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Suite 950
Washington, DC 20005-2100

(202) 628-8200

January 25, 2018

Honorable Bob Smith
Chairman, Committee on Environment and Energy
New Jersey State Senate
Trenton, New Jersey (sent via-email)

Re: EPSA Comments on S 877

Dear Senator Smith:

This letter concerns the hearing scheduled for January 25, 2018, on S 877. EPSA appreciates past opportunities to testify on the nuclear subsidy issue because of the damage it would do to the wholesale markets from which EPSA members who also serve New Jersey customers receive all their revenues. Due to scheduling conflicts, EPSA will not be able to attend tomorrow's hearing. Since S 877 is identical to S 3560 from last session, we wanted to reiterate our opposition. Accordingly, I have attached the letter that EPSA sent you on December 18, 2017 for your reference.

In addition to the issues outlined in the earlier letter, we wanted to point to a couple of subsequent developments that further undermine PSEG's push for state subsidies. First is the legislation you sponsored for New Jersey to rejoin the Regional Greenhouse Gas Initiative (RGGI). Market-based constructs like RGGI are the most efficient means to reduce carbon emissions on a non-discriminatory basis. Tanya Bodell of Energyzt Advisors testified at your December 20, 2017 hearing that New Jersey's nuclear plants will earn an additional \$2-5/MWh under RGGI or tens of millions of additional dollars.

In addition, PSEG made the attached filing with the SEC on January 11, 2018. In this filing, PSEG disclosed that under the Tax Cuts and Jobs Act of 2017, the company expects its power business to receive benefits of \$530 million to \$650 million. These expected tax savings, coupled with the revenue that PSEG's nuclear plants will receive as a result of RGGI, eliminate the urgency to act hastily given PSEG's earlier assertions that its nuclear plants would already be profitable for several years without these funds.

As always, EPSA appreciates the opportunity to participate in this debate and thanks you for your consideration of our views. Should you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Zuretti", with a long horizontal line extending to the right.

Bill Zuretti
Director, Regulatory Affairs and Counsel, Electric Power Supply Association (EPSA)
Email: bzuretti@epsa.org
CC: Senate Committee Members



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Suite 950
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December 18, 2017

Honorable Bob Smith
Chairman, Committee on Environment and Energy
New Jersey State Senate
Trenton, New Jersey (sent via e-mail)

Subject: *S. 3560's Many Pitfalls for Consumers and Competition*

Dear Senator Smith:

This letter follows up on the correspondence sent to you on December 5, 2017, which was prompted by the hearing where EPSA and many others were not allowed to testify. In that letter, EPSA outlined in detail the many concerns we had with the sketchy "nuclear power plant profit safety net" that PSEG presented at the December 4 hearing.

EPSA has now had a brief opportunity to review the legislative language you introduced as S. 3560 on December 14, 2017, to create a new and unprecedented way to compensate nuclear power plants, termed in the bill as a "Nuclear Diversity Certificate" program ("NDC"). Even after only the preliminary analysis that the past few days has allowed, it is abundantly clear that EPSA's concerns and those of many other opponents have been confirmed, and then some. Please allow us to elaborate below.

S. 3560 Starts with False Premises that Plants Will Close and Rates Will Rise

The stated purpose of S. 3560 is to avoid "premature" retirement of New Jersey's nuclear plants. Putting aside the validity of the "premature" concept, given that under federal and state law all power plants compete regardless of fuel and face similar challenges, **there is no factual basis to conclude that New Jersey's nuclear plants are in imminent danger.** PSEG has said as much: the plants are profitable for years, they have capacity obligations to PJM, and there are several state, regional and federal initiatives underway that would make them even more profitable. **There is simply no need to rush to make hasty, ill-informed and ill-advised decisions in the remaining days of this session.**

Similarly, despite scare tactics and use of paid-for, self-serving "reports" with blatantly unrealistic assumptions, there is no basis to the wild claims that electric rates will skyrocket in the absence of massive consumer subsidies. We would be glad to walk you and others through the technical deficiencies in the Brattle and IHS Markit work done for the nuclear industry. Suffice it to say that were these claims true, consumer advocates would not be so strongly opposed to S. 3560.

