Should Be Permitted To Intervene As A Party In These Proceedings.

In support of the instant application for intervention, P3 respectfully submits that all factors for intervention set forth in N.J.A.C. 1:1-16.1, weigh in favor of the granting P3's application to intervene in all proceedings convened by the Board arising out of, or in connection with the implementation of the Act. The standard for intervention in an administrative proceeding provides:

- (a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene. [N.J.A.C. 1:1-16.1(a)].

When evaluating a motion for intervention, the following factors should be considered: (1) the nature and extent of the movant's interests in the outcome of the case; (2) determination of whether the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case; (3) the prospect of confusion or undue delay arising from the movant's inclusion; and, (4) any other appropriate matters. N.J.A.C. 1:1-16.3; see also Atlantic Employers Ins. Co. v. Tots & Toddlers Pre-School Day Care Center, Inc., 239 N.J. Super. 276, 280 (App. Div.), certif. den. 122 N.J. 147 (1990) (noting courts apply a liberal construction to intervention rules); State by Bontempo v. Lanza, 39 N.J. 595, 599 (1963), cert. den. 375 U.S. 45 (1964) (same); R. 4:33-1 (intervention as of right must be granted when "the applicant claims an interest relating to the ... transaction which is the subject of the action and ... the disposition of the action may as a practical matter impair or impede the ability to protect that interest ...).

By Order dated November 19, 2018, in Docket No. EO18080899, Agenda Item 9B, the Board made the following findings in support of P3's motion for intervention:

- the BPU “acknowledges that the outcome of this proceeding will have direct economic consequences for P3 and its members based on impacts on competition and rates in wholesale electricity markets, if ZECs are issued”; and that
- “P3 may potentially contribute to the development of the record and scope of the proceeding and thereby aid the Board in understanding the issues”; and finally that
- the Board also noted that “P3 may add constructively to this proceeding without causing undue delay or confusion.”

As the Board found that P3 met the all of the criteria for intervention in the original ZEC Docket, it should do so here as well. However, P3 should also be granted full Party intervenor status with access to confidential information.

Specifically, and as P3 demonstrated in the original ZEC docket, P3 is substantially, specifically and directly affected by these proceeding because, among other things, the award of ZEC subsidies will advantage one power generator to the detriment of competing power producers who are members of P3 and place them at a competitive disadvantage in the PJM market. (See Certification of Glen Thomas, (“Thomas Cert., ¶11)).

P3, whose members are power suppliers in the PJM market who compete with PSEG Power, PSEG Nuclear, and Exelon has an interest in its representational capacity in assisting the Board with determining whether a subsidy is harmful to the competitive interests of P3, P3 has a direct and material interest in assisting the Board in its determination of whether the broad statutory criteria have been met.

The subsidization of any assets, especially if they are profitable, will have undeniable negative impacts on New Jersey's wholesale and retail markets. (Thomas Cert., ¶10). The negative impact on competition directly impacts the properly designed and well-functioning

market that P3 members rely upon. (Thomas Cert., ¶11). Specifically, in a market based on competitive principles, the subsidization of certain resources creates winners and losers. Billions of dollars have been invested in the PJM market by P3 members and other market participants with the assumption and expectation of a level playing field among resources. Ibid. Whenever resources that would otherwise be unprofitable are given a financial subsidy that makes them more cost competitive than unsubsidized resources -- the goal of the ZEC proceedings -- the playing field is undeniably slanted in the favor of the subsidized units and hurts competing power providers like the members of P3. Ibid. Providing subsidies to profitable units only compounds the unfairness of the market. Ibid.

