CHAPTER 42

AN ACT concerning advanced nuclear energy generation and economic development in the State and supplementing Title 48 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.48:9A-6 Short title.

1. This act shall be known and may be cited as the "Powering Opportunity, Workforce, and Energy Reliability for New Jersey Act" or "Power NJ Act."

C.48:9A-7 Findings, declarations.

2. a. The Legislature finds and declares that:

(1) Electricity consumption, primarily driven by data center consumption, is increasing across the regional grid at a pace that outstrips the entry of new generation resources, placing the reliability of electric service at serious risk for customers throughout New Jersey;

(2) The resulting lack in available generation capacity has driven wholesale capacity market prices to record highs, costs that are ultimately borne by New Jersey electric ratepayers;

(3) Dependable and affordable electric power is essential to sustaining the competitiveness of the State's economy and to protecting the health, safety, and well-being of New Jersey residents;

(4) Nuclear generation is inherently carbon-free and consistently achieves higher capacity factors than any other class of generation resource, exceeding 92 percent on a fleet-wide basis, with certain advanced reactor designs potentially capable of operating at full rated output 98 percent of the time;

(5) Nuclear facilities also achieve higher effective load-carrying capacity, reaching as high as 98 percent in summer and 96 percent in winter, potentially enabling them to deliver power to the grid reliably across all weather conditions and seasons;

(6) Nuclear generating stations maintain on-site fuel supplies that confer strong energy security;

(7) New Jersey's nuclear generating capacity has contracted in recent years, most significantly following the 2018 economic retirement of the Oyster Creek Generating Station, which, at the time of its closure, was the oldest operating commercial nuclear reactor in the United States;

(8) A new generation of advanced nuclear reactor designs is now in the process of entering commercial development, offering meaningful improvements over earlier designs in the areas of safety, thermal efficiency, waste generation, and overall environmental performance;

(9) Advanced nuclear generating facilities have the potential to deliver firm, zero-carbon electricity that enhances grid stability, supports the integration of variable renewable resources, and produces sustained, high-paying employment alongside wide-ranging regional economic benefits;

(10) The development and construction of an advanced nuclear energy project creates significant economic activity for the State, generating thousands of high-wage jobs during the construction and development phases and a substantial number of permanent, skilled trade, and professional jobs over the facility's operational life;

(11) Advanced nuclear energy development creates meaningful opportunities for New Jersey-based businesses across manufacturing, engineering, fabrication, and related supply chain sectors, and the State is well-situated to cultivate a domestic nuclear supply chain network with benefits that would extend across multiple industries and workforce segments;

(12) Advanced nuclear energy facilities generate material and enduring tax revenues for the State and for the municipalities in which they are located or adjacent, thereby supporting local

public services, infrastructure, and community development and providing long-term fiscal stability to host communities;

(13) A dependable supply of nuclear power supports the State's economic development objectives by making New Jersey a competitive destination for energy-intensive industries, including advanced manufacturing, life sciences, and technology companies, which require reliable, carbon-free electricity as a prerequisite to siting or expanding their operations; and

(14) The environmental and public interest attributes of electric generation resources, including the zero-carbon nature of nuclear generation, its contribution to long-term grid reliability and energy security, and its durable benefits to the health and welfare of New Jersey residents, hold independent value to the State and its people that is separate and distinct from the electricity that electric generation resources produce. As a result, it is appropriate for the State to recognize, define, and actively support these attributes as a matter of State energy and environmental policy.

b. The Legislature therefore determines that, when affordable, it is in the public interest of New Jersey residents to actively promote and support the siting and construction of advanced nuclear reactors in the State as a source of carbon-free, reliable, and affordable electric power and as a driver of sustained economic development, high-quality job creation, supply chain growth, and long-term fiscal strength for the State and its municipalities.

C.48:9A-8 Definitions.

3. As used in this act:

"AACE" means the Association for the Advancement of Cost Engineering.

"Advanced nuclear energy project" means a project to construct a nuclear electricity generation facility of at least one advanced nuclear reactor located in the State connected to the electric transmission system in this State.