S. 3560 Lets Nuclear Plants Cherry Pick Between Cost-Based and Market Rates

There are two separate and distinct ways to compensate owners of electricity generation: ***EITHER cost-based rates*** that are closely bounded by detailed rules, regulations and procedures ***OR market-based rates*** that rely on competition and market rules to discipline what suppliers can charge for power.

S. 3560 allows PSEG and Exelon to have the best of both worlds at the expense of consumers and their competitors. The bill gives them guaranteed cost recovery, including capital costs and profits, but without the independent NJBPU supervision and profit limitations that accompany traditional cost-based regulation, including weighing alternatives. At the same time, S. 3560 would allow PSEG and Exelon to keep all the upside if market-based rates rise in the future, but without them assuming the higher risks normally part of the bargain with market-based rates (including the risk that costs including capital costs exceed revenues). This would be exacerbated by the anti-competitive effects of letting them bid in wholesale energy and capacity markets with the "head start" of hundreds of millions of dollars in consumer-financed subsidies *each year*. This will let them distort wholesale market outcomes and thus lessen the very competition that is essential to keeping their market-based rates in check.

S. 3560's practical effect is to repeal New Jersey's restructuring law that was designed to shift risks and costs from consumers to investors, *but only for PSEG and Exelon.* However, instead of returning to the pre-restructuring law's traditional approach to cost-based regulation consistent with sound utility rate-making principles, the mechanisms in S. 3560 by-pass those protections. We would be pleased to elaborate as to why this is the case.

S. 3560 Makes It Too Easy for Nuclear Plants to Qualify for Consumer Subsidies

Section 3 is replete with drafting gaps and gimmicks. For starters, **there is no basis as to why the entire structure is forward-looking as opposed to backward looking.** Mere forward-looking corporate projections, especially over multiple years, are ripe for gamesmanship and manipulation or simply making mistakes, especially when the information from a nuclear plant's owners appears to be self-certified and would be treated by the NJBPU as confidential.

Forward-looking approaches require making assumptions about a dynamic, evolving subject (electricity) with a poor track record of even seasoned experts being able to accurately predict all the variables that will impact the financials of a given set of power plants. By contrast, the owners of these plants are profitable, multi-billion dollar companies with strong balance sheets and cash flows, paying hefty dividends to their shareholders. The nuclear plants at issue are but a part of their fleets. Any assistance should occur after the close of each year when results are known to the penny, as opposed to speculating about what costs and revenues may or may not be over a multi-year period such as three years here.

Below are just some of the ways in which Section 3 as drafted makes it too easy to qualify for unprecedented and unjustified access to subsidies:

- **Everything is confidential** as submitted by those who stand to gain hundreds of millions of dollars per year, without any explicit requirement for independent audits, public comment or analysis by the NJBPU;
- **“Risk of loss” is not defined in the legislation**, and the “loss” that would trigger the NDC payments is **not** the risk of the plants closing as properly defined, but the broader and more subjective risk of loss of “fuel diversity” (also not defined) and air quality attributes, but only from these plants and without regard to whether the NDC payments would be the least cost means to maintain those benefits for New Jersey;
- **The look-ahead in Section 3(a) alternates between a three-year forward period and references to financial measures on an *annual* basis** during that three-year period; in other words, the legislative language is subject to the interpretation that if a plant has a financial shortfall in only one of the forward three years under review, the plant would receive the NDC payments for the full three-year period;
- **The section has an overly loose and ill-defined test – or really a series of multiple pathways – for PSEG and Exelon to qualify for NDC payments from captive consumers.** Simply stated, Section 3(a) would allow them to load up the projected expenses to justify subsidies well beyond what is considered prudent based on traditional utility and wholesale market practices and principles. As drafted, the allowed costs are not just operation and maintenance including fuel expenses, but “non-fuel capital expenses” (potentially including those already recovered), a new undefined category termed “cost of operational and market risks that would be avoided by ceasing operations” and “any other information, financial or otherwise.” In other words, non-financial information and unspecified “other” information could be injected to justify why the plants *might* retire even if the numbers themselves do not.
- The tests are that the power plant is cash negative on an annual basis “or alternatively is not covering its costs including its cost of capital on an annual basis.” **This is a telling example of mixing and matching between cost-based and market-based rates.** Power plants in competitive wholesale markets and restructured state power systems such as New Jersey are not supposed to be guaranteed their costs of capital, especially when their competitors have no such guarantees. Furthermore, the bill has no limits on what that amount could be, and whether it includes sunk costs or previously recovered stranded costs. The bill does not expressly require that the NJBPU determine that the costs claimed were prudently incurred or for used and useful facilities.

