Governor Philip D. Murphy
Office of the Governor
225 W. State Street
Trenton, NJ 08608

Dear Governor Murphy: May 2, 2018

On behalf of consumers, labor unions, businesses, environmental advocates and chemical and pharmaceutical manufacturers, representing more than 1.3 million New Jersey ratepayers, more than 1,800 large and small New Jersey businesses employing more than 50,000 workers throughout the Garden State, and more than 200,000 citizen members of environmental organizations, we write seeking your leadership to conditionally veto the nuclear bailout legislation (**S2313**) that was passed by the Legislature on April 12, 2018. We, the undersigned, strongly oppose S2313 as it is written.

As described more fully below, **S2313** fails to strike a proper balance between utility consumers and the nuclear power industry, fails to protect New Jersey's economy from unfair competition, is counter to the principles of open and transparent government and will compromise New Jersey's clean energy future. While we do not oppose a subsidy for nuclear energy if it is first proven to be necessary, we do oppose, as would be required under **S2313**, taxpayer and employer funded subsidies when they are not needed and which are established behind closed doors by the interested parties and without ratepayer participation.

During months of hearings and debates, PSEG has consistently stated three principles:

1. PSEG should not get one dollar more than is needed;
2. PSEG has committed to opening its books to state regulators, (but not in a public or transparent manner);
3. PSEG agrees that any subsidies provided by FERC, PJM and/or other regional initiatives should offset either in part or in its entirety New Jersey taxpayer and employer funded subsidies.

S2313 fails to guarantee ratepayers and businesses will not pay one dollar more than is needed, nor that subsidies received from FERC, PJM, RGGI and/or other regional initiatives will offset any New Jersey subsidy. Moreover, the bill fails to require the BPU to conduct a proceeding in the open and transparent manner required by the Administrative Procedures Act. Indeed, the bill fails to even guarantee that New Jersey's statutorily established ratepayer representative, the NJ Division of Rate Counsel, will be part of the process, let alone other affected stakeholders.

PSEG has stated that their nuclear operations are profitable this year and will be at least through 2019. We expect to know by the end of May 2018 whether or not PSEG's bid into the PJM auction clears the wholesale market and if so whether or not the nuclear power plants will continue to be profitable for an additional four years into the future. If this bill is signed as written, New Jersey rates will be higher than those of adjoining states even though a sizable portion of the output of the nuclear plants is consumed in those states. Because ratepayers in other states will not pay the subsidies, S2313 harms New Jersey ratepayers and puts our manufacturers at a competitive disadvantage vis-à-vis their competitors in other states.

In order to strike an appropriate balance between PSEG, we strongly believe that **S2313** must include the following important provisions:

- Guarantee that as a condition precedent to nuclear power corporations obtaining ratepayer funded subsidies must first satisfy a **burden of proof of financial distress** and mandating review of a subsidy application by the Ratepayer Advocate and interested stakeholders. The bill should delete references to "cost of capital," "market risk" and assumed minimum returns on equity as elements

that can be taken into account to determine whether a bailout is appropriate. The plants' profitability should be determined via an independent analysis of cost and revenue under the Administrative Procedure Act to protect open and transparent government and accountability.

- Guarantee the full inclusion and participation of the **NJ Division of Rate Counsel** to protect ratepayers and avoid setting an anti-consumer precedent that diminishes the role of New Jersey's Ratepayer Advocate.
- Establish a process for an **annual financial review** and true-ups, with ratepayer refund as needed, of each nuclear plant receiving subsidies of its costs and revenue to assure that PSEG's stated principle that it only receive the financial support that is actually required guides the process. The approach represented in S2013 could provide windfall profits to PSEG over a 10-year period or longer.
- Require a **ten-year sunset provision** similar to the ones included in both the New York and Illinois Zero Emission Credit programs.
- Ensure that the nuclear plants do not receive unnecessary subsidies:
    - If the plants receive other subsidies from other entities such as PJM, FERC, DOE, RGGI, etc.; it would be **clearly deducted** from the state subsidy. S2313 as written does not assure that such deductions will be made.
    - If the plants receive subsidies from other sources like PJM for their fuel diversity, baseload, or reliability value, then these subsidies must be **deducted** from the subsidies provided by the ratepayers.
    - Any financial gain to the plants or increases in market prices generally due to the pricing of carbon that result from the State rejoining the **Regional Greenhouse Gas Initiative** should also be taken into account and credited against the ratepayer subsidies.
    - Include **clawback provisions** to protect consumers and ensure any additional financial gains are returned to the ratepayers. The subsidies should not be irrevocable **as the bill provides.**

Ensure that no state-funded subsidies are paid to **out-of-state nuclear facilities** owned by PSEG or Exelon, including the Peach Bottom, Limerick or Three Mile Island or any other out-of-state facility. The 40% amount attributable to the nuclear plants is overstated due to the planned retirement of Oyster Creek. The proper figure should be 33%, which would eliminate the likelihood that an out of state nuclear plant would be subsidized by NJ ratepayers.

Protect workers against layoffs or contractors being brought in to replace them through the life of the subsidy.

Without the changes above, we believe that **S2313** is an unwarranted bailout for the nuclear power industry at the expense of New Jersey's environment and ratepayers.

We do not oppose a transparent, open process to consider whether or not there is a need for a subsidy to achieve the goals of S2313. However, the legislation as written prevents the BPU, or anyone else, from determining whether verifiable financial need actually exists. The process laid out in the bill hamstrings any meaningful review by the Board of Public Utilities. Consumers will bear the cost of $300 million in annual subsidies to nuclear plants, without adequate review by the NJ Division of Rate Counsel and the public to verify that such support is warranted.

S2313 is universally unpopular with New Jersey's residents and businesses, as has been repeatedly expressed at multiple legislative hearings and through independent opinion research. The severe reservations with the language, lack of financial transparency, and the process surrounding the Zero Emission Credit that has been expressed by so many expert witnesses should itself give pause to enacting **S2313.**

We, the undersigned urge you to conditionally veto the legislation to ensure an open and transparent process for the people of New Jersey and to ensure rates are fair and reasonable for ratepayers.

Finally, we request to meet with you to discuss any or all of the recommendations made herein, and at your earliest convenience given the urgent nature of this legislation. Please directly contact Ev Liebman via cell at 202.664.6984 and e-mail at eliebman@aarp.org to coordinate a time, date and location, and we are happy to meet. Please reach out to us to coordinate scheduling.

With appreciation for your continued engagement and leadership on this critical issue for our state economy, environment, employers and ratepayers.

Sincerely,

Rev. Fletcher Harper
GreenFaith

Marcia Marley
BlueWave NJ

Amy Goldsmith
Clean Water Action

Rob Gregson
UU Faith Action NJ

Doug O'Malley
Environment New Jersey

Jeff Tittel
NJ Sierra Club

Dena Mottola Jaborska
NJ Citizen Action

Jerome Montes
Main Street Alliance

Gordon MacInnes
NJ Policy Perspective

Ev Liebman
AARP New Jersey

Dennis Hart
Chemistry Council of New Jersey

Steven Goldenberg
New Jersey Large Energy Users Coalition

Analilia Mejia
NJ Working Families Alliance

Walt McRee & Joan Bartl
Banking on New Jersey

Janice Fitzgerald
Health Professionals & Allied Employees

Renee Wolf Koubiadis
Anti-Poverty Network

Hetty Rosenstein
Communication Workers of America

Kevin Brown
SEIU 32 BJ

Tracy Carluccio
Delaware RiverKeeper Network