"Advanced nuclear reactor" or "advanced reactor" means a nuclear reactor that:

(1) has significant improvements compared to reactors operating on December 27, 2020, including improvements such as: (a) additional inherent safety features; (b) lower waste yields; (c) improved fuel and material performance; (d) increased tolerance to loss of fuel cooling; (e) enhanced reliability and improved resilience; (f) increased proliferation resistance; (g) increased thermal efficiency; (h) reduced consumption of cooling water and other environmental impacts; (i) the ability to integrate into electric applications and nonelectric applications; (j) modular sizes that allow for deployment that corresponds with the demand for electricity or process heat; and (k) operational flexibility to respond to changes in demand for electricity or process heat and to complement integration with intermittent renewable energy or energy storage; or

(2) is of a design that has received design certification, design approval, or a combined license from the Nuclear Regulatory Commission after January 1, 2000.

"Aggregate output" means the trailing three-year average of aggregate megawatts of capacity, as defined in the PJM Open Access Transmission Tariff, or the average of all calendar years following the commercial operation date if fewer than three calendar years of post-commercial operation data are available, made available to the PJM Reliability Pricing Model capacity market, the Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate, by a qualified project and by any existing New Jersey nuclear reactors owned in whole or in part by the same entities as the qualified project or by their parent companies.

"Authority" means the New Jersey Economic Development Authority.

"Baseline threshold" means the amount of nuclear energy agreed upon pursuant to paragraph (8) of subsection b. of section 5 of this act and the existing nuclear reactor baseline as established by the board pursuant to subsection f. of section 4 of this act.

"Basic generation service provider" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Board" means the New Jersey Board of Public Utilities.

"Class II cost estimate" means a cost estimate prepared in accordance with the AACE International Recommended Practice No. 18R-97, Cost Estimate Classification System, or successor practice, classified as a Class II estimate, with an expected accuracy range of approximately negative 15 percent to positive 20 percent, suitable for use as a project control baseline.

"Class IV cost estimate" means a cost estimate prepared in accordance with the AACE International Recommended Practice No. 18R-97, Cost Estimate Classification System, or successor practice, classified as a Class IV estimate, with an expected accuracy range of approximately negative 30 percent to positive 50 percent, suitable for use in project screening and feasibility analysis.

"Co-located energy user" means an end-use customer that receives electricity from a qualified project through a physical configuration that does not rely, in whole or in part, on the transmission or distribution system of an electric public utility, including any configuration in which the customer's load is served behind the qualified project's point of interconnection or through a dedicated tie-line, regardless of whether the customer is separately metered.

"Direct power purchase agreement" means a bilateral contract between a qualified project and an end-use customer for the sale of electric energy, capacity, or associated attributes from the qualified project, under which the end-use customer receives delivery through the transmission or distribution system rather than through a co-location arrangement, and that results in the project's generating capacity being made unavailable to the PJM Reliability Pricing Model capacity market, Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate.

"Effective load-carrying capability" or "ELCC" means the amount of additional electric load a resource can support while maintaining the same level of system reliability, calculated in accordance with the methodology used by PJM Interconnection, L.L.C. for accreditation of generation and storage resources in the PJM capacity market.

"Electric power supplier" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Electric public utility" means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Environmental attributes" means any and all aspects, characteristics, claims, credits, offsets, allowances, and benefits, whether or not separately tradeable, associated with the generation of electricity from a qualified project that reduce, avoid, or displace emissions of greenhouse gases or criteria air pollutants, together with the zero-carbon nature of the generation. "Environmental attributes" shall not include: (1) federal, State, or local tax credits or production credits; (2) renewable energy certificates issued under the State's renewable portfolio standard; or (3) zero-emission certificates issued under section 3 of P.L.2018, c.16 (C.48:3-87.5).

"Existing nuclear reactor baseline" means the aggregate amount of nuclear energy made available to the PJM Reliability Pricing Model capacity market, the Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate, by existing New Jersey nuclear reactors owned in whole or in part by the same entity or entities as the proposed project, or by their parent companies, reflected as the average annual megawatts of capacity, as defined in the PJM Open Access Transmission Tariff, of the existing nuclear

reactors made available to the PJM Reliability Pricing Model capacity market, the Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate, over the preceding three calendar years.

