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Remarks of Stefanie A. Brand, Director, Division of Rate Counsel, Regarding S2313 (Establishes zero emission certificate program.) Presented at the Senate Budget and Appropriations Committee Meeting, April 5, 2018

Good afternoon. My name is Stefanie Brand, and I am the Director of the Division of Rate Counsel. I would like to thank Chairman Sarlo, and members of the committee for the opportunity to testify today on S2313 (Establishes zero emission certificate program).

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

As the statutorily mandated advocate for ratepayers who have a direct interest in the continued provision of electricity at reasonable rates, I have testified several times before this committee and other legislative committees about earlier iterations of this bill. I am not going to simply repeat my prior testimony, but wanted to take this opportunity to highlight some of the most important concerns we have about this bill.

First, the bill, in Section 3 (a), takes the unprecedented step of making the participation of Rate Counsel, the entity charged by the Legislature with representing the interests of the ratepayers of this state who will be forced to pay for the bill's subsidy, subject to a finding by both the Attorney General and the BPU that Rate Counsel's participation is "essential." This is a much higher standard than what is usually applied to establish a party's standing. It is also wholly inappropriate to have the Attorney General, who will also be a party to this proceeding representing Board Staff, to pass on the degree to which another party in the case is "essential." It is also unclear how the proceedings to establish that Rate Counsel or other parties are "essential" can be conducted in the timeframes established in the statute for the review of the nuclear plants' finances. Surely, any entity whose intervention is denied will have the right to due process to challenge that finding, through an evidentiary hearing and/or appeal. Although the timeframes have been extended somewhat in this version of the bill, the 120 days provided for the review of nuclear plant applications does not leave sufficient time for litigation of intervenor participation as well as full review of the nuclear plants' applications. This is likely why the Legislature has previously recognized that our office's participation on behalf of the public interest should be guaranteed by statute and not subject to litigation in every case. See, N.J.S.A. 52:27EE-48. As the institutional adversary to businesses, industry and utilities, our office ensures a fair process and full record and since the mid-1970's has participated in every case where a rate increase is sought without ever releasing confidential information to the public.

There is absolutely no good reason to deviate from the process that has protected interests on both sides for over 40 years. I, and several others, have testified repeatedly that this language places unnecessary and inappropriate burdens on ratepayer participation, a view that has been shared by several Legislators at the prior

Committee hearings. Yet that language remains in the bill. It is frankly astonishing that the Legislature would sanction any impediment to having the advocate for those who would pay for this subsidy participate fully in the process. If this bill goes forward, that language must be removed to allow for a fair and transparent review of the Company's finances in order to see if any subsidy is in fact needed.

The bill is also deficient in that it does not allow the BPU, once it has reviewed the Company's finances and if it determines that some remedy is required, to tailor that remedy to the actual scope of the problem. The BPU is charged, both by statute and due process of law, to ensure that rates are just and reasonable. However, if the BPU decides that a nuclear plant is eligible for some subsidy, it must apply the .4 cent rate for at least the first 3-4 year period. The Board does not have discretion to award a lower subsidy until the second eligibility period, and in fact the tariffs establishing the .4 cent rate are to be approved and ready to be charged to ratepayers on the day the eligibility list comes out. There is a provision allowing BPU to lower the rate in the fourth year, but by the time anyone looks at this rate to make sure it is just and reasonable, ratepayers will have been charged nearly $1 billion. Moreover, if the BPU does lower the rate, pursuant to Section 3k, PSEG can simply back out of the program. While there is no relief valve for ratepayers if prices and revenues go up in the middle of an eligibility period, there are many unilateral off ramps for the Company. Not only may the Company drop out if the BPU lowers the rate, it can drop out if the Legislature passes any new tax, assessment or fee on generators, or if a state or federal law reduces the value of a ZEC (for instance by imposing wholesale market rules that will minimize the market distortion from the ZEC). Thus, there is no ability for the Board to determine a just and reasonable rate before it is charged to ratepayers. In fact, there is nothing in the bill that explains how the .4 cent rate was derived or why the authors of the bill believed it to be the appropriate amount. All we do know is that the rate is included in this bill which means it was established before any review of the plants' financial information.

What we also know is that this rate will lead to significant additional costs for ratepayers. Using the rate of .4 cents per kilowatt-hour, and New Jersey's EY2017 retail sales (approximately 75 million megawatt-hours) the direct cost of the ZEC program comes to a little over $300 million per year. If we assume that the program will run for seven years, *i.e.*, for the first four-year rate period and one additional three-year period, this would total $2.1 billion in direct costs for the seven years. If the program runs for ten years, it would be an even $3 billion in direct costs.

There will also be indirect and induced costs associated with this level of rate increase. These are the secondary costs associated with ratepayers having less money to spend on other things or businesses forgoing new investments because they are spending additional money on the nuclear subsidies. Indirect and induced costs will add another $244 million per year to the bill, for a total of $544 million per year. For seven years, that comes to $3.8 billion total, or $5.4 billion if the program lasts for ten years. If we take into account the time value of money, or the net present value ("NPV"), the total cost for a seven year program is $2.7 billion and the total cost for a ten year program is $3.4 billion. While PSEG has argued that this number is less than their prediction of the cost if all three plants closed, their numbers admittedly do not include the net impact of the subsidies and are heavily weighted in their favor. A full analysis –

which should be done before any subsidies are awarded, may well show a very different result.