P3, whose members include power suppliers who compete with PSEG Power, PSEG Nuclear, and Exelon, and who will be harmed by the market contortions created by the ZEC subsidy, are entitled under the criteria to intervene in this matter as a Party so that its specific interests as an association of nuclear, natural gas, coal, wind, solar and biomass facilities that generate power are appropriately represented, protected and have the opportunity to be heard on the significant issues in this proceeding that will affect their economic interests, including the adequacy of the statutory predicate that a facility must establish to receive a subsidy and the amount of any subsidy (notwithstanding the assertion the Board has no authority to adjudicate the level of any ZEC subsidy even if it is not needed due to a facility's unprofitability or because the subsidy will result in "unjust and unreasonable rates." (Thomas Cert., ¶12). P3 will bring the sophisticated expertise of its members to the hearing to insure that the issues related to the issuance of subsidies and their impacts are fully and accurately addressed. (Thomas Cert., ¶13). P3's intervention will thus serve to assist and inform the Board, and also help the Board meet the

massive resources PSEG and Exelon bring to this proceeding in support of their subsidy application. (Thomas Cert., ¶14).

Moreover, P3's interest is sufficiently different from that of any party. P3 members are competitors of PSEG Power, PSEG Nuclear and Exelon. P3 members' interests are actual competitors of PSEG and Exelon. By bringing its real-world expertise to this matter, P3 will assist the board in formulating its decisions.

Additionally, P3 has been actively involved in the Board's review of PSEG's and Exelon's FRR/MOPR proposal. On May 20, 2020, P3 filed extensive comments and on June 24, 2020 and July 23, 2020 filed reply comments regarding the BPU's Investigation of Resource Adequacy. In addition, just last Friday, September 18, 2020, Glen Thomas on behalf of P3, participated on a panel as part of the BPU's Technical Conference reviewing resource adequacy alternatives. In its initial filing, PSEG stated it would be willing to give up its nuclear subsidy if it were successful in obtaining its FRR proposal. (See PSEG Comments in Investigation of Resource Adequacy Alternatives, BPU Docket No. EO20030203, dated May 20, 2020, and stating "[t]he ZEC program would be replaced by this new mechanism."). (Thomas Cert., ¶8)

Although PSEG has since attempted to modify that astonishing statement in several outlets, it is clear PSEG sees a connection between FRR and any nuclear subsidies. Since P3 has taken an active stakeholder role in the resource adequacy proceeding, its intervention in these proceedings as a party is necessary to ensure a completeness of its procedural standing to advocate for, lend its expertise to, and protect its interests in the proper functioning of the PJM markets. (Thomas Cert., ¶¶8, 9).

Finally, the Board in its previous Order, concluded that "disclosure of information deemed confidential could harm competition, given that P3 members are power providers" and thus found

that P3 was not entitled to access to information marked “confidential” by applicants. P3 was accordingly granted participant status only. P3 continues to assert that this ruling was in error, as it conflated the standard for full party intervention, which P3 clearly met, with the standard in the Act for access to confidential information. These are two separate and distinct standards and should not have been analyzed in conjunction to deny P3 full Party status. However, and notwithstanding the Board’s Order in the original ZEC Docket, P3 should now be granted access to confidential information.

N.J.S.A. 48:3-87.5(a) provides that in order for a party to be permitted to review information marked “confidential” by an applicant for ZEC’s:

The board and the Attorney General shall jointly approve the disclosure of such confidential information to a party that they deem essential to aid the board in making the determinations required under this subsection, provided that the party is not in a position such that disclosure could harm competition and the party agrees in writing to maintain the confidentiality of the confidential information. [L. 2018, c. 16, Section 3(a)].

Along with this motion, P3 has submitted the requested signed agreements to protect the confidential nature of information submitted by the parties. Thus, P3 also meets the statutory requirements for access to confidential information.

However, even if the Board determines P3 is not entitled to confidential information, it should grant P3 full Party intervenor status in these matters in order to allow it to fully and meaningfully participate in the proceedings as a Party, which includes but is not limited to the ability to receive copies of all pleadings, papers, documents and exhibits and to introduce, submit and file direct testimony, pleadings, papers, documents and exhibits as appropriate, the right to participate in conferences, discovery, testimony and cross-examination, settlement, and to be heard on all issues before the Board.