"Non-performance costs" means any costs, expenses, losses, or liabilities arising from: (1) construction costs exceeding the verified total construction cost estimate; (2) failure to achieve commercial operation by the target commercial operation date set forth in the final board order issued pursuant to section 6 of this act; (3) failure to meet project development milestones established in the final board order; (4) delays, suspensions, or cancellations of the project for reasons other than a force majeure event as defined in the final board order or a change in law pursuant to section 6 of this act; and (5) any other costs incurred by a qualified project entity that are not expressly recoverable under the RCC price and payment schedule approved by the board.

"Nuclear energy" means electric energy generated by a nuclear reactor.

"Nuclear reactor" means an apparatus required to be licensed by the Nuclear Regulatory Commission that is designed or used to sustain nuclear fission in a self-supporting chain reaction.

"Nuclear Regulatory Commission" or "NRC" means the United States Nuclear Regulatory Commission.

"PJM Interconnection, L.L.C." or "PJM," means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51), or any successor entity thereto.

"Qualified project" means an advanced nuclear energy project approved by both the board and the authority pursuant to sections 5 and 6 of this act.

"Qualified project entity" means the person or entity that develops, owns, or operates a qualified project and is bound by the terms of the final board order and authority resolution, together with any permitted successor or assignee.

"Rated output" means the maximum sustained electric generating capacity of a qualified project, measured in megawatts at the generator terminals, as specified in the Nuclear Regulatory Commission operating license or combined license issued for the qualified project.

"Reliable Capacity Certificate" or "RCC" means a certificate, issued by the board or its designee, representing the environmental attributes of one megawatt hour of electric generation from a qualified project.

"Stipulation" means a written agreement entered into among the staff of the board, the chief executive officer of the authority, and a provisionally qualified project entity, setting forth the terms negotiated under section 5 of this act.

"Verified total construction cost estimate" means the Class II cost estimate of all projected construction costs submitted by a qualified project entity pursuant to paragraph (2) of subsection b. of section 5 of this act and verified by the board and the authority, with the assistance of such independent consultants as the board or the authority may retain, as being necessary, justified, and as accurate and realistic as current information permits.

C.48:9A-9 Program established to promote construction of affordable advanced nuclear energy projects.

4. a. The board shall establish a program, in accordance with the provisions of this act, to promote the construction of affordable advanced nuclear energy projects in the State.

b. No later than 180 days after the effective date of this act, the board, in consultation with the authority, shall issue a request for expressions of interest for the construction of advanced nuclear energy projects in the State.

c. Any entity wishing to construct an advanced nuclear energy project and obtain qualified project status shall file with the board, no later than 60 days following publication of the

request pursuant to subsection b. of this section, an expression of interest, which shall include, but need not be limited to, the following:

(1) a letter of intent filed with the Nuclear Regulatory Commission;

(2) a proposed licensing pathway under the Nuclear Regulatory Commission, including identification of any applicable Early Site Permit, design certification, or other prior Nuclear Regulatory Commission determinations on which the project intends to rely;

(3) proposed State and municipal permitting pathways;

(4) a Regulatory Engagement Plan, prepared consistently with Nuclear Regulatory Commission guidance, which shall set forth:

(a) the developer's organizational structure;

(b) the project's design and indicative construction timeline, including the anticipated completion date; and

(c) pre-application engagement materials submitted to, or prepared for, the Nuclear Regulatory Commission;

(5) geotechnical, hydrological, and environmental analyses of the proposed site sufficient to support the regulatory requirements of 10 C.F.R. Part 51, or a copy of any Early Site Permit issued pursuant to 10 C.F.R. s.52.12 et seq.;

(6) a technical description of the proposed system design and technology structure, including reference to any applicable design certification issued under 10 C.F.R. Part 52, Subpart B, and any deviations from the certified design;

(7) a Class IV or better cost estimate, presenting projected construction and operating costs as a reasoned range, together with the assumptions, methodology, and reference projects underlying the estimate, inclusive of budgeted risk and contingency value that is designed to reflect the unique risks associated with the development, construction, and operation of a nuclear generating facility;

(8) the proposed capital structure and financing plan, identifying committed or prospective investors or lenders, and any proposed or anticipated sources of construction-phase funding, including evidence that the project is pursuing and has a reasonable expectation of receiving debt financing from the United States Department of Energy or Department of Commerce covering all or a portion of construction costs, provided that this requirement shall apply only to the extent such federal financing is reasonably available at the time of submission;