I want to reiterate that Rate Counsel has no interest in seeing nuclear power plants shuttered at any time prior to when we no longer need the electricity they generate. However, there is no reason to believe that the federal, state and regional entities that ensure our continued reliability and administer our deregulated wholesale energy and capacity markets, are unable to oversee our grid and administer those markets to protect these plants from shutting down while they are still needed. Nor is there any reason to reverse the decades-long deregulation of generation throughout the state to suddenly provide the benefits, but not the burdens, of re-regulation to one preferred fuel source.

As I have stated previously, there has been no demonstration that PSEG's nuclear plants are in financial difficulty other than bald assertions and ultimatums issued by the Company. While there are some nuclear power plants in this country that are at risk of shutting down, most of them are in areas where the energy and capacity prices paid are lower than New Jersey's or where other factors may increase their operating costs. However, not all nuclear power plants are in trouble. The PJM Market Monitor has submitted testimony that shows based on public data that PSEG's nuclear plants are making money. In fact, the Market Monitor's testimony shows that over the last five years (2013-2017), PSEG's nuclear plants have covered their avoidable costs by over $1.4 billion. In the first 17 days of 2018 alone, PSEG covered its avoidable costs by more than $131 million. An analysis released just yesterday by the Market Monitor predicts that they will continue to make money. PSEG has admitted that the plants are currently making money, but they argue that they do not expect them to earn the return the company is seeking – 18% - which is almost double the return authorized for its regulated side. So it is imperative that we make sure, before raising ratepayer bills by billions of dollars, that there really is a threat to these plants that warrants this level of subsidies.

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

The timeframes provided for the review are also unworkable. From the date the applications are actually submitted, there are only 120 days for review, which leaves little time for follow up that would allow our office or the BPU to obtain the information necessary to make the required findings, and no administrative process is provided if the findings or data are contested. The information is all forward-looking, based on estimates that can easily be wrong or gamed. The process set forth in the Administrative Procedures Act, which has been the blueprint in this state for adequate process for many years, should be used to make sure that the process here is fair and thorough. There is no legitimate reason to deviate from it here. I understand that proposed amendments have been submitted that would reaffirm the applicability of the Administrative Procedure Act to this process and I fully support those amendments.

The fact that the bill makes this charge *irrevocable* cannot be ignored. Once the initial four year period or subsequent three year periods begin, ratepayers are on the hook for the entire period. If prices go up, which is likely to happen for a number of reasons, only some of which relate to the financial stress on nuclear and coal plants, PSEG gets to keep the additional revenues as well as the ZEC supplemental payments for that entire period. There is no definition of when the closure of a nuclear plant will no longer be considered "premature," and the study called for in the bill at the end of ten years is of little comfort since ratepayers will have already paid $3 billion that, based on the language of the statute, they will likely never get back.

The provision providing for an offset if PJM, FERC or other entities act to address the financial condition of coal and/or nuclear plants is also of little value for ratepayers. It does not change a nuclear plant's eligibility for subsidies unless, according to the nuclear plant itself, the program "*eliminates* the need for the nuclear power plant to retire prematurely." The bill does provide for the BPU to determine each year the "dollar amount" received from such programs and deduct it from the overall subsidy, but establishing that dollar amount will be virtually impossible, given that the market prices are set by a variety of factors making it difficult to pull out that one strand to determine its impact on the overall price. For example, with New Jersey re-entering the Regional Greenhouse Gas Initiative (RGGI), we will be seeing revenues from the price on carbon that other plants will pay. But that money is already earmarked to go to clean energy and energy efficiency programs. So while the RGGI payments paid by competitors will help PSEG's plants compete, the RGGI revenues will not be deducted from this program, as only amounts "received" by the nuclear plants are deducted.

The bill also effectively ensures that New Jersey ratepayers will be subsidizing ratepayers in other states. Not all of the electricity generated by these plants goes to New Jersey. In fact, much of it goes to Delaware, Maryland and Pennsylvania. With additional transmission being built from these nuclear plants, the amount going out of state, according to the PJM cost allocation formula, may very well increase. Many New Jersey businesses compete with businesses in nearby Delaware, Maryland and Pennsylvania. With this bill, you will be giving those out of state competitors a leg up. Moreover, given that the bill allows for subsidies until the megawatt-hours reach 40% of New Jersey's E.Y. 2017 load, we may well be subsidizing out of state plants as well, as the three eligible in-state nuclear plants provide New Jersey with less than 40% (about 33%) of our electricity.

In sum, this is a "heads I win, tails you lose" situation for PSEG. It puts all the power and benefits on PSEG's side of the ledger, allowing it to determine what it is entitled to earn, whether other programs provide enough assistance, and even its own eligibility. Many of the tasks being assigned to BPU cannot be adequately performed in the timeframes allowed, and without further changes, we will be spending some of that time litigating the intervention of those who represent the ratepayers. PSEG can back out if any term doesn't go in its favor, but ratepayers are on the hook for an irrevocable charge even if PSEG starts earning more. The normal administrative procedures are cast aside as if they were of no importance to protecting the due process rights of ratepayers.

If the goal is to only give PSEG a subsidy if they need it, this bill doesn't get us there. There should be a transparent and objective process to assess the problem, figure out what is needed to solve it, and come up with a fair way to balance the competing interests of both the Company and ratepayers. Ratepayers do not have bottomless pockets. If we spend $3 billion on nuclear subsidies and it turns out we didn't need to, that is $3 billion less that we can spend on something else that we do need.

I urge you not to vote this bill out of Committee. Thank you for the opportunity to testify today. I am available to answer any questions you may have.