S. 3560 Over Compensates Nuclear Plants to Inflate their Owners' Profits

Even if one accepts that New Jersey's nuclear plants are at risk of closing soon (and they are not), and even if one tolerates the toggling between cost-based and market-based rates (which you should not), **the most glaring flaw is the disconnect between how much a nuclear plant "needs" to stay open and the much larger amount plants would receive as NDC payments.** In other words, even if the triggers to qualify were fixed, the subsidy paid is not limited or tailored to the projected gap between costs and revenues. **This is because once a plant meets one of the loose tests to qualify for an NDC, the amount of the payment is not limited to the amount of the gap between costs and revenues used to qualify for an NDC payment in the first place (see below).**

Instead of leaving it to the NJBPU to determine an amount using traditional cost-of-service principles, **S. 3560 is very generous to plant owners by paying them based on the rigid formula spelled out in section 3(g), (h) and (i).** As best we can tell, the formula collects from captive consumers \$4 per megawatt-hour (MWh) applied to all nuclear and non-nuclear generation consumed. It then pays eligible nuclear plants (regardless of the amount of their projected shortfall) the equivalent of \$10 per MWh as a bonus (at a time when market prices are \$30 per MWh, for a one-third premium over market prices). This comes to around \$300 million annually (roughly \$200 million to PSEG and \$100 million to Exelon) **even if** the projected or actual difference between a plant's generous definition of costs and its revenues is far less than the large fixed NDC payments. While captive customers share in the "losses", they get none of the upside in years when the plants are profitable above the new "safety net" NDC levels. This could be addressed by netting profits and losses over multiple years. The bill does not adequately protect against "double dipping" (under section 3(e)(5) federal and other non-NDC payments for the same "attributes" *do not* reduce NDC payments dollar for dollar in all instances as should be required).

There are many other questions, including whether out of state plants would be eligible, whether New Jersey consumers would subsidize plants but the power goes out of state, and whether FERC and PJM will act to protect wholesale markets in a manner that could effectively disallow nuclear plants armed with NDC subsidies from counting toward PJM capacity requirements and being dispatched to meet electricity demand. **Thus, it is a mistake to rush to judgment but helps explain why those who stand to receive very sizeable NDC payments are pushing to rush to judgment anyway.**

Sincerely,



John E. Shelk

President & CEO, Electric Power Supply Association (EPSA) (Email: jshelk@epsa.org)

CC: Senate and Assembly Committee Members

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FORM 8-K

PUBLIC SERVICE ELECTRIC & GAS CO - PEG

Filed: January 11, 2018 (period: January 11, 2018)

Report of unscheduled material events or corporate changes.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) January 11, 2018

PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED
(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction
of incorporation)

001-09120
(Commission
File Number)

22-2625848
(I.R.S. Employer
Identification No.)

80 Park Plaza
Newark, New Jersey 07102
(Address of principal executive offices) (Zip Code)

973-430-7000
(Registrant's telephone number, including area code)
<http://www.pseg.com>

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction
of incorporation)

001-00973
(Commission
File Number)

22-1212800
(I.R.S. Employer
Identification No.)

80 Park Plaza
Newark, New Jersey 07102
(Address of principal executive offices) (Zip Code)

973-430-7000
(Registrant's telephone number, including area code)
<http://www.pseg.com>

PSEG POWER LLC
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34232
(Commission
File Number)

22-3663480
(I.R.S. Employer
Identification No.)

80 Park Plaza
Newark, New Jersey 07102
(Address of principal executive offices) (Zip Code)

973-430-7000
(Registrant's telephone number, including area code)
<http://www.pseg.com>

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether any of the registrants is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if such registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act

The information contained in Item 7.01 Regulation FD Disclosure in this combined Form 8-K is separately furnished, as noted, by Public Service Enterprise Group Incorporated (PSEG), Public Service Electric and Gas Company (PSE&G) and PSEG Power LLC (Power). Information contained herein relating to any individual company is provided by such company on its own behalf and in connection with its respective Form 8-K. PSE&G and Power each makes representations only as to itself and makes no other representations whatsoever as to any other company.