(9) the proposed annual volume of megawatt hours of energy to be delivered to the electrical grid serving the State and the proposed amount of megawatts of capacity, as defined in the PJM Open Access Transmission Tariff, to be made available to the PJM Reliability Pricing Model capacity market, the Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate;

(10) if applicable, the existing nuclear reactor baseline;

(11) any proposed direct power purchase agreements, co-located end-use agreements, or other energy offtake agreements, together with a description of anticipated ratepayer benefits and any commitment by the parties to share in the capital costs and any potential cost overruns, and the role that the agreements play in financing the project;

(12) the proposed RCC price structure and schedule under section 7 of this act, reflecting total project revenue requirements over a term not to exceed 40 years, stated as total net present value and on a per-megawatt-hour production basis, inclusive of budgeted risk and contingency value, and presented as a range corresponding to the range of construction costs in the Class IV cost estimate submitted under paragraph (7) of this subsection, with stated low and high bounds for the per-megawatt-hour RCC value;

(13) a projection of the anticipated monthly bill impact on ratepayers resulting from the proposed RCC price structure and schedule throughout the term of the proposal;

(14) a proposal for returning to New Jersey ratepayers some or all revenues earned by the qualified project from the sale of energy, capacity, or ancillary services in PJM during the RCC term, together with revenue projections and a contingency plan in the event the qualified project is unable to participate in the above-listed wholesale markets at PJM;

(15) a comprehensive economic impact and community benefit analysis addressing projected effects on employment, wages, household income, State and local tax revenue, regional economic activity, and infrastructure, including, but not limited to:

(a) a fiscal impact analysis detailing projected direct, indirect, and induced State and local tax revenues, as well as any anticipated Payment in Lieu of Taxes (PILOT) agreements with the host municipality or municipalities;

(b) a demonstration of a project financing gap, including an analysis of the projected internal rate of return with and without the proposed State support, and any identified federal support, including tax incentives, to justify the financial necessity of the RCC price structure proposed pursuant to paragraph (12) of this subsection;

(c) an assessment of the benefits of the project, including the project's role in meeting New Jersey's resource adequacy requirements and how the project will exert downward pressure on PJM wholesale market prices;

(d) an assessment of the potential capacity or wholesale market savings and benefits of the project compared to comparable investments in other non-emitting technologies;

(e) a workforce development and labor plan, which shall include estimates of temporary construction and permanent operations jobs, a commitment to enter into a project labor agreement and pay prevailing wages for any construction services in State or to pay the wages and benefits provided in a collective bargaining agreement between a labor organization as defined in 29 U.S.C. s.152(5) and the employer covering the work, and proposed partnerships with local educational or workforce training institutions;

(f) a supply chain plan detailing realistic and cost-effective opportunities to utilize local suppliers, any known or contracted suppliers, and known or likely supply chain challenges and planned mitigation strategies;

(g) a proposed Community Benefits Agreement or a detailed framework for negotiating such an agreement with the host municipality and local stakeholders; and

(h) a holistic economic assessment of the project, specifically detailing its capacity to attract, support, or retain large-scale commercial and industrial ratepayer load, including, but not limited to, advanced manufacturing facilities and data centers, and impacts on electric utility customer bills caused by the RCC;

(16) an environmental benefit analysis, including:

(a) a quantitative estimate of the total net greenhouse gas emissions avoided or displaced by the project's construction and operation compared to existing and new fossil fuel-fired generation in the PJM region;

(b) an assessment of the project's impact on criteria air pollutants, including nitrogen oxides (NOx), sulfur dioxide (SO2), and particulate matter;

(c) a description of the proposed project's impact on local water resources, including cooling water usage and thermal discharge, and a plan for minimizing the physical footprint on sensitive habitats or preserved lands;

(d) a high-level plan for the management and on-site storage of spent nuclear fuel and any low-level radioactive waste, emphasizing safety and long-term environmental protection; and

(e) a formal statement demonstrating how the project supports the State's clean energy goals and the emissions reduction targets established in the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.); and

(17) any additional information deemed necessary by the board, in consultation with the authority.

d. An expression of interest shall create no contractual obligation between the State and the applicant, and the board's preliminary evaluation shall not commit the State to enter into a stipulation or to issue a final board order.

e. The board shall undertake a preliminary evaluation of all proposed projects and provisionally qualify, or deny provisional qualification of, each proposed project no more than 90 days after receipt by the board of a complete expression of interest. The board may grant provisional qualification to one or more proposed projects. The board, in consultation with the Division of Rate Counsel, in, but not of, the Department of the Treasury, Department of Environmental Protection, and any other State agency the board deems appropriate, shall grant provisional qualification status upon a threshold finding that:

(1) a proposed advanced nuclear energy project is reasonably likely to significantly contribute to meeting the State's energy reliability, resilience, and capacity needs, consistent with the State's clean energy goals;

(2) the range of RCC values presented under paragraph (12) of subsection c. of this section would produce, at one or more values within the range, a net benefit to ratepayers when compared to alternative means of meeting the State's energy reliability and capacity needs over the term of the proposed RCC, considering capacity factor, ELCC, operational life, fuel security, the reliability and resilience contributions of the project to the State's electric system, the contribution of the project to the State's clean energy and emissions reduction goals, and the projected monthly bill impact at the low and high bounds of the range. The board's finding under this paragraph shall not constrain its findings under section 6 of this act; and

(3) if the board considers granting provisional qualification to more than one project, the board shall evaluate the cumulative ratepayer impact of all such projects. The board shall not grant provisional qualification to any additional project if doing so would cause the cumulative ratepayer impact to become unreasonable or excessive as determined under paragraph (4) of subsection a. of section 6 of this act

f. In determining whether to grant provisional qualification status to one or more proposed projects, the board shall assess whether the projects with an energy offtake agreement include one or more of the following provisions:

(1) the energy buyer would agree to pay a per-megawatt-hour price greater than the RCC price set in the final board order issued under section 6 of this act and as may be adjusted pursuant to subsection e. of section 6 of this act;

(2) the energy buyer would share construction development risk that would otherwise be allocated to a qualified project entity as a non-performance cost;

(3) the energy buyer either holds or agrees to hold an equity stake in the proposed project; or

(4) otherwise provides benefits to ratepayers, as determined by the board.

g. If the board grants provisional qualification status to a proposed project, it shall issue a board order to that effect, which shall include an RCC price range corresponding to the range of construction costs in the Class IV estimate pursuant to this section and the megawatt output of the project eligible for RCCs, and all other terms proposed by the project. If applicable, the board shall also establish the existing nuclear reactor baseline in its order designating provisional qualification.

C.48:9A-10 Negotiations with provisionally qualified projects.

5. a. Following a board order granting provisional qualification status to a proposed project, the board and the authority shall enter into negotiations with any provisionally qualified project concerning the RCC price and schedule, any real estate terms, agreements on supply chain guarantees, and any other terms and conditions the board and the authority deem necessary based on the information provided in the expression of interest. The board and the authority may request and consider any additional information they find necessary in connection with their evaluation and negotiations. Throughout the negotiation process, the authority and the board shall consult with the Department of Environmental Protection and other State agencies with applicable expertise. The Division of Rate Counsel, in, but not of, the Department of the Treasury, shall have, with respect to this section and sections 6 and 7 of this act, the right to receive all filings and submissions made to the board or the authority, to submit written comments and evidence, and to petition the board for reconsideration of any final board order.

b. Board staff, the authority's chief executive officer, and a provisionally qualified project shall enter into a stipulation formalizing all terms agreed upon as a result of negotiations. The stipulation shall include, but need not be limited to, the following terms:

(1) the target commercial operation date;

(2) the verified construction cost estimate, which shall be a Class II cost estimate. The verified total construction cost estimate shall be memorialized in any final board order issued pursuant to section 6 of this act and shall serve as the baseline against which cost overruns are measured for purposes of allocating non-performance costs to the project;

(3) the RCC value and payment schedule, including budgeted risk and contingency value that is designed to reflect the unique risks associated with the development, construction, and operation of a nuclear generating facility;

(4) the percentage of the revenues from the qualified project's sale of energy, capacity, or ancillary services in PJM during the RCC term to be returned to New Jersey ratepayers;

(5) critical project development milestones, the timeline for their achievement, and the consequences of failure to meet the milestones;

(6) ongoing project reporting requirements;

(7) a requirement that no RCC payment shall be made until the qualified project is generating electricity and transmitting it to the electric grid;