Item 7.01 Regulation FD Disclosure

In December 2017, the Tax Cuts and Jobs Act (the "Act") was enacted, which made significant changes to U.S. tax law. In particular, under the Act, the statutory U.S. corporate income tax rate will decrease from a maximum of 35% to 21% and certain changes were made to bonus depreciation rules. The rate reduction took effect on January 1, 2018.

For the year ended December 31, 2017, PSEG will be required to assess the impact of Financial Accounting Standards Board Accounting Standards Codification 740, *Income Taxes*, which requires that the effect on deferred tax assets and liabilities of a change in tax rates be recognized in the period the tax rate change was enacted. PSEG, based on currently available information, expects the enacted reduction in the statutory U.S. corporate income tax rate, as well as other aspects of the Act, will have the following material impacts on its consolidated financial statements for the year ended December 31, 2017:

- PSEG expects to record a one-time, non-cash earnings benefit in the range of \$660 million to \$850 million.
- Approximately \$530 million to \$650 million of this non-cash earnings benefit is expected to relate to the impact of the Act on Power.
- Approximately \$130 million to \$180 million of this non-cash earnings benefit is expected to relate to the impact of the Act on the accounting for the leveraged lease portfolio managed by PSEG Energy Holdings, L.L.C.
- PSE&G expects to have excess deferred taxes in the range of \$1.8 billion to \$2.2 billion. PSE&G records the revenue impact of excess deferred taxes as regulatory liabilities where it is probable that refunds will be made to customers in future rates. However, the amount and timing of any such refund cannot be determined at this time.

Beginning in 2018, PSEG, on a consolidated basis, will incur lower income tax expense resulting in a decrease in its projected effective income tax rate. This is also expected to increase PSEG's and Power's net income. Power's operating cash flows will reflect the full expensing of capital investments for income tax purposes. PSEG and Power expect that the interest on their debt will continue to be fully tax deductible albeit at a lower tax rate. For PSE&G, the Act is expected to lead to lower customer rates over time due to lower income tax expense recoveries and the refund of deferred income tax regulatory liabilities, partially offset by the impacts of higher rate base. The impact of the lower federal income tax rate on PSE&G will be reflected in PSE&G's upcoming distribution base rate case filing and its Transmission formula rate filings. The Act is generally expected to result in lower operating cash flows for PSE&G resulting from the elimination of bonus depreciation, partially offset by higher revenues due to the higher rate base. The full impact of these and other provisions of the Act cannot be determined at this time.

The impact of the Act may differ from these estimates, possibly materially, due to, among other things, changes in interpretations and assumptions PSEG has made, guidance that may be issued and actions PSEG may take as a result of the Act. PSEG will continue to assess the expected impacts of the Act and will include its estimated impacts and additional details in its Annual Report on Form 10-K for the year ended December 31, 2017.

Forward-Looking Statements

The statements contained in this Form 8-K that are not purely historical are "forward-looking statements" within the meaning of The Private Securities Litigation Reform Act of 1995. Such forward-looking statements are subject to risks and uncertainties, which could cause actual results to differ materially from those anticipated. Such statements are based on management's beliefs as well as assumptions made by and information currently available to management. Factors that may cause actual results to differ materially from those contemplated in any forward-looking statements made by us herein are discussed in PSEG's Annual Report on Form 10-K and subsequent reports on Form 10-Q and Form 8-K filed with the Securities and Exchange Commission (SEC), and available on its website: <http://investor.pseg.com>. All of the forward-looking statements made in this Form 8-K are qualified by these cautionary statements and PSEG cannot assure you that the results or developments anticipated by

management will be realized or even if realized, will have the expected consequences to, or effects on, PSEG or its business, prospects, financial condition, results of operations or cash flows. Readers are cautioned not to place undue reliance on these forward-looking statements in making any investment decision. Forward-looking statements made in this Form 8-K apply only as of the date hereof. While PSEG may elect to update forward-looking statements from time to time, it specifically disclaims any obligation to do so, even in light of new information or future events, unless otherwise required by applicable securities laws.