(8) the amount of nuclear energy that the qualified project shall make available to the PJM Reliability Pricing Model capacity market, Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate;

(9) the amount that the project entity shall reimburse the authority and the board for all reasonable costs incurred in reviewing the project, including consulting fees;

(10) the percentage of new, unanticipated tax credits or governmental benefits that the qualified project entity shall pass along to ratepayers. A qualified project entity may retain new, unanticipated tax credits or other governmental benefits in order to recover its administrative costs related to the qualified project. In addition to the amount of new, unanticipated tax credits or other governmental benefits the qualified project entity retains to cover administrative costs, the qualified project entity may retain up to the lesser of 10 percent, or a different percentage, as negotiated in the stipulation, of any new, unanticipated tax credits or governmental benefits the qualified project entity receives, so long as the amount does not exceed an absolute cap on the allowable retention amount, as also negotiated in the stipulation;

(11) an agreement that the qualified project entity shall implement all reasonable wildlife protection measures necessary to sustain the health and population of wildlife species present in and around the facility site, pursuant to all applicable State and federal requirements; and

(12) an agreement that the qualified project entity shall conduct ongoing community outreach and public education regarding nuclear energy during construction and development of the project and throughout the facility's operating life.

c. Once a stipulation is completed, the stipulation, including all terms, will be made public and the public shall have 30 days to submit comments on the stipulation. During the public comment period, the board shall conduct a public hearing in the municipality that the provisionally qualified project is located.

d. Within 30 days of the close of the public comment period, board staff and the authority's chief executive officer shall review all public comments and discuss potential amendments to the stipulation with the parties where appropriate.

e. A stipulation entered into pursuant to this section shall represent the recommended terms of agreement among board staff, the authority's chief executive officer, and a provisionally qualified project entity but shall not become effective or binding upon the qualified project entity, the State, or any other party unless and until the board issues a final order approving the stipulation pursuant to section 6 of this act.

f. Neither board staff nor the chief executive officer of the authority shall be required to obtain prior approval from the board members or from the authority's board of directors to enter into a stipulation under this section. The stipulation, along with a cost benefit analysis of the stipulation, shall be presented to the board, together with the board staff's and the authority's chief executive officer's recommendations, for the board's consideration.

g. If board staff, the authority's chief executive officer, and a provisionally qualified project entity do not enter into a stipulation within 12 months of the grant of provisional qualification status, that status shall automatically lapse and the project shall cease to be a provisionally qualified project, unless board staff, the authority's chief executive officer, and the project entity consent in writing to extend the negotiating period for one or more additional periods of not more than six months each.

h. Notwithstanding any procurement threshold established under R.S.52:25-23, any circular issued pursuant thereto by the Division of Purchase and Property in the Department of the Treasury, or any board-specific procurement threshold, the board or the authority may engage consulting services on a non-advertised basis using the procedures authorized by R.S.52:25-23 and set forth by the Director of the Division of Purchase and Property in Circular No. 26-02-DPP to assist in carrying out its duties under this act. Any such engagement shall not be applied against the board's or the authority's delegated procurement authority threshold. The requirements of subsection a. of section 1 of P.L.2005, c.92 (C.52:34-13.2) shall not apply to any consulting engagement entered into under this section, provided that any such engagement shall comply with all applicable federal export control laws, rules, and regulations.

C.48:9A-11 Project approval, stipulations.

6. a. No later than 90 days after receiving a stipulation pursuant to subsection e. of section 5 of this act, the board, after consultation with the Division of Rate Counsel, in, but not of, the Department of the Treasury, and after providing public notice of the proposed order and an opportunity for written comment by interested members of the public for a period of 30 days, shall issue an order approving the project, provided the board finds that the stipulation terms ensure each of the following conditions:

(1) all anticipated project costs are necessary and justified, and cost estimates are as accurate and realistic as current information permits;

(2) the entity proposing the project demonstrates financial integrity and sufficient access to capital, including a loan or loan guarantee from the United States Department of Energy or

Department of Commerce covering all or a portion of construction costs, sufficient to support a reasonable expectation of project completion;

(3) the proposed RCC structure distributes the risks and rewards of the project between ratepayers and the qualified project entity in a just and reasonable manner;

(4) the RCC structure will not impose costs on New Jersey electric customers that are unreasonable or excessive, whether considered independently or in relation to customers' overall bills;

(5) the baseline threshold results in a net increase in nuclear energy made available to the PJM Reliability Pricing Model capacity market, the Fixed Resource Requirement, or any other procurement program operated by PJM, as appropriate, equal to greater than 50 percent of the project's rated output;

(6) there is a net benefit to ratepayers;

(7) any energy offtake agreement shall not provide a per megawatt-hour price for electricity lower than the RCC price set in the final board order, as may be adjusted pursuant to subsection e. of section 6 of this act, unless the energy buyer has contributed equity capital or will assume construction risk for the proposed project such that the energy buyer's total cost contribution per megawatt-hour of contracted output, calculated over the term of the RCC, equals or exceeds the RCC price, including any board authorized adjustment; and

(8) any additional criteria established as part of the board's order granting provisional qualification pursuant to subsection g. of section 4 of this act have been met.

b. In evaluating the reasonableness of the proposed RCC price and schedule, the board shall consider:

(1) projected electrical output and anticipated market prices over the anticipated life of the project, including a forecast of electricity revenues from the sale of energy to the grid and capacity derived from the project;

(2) anticipated revenues from RCC sales;

(3) the projected return of market revenues to New Jersey ratepayers over the RCC term, including any merchant exposure assumed by the project developer or profit sharing if market revenues exceed a specified level;

(4) the verified total construction cost estimate;

(5) additional project funding and financing sources, including any energy offtake or co-location arrangement;

(6) the net cost impact on New Jersey electric customers; and

(7) the proposed commercial operation date.

c. If the board is considering more than one qualified project, the board shall consider the ratepayer impact of the qualified projects in totality, and even if each qualified project independently may result in affordable rates to ratepayers, if the cumulative impact of more than one qualified project is unaffordable to ratepayers, the board shall not approve of a subsequent project.

d. If the board does not find that the conditions of this section are satisfied, the board shall issue an order setting forth the basis for its determination. Within 60 days of the order, board staff, the chief executive officer of the authority, and the qualified project entity may submit a revised stipulation addressing the board's concerns, which the board shall consider under the same standards set forth in this section, including all public notice requirements. The provisional qualification status of the project shall remain in effect during the renegotiation period, notwithstanding the time limits in subsection g. of section 5 of this act.

e. A qualified project entity may petition the board for modification of the final board order, including to seek an increase of verified total construction costs or due to a change in

State law or regulation. The board may, upon consent of the authority's chief executive officer, after consultation with the Division of Rate Counsel, in, but not of, the Department of the Treasury, and an opportunity for the public to be heard, grant such a petition upon finding that the requested modification was reasonably unforeseeable, is necessary to preserve the project's continued financial viability, will not impose an unreasonable burden on ratepayers, and that the project entity will maintain the project's economic development and workforce commitments. Any proposed modification that would increase the RCC price, extend the RCC term, reduce the share of market revenues returned to ratepayers, or otherwise materially increase the net cost to ratepayers shall additionally require: (1) an opportunity for written comment by the Division of Rate Counsel and by interested members of the public not less than 30 days prior to any board action; and (2) an express finding by the board, supported by substantial evidence, that the modification is necessary and in the public interest and that there is still a net benefit to ratepayers. For the purposes of this subsection, "change in State law or regulation" means any change that imposes a moratorium on the construction or operation of the qualified project or imposes regulatory requirements that, considered together, significantly increase the total construction cost of the qualified project, as projected at the time of the change in law, provided that the qualified project entity has attempted to mitigate the effects of the change in law to the maximum extent reasonably practicable.

f. Before entering into any agreement after preliminary qualification to sell electricity to a co-located energy user or to any end user through a direct power purchase agreement, the qualified project entity shall obtain board approval. Approval of any such agreement shall include a requirement that some percentage of revenues of any direct power purchase agreement be returned to ratepayers pursuant to paragraph (2) of subsection d. of section 7 of this act.

g. A board order issued pursuant to this section shall not be subject to change without the joint consent of the board, the chief executive officer of the authority, and the qualified project entity.

C.48:9A-12 Reliable Capacity Certificate program.

7. a. No later than 18 months after first issuing a board order memorializing qualified project terms pursuant to section 6 of this act, the board shall establish, by adopting rules and regulations, a Reliable Capacity Certificate program to require that a proportional number of the megawatt hours sold in this State by each electric power supplier and each basic generation service provider be from nuclear energy generated by qualified projects. The RCC program shall be designed to support at least 1,100 megawatts of capacity, as defined in the PJM Open Access Transmission Tariff, from qualified projects. Each obligated entity's required nuclear energy share shall correspond to the projected RCC output of each designated qualified project, over a term of not more than 40 years as approved by the board, commencing on the commercial operation date of the qualified project. The 1,100 megawatt figure stated in this subsection shall constitute a program design parameter and shall not constitute a commitment by the State to procure any specific quantity of generation. The State shall procure generation only from qualified projects approved by the board and on the terms set forth in a final board order issued pursuant to section 6 of this act.

b. (1) A qualified project shall earn one RCC for each megawatt-hour of electricity it generates. If a qualified project executes an agreement to sell more than one percent of its total generation to any single co-located energy user or through a direct power purchase agreement with an end user, the megawatt-hours sold pursuant to the agreement shall not be eligible for RCC credit.

(2) Each calendar year beginning with the qualified project's commercial operation date and continuing through the expiration of the RCC term, a qualified project shall report to the board its aggregate output. For any calendar year in which the aggregate output falls below

the baseline threshold established by the board pursuant to paragraph (5) of subsection a. of section 6 of this act, due to an agreement with a co-located energy user or direct power purchase agreement, the quantity of megawatt-hours generated by the qualified project that are eligible to receive RCCs in that calendar year shall be reduced by the corresponding shortfall.

c. Each electric power supplier and basic generation service provider shall satisfy its RCC program obligation through the purchase of RCCs at the price and over the compliance period required by the board's order designating a qualified project.

d. (1) Revenues earned by a qualified project from sales of energy, capacity, or ancillary services in PJM during the RCC program term shall be returned to the electric power supplier or basic generation service provider, as appropriate, no later than 60 days from the receipt of such revenues and the electric power supplier or basic generation service provider shall have no more than 90 days to return those revenues to New Jersey ratepayers as set forth in a final board order issued pursuant to section 6 of this act.

(2) A share of revenues, as agreed between the authority, the board, and the qualified project, derived from a direct power purchase agreement with an end user that neither contributed to construction financing, nor was addressed in the final board order, shall be returned to the electric power supplier or basic generation service provider, as appropriate, no later than 60 days from the receipt of such revenues and the electric power supplier or basic generation service provider shall have no more than 90 days to return those revenues to ratepayers.

e. A qualified project shall not be eligible to receive an RCC for a megawatt hour of electricity generation if the qualified project also receives a zero-emission certificate pursuant to section 3 of P.L.2018, c.16 (C.48:3-87.5) for that megawatt hour of electricity generation.

C.48:9A-13 Information submitted to be subject to confidentiality procedures.

8. The financial and other information submitted to the board and authority pursuant to sections 4, 5, and 6 of this act may be submitted on a confidential basis and shall be subject to the confidentiality procedures set forth pursuant to N.J.A.C.14:1-12.1 et seq., or any successor regulation, and section 1 of P.L.1982, c.222 (C.48:2-16.4), including the procedures for designating, challenging, and reviewing claims of confidentiality. The Division of Rate Counsel, in, but not of, the Department of the Treasury, or PJM's independent market monitor may enter into nondisclosure agreements with the board, the authority, or a qualified project entity, as applicable, to receive information designated as confidential pursuant to this section for purposes of performing their respective oversight and market monitoring functions. Nothing in this section shall be construed to limit the right of the Division of Rate Counsel to access information pursuant to section 5 of this act or the application of P.L.1963, c.73 (C.47:1A-1 et seq.) for information that is not properly designated and maintained under the applicable confidentiality procedures.

C.48:9A-14 Rules, regulations.

9. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the board, in consultation with the authority, is authorized to adopt immediately upon filing with the Office of Administrative Law rules and regulations necessary to implement this act. The rules and regulations adopted pursuant to this section shall be effective for a period not to exceed 18 months following the date of filing and may thereafter be amended, adopted, or readopted by the board in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

10. This act shall take effect immediately.

Approved July 13, 2026.