STATE OF NEW JERSEY

Board of Public Utilities
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ENERGY/CLEAN ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC & GAS COMPANY FOR APPROVAL OF ITS CLEAN ENERGY FUTURE-ENERGY EFFICIENCY ("CEF-EE") PROGRAM ON A REGULATED BASIS	)	PREHEARING ORDER SETTING PROCEDURAL SCHEDULE AND RULING ON MOTIONS TO PARTICIPATE AND INTERVENE
	)	DOCKET NOS. GO18101112 & EO18101113

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

Mathew M. Weissman, Esq., General State Regulatory Counsel, PSEG Services Company for Public Service Electric and Gas Company

Aaron Kleinbaum, Esq., Eastern Environmental Law Center for Environment New Jersey; Sierra Club; Environmental Defense Fund; New Jersey League of Conservation Voters; and Natural Resources Defense Council

Steven S. Goldenberg, Esq., Giordano, Halleran & Ciesla, P.C. for New Jersey Large Energy Users Coalition

BY COMMISSIONER DIANNE SOLOMON:

BACKGROUND AND PROCEDURAL HISTORY

On January 13, 2008, L. 2007, c. 340 (the "Act") was signed into law based on the New Jersey Legislature's findings that energy efficiency and conservation measures must be essential elements of the State's energy future, and that greater reliance on energy efficiency and conservation will provide significant benefits to the citizens of New Jersey. The Legislature also found that public utility involvement and competition in the conservation and energy efficiency industries are essential to maximize efficiencies. N.J.S.A. 26:2C-45.

Pursuant to Section 13 of the Act, codified as N.J.S.A. 48:3-98.1(a)(1), an electric or gas public utility may, among other things, provide and invest in energy efficiency and conservation programs in its service territory on a regulated basis. Such investment in energy efficiency and conservation programs may be eligible for rate treatment approved by the New Jersey Board of

Public Utilities ("Board" or "BPU"), including a return on equity, or other incentives or rate mechanisms that decouple utility revenue from sales of electricity and gas. N.J.S.A. 48:3-98.1(b). Ratemaking treatment may include placing appropriate technology and program costs investments in the utility's rate base, or recovering the utility's technology and program costs through another ratemaking methodology approved by the Board. An electric or gas utility seeking cost recovery for any energy efficiency and conservation programs pursuant to N.J.S.A. 48:3-98.1 must file a petition with the Board.

On July 16, 2009, the Board issued an Order[1] authorizing Public Service Electric and Gas Company ("PSE&G" or "Company" or "Petitioner") to implement eight (8) energy efficiency programs: 1) Residential Whole House Efficiency Sub-Program; 2) Residential Multi-Family Housing Sub-Program; 3) Small Business Direct Install Sub-Program; 4) Municipal/Local/State Government Direct Install Sub-Program; 5) Hospital Efficiency Sub-Program; 6) Data Center Efficiency Sub-Program; 7) Building Commissioning/O&M Sub-Program; and 8) Technology Demonstration Sub-Program ("EEE Program").

By Order dated July 14, 2011[2], the Board authorized PSE&G to extend three (3) of its eight (8) Sub-Programs: Residential Multi-Family Housing, Municipal/Local/State Government Direct Install, and Hospital Efficiency ("E3 Extension Sub-Programs"). By Order dated April 16, 2015[3], the Board authorized PSE&G to further extend the three (3) sub-programs approved in the July 2011 Order ("EEE Extension II").

By Order dated August 23, 2017,[4] the Board authorized PSE&G to extend the E3 Extension Sub-Programs for a period of two (2) years. The Board further authorized the Company to implement a Smart Thermostat Sub-Program and a Residential Data Analytics Smart Pilot Sub-Program.

October 2018 Filing

On October 15, 2018, PSE&G filed the instant petition with the Board.

On October 29, 2018 the Board designated the undersigned as Presiding Commissioner, who is authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the Board directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by November 16, 2018

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[1] In re the Petition of Public Service Electric and Gas Company Offering an Energy Efficiency Economic Stimulus Program in Its Service Territory on a Regulated Basis and Associated Cost Recovery Mechanism Pursuant to N.J.S.A. 48:3-98.1, BPU Docket No. EO09010058, Order dated July 16, 2009.

[2] In re the Petition of Public Service Electric and Gas Company for an Extension of Three Sub-Components of Its Energy Efficiency Economic Stimulus Program in its Service Territory on a Regulated Basis and Associated Cost Recovery and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric and the Tariff for Gas Service, B.P.U.N.J. No. 15 Gas, Pursuant to N.J.S.A. 48:2-21, 48:2-21.1, and N.J.S.A. 48:3-98.1, BPU Docket No. EO11010030, Order dated July 14, 2011.

[3] In re the Petition of Public Service Electric and Gas Company to Continue Its Energy Efficiency Economic Extension Program on a Regulated Basis ("EEE Extension II"), BPU Docket No. EO14080897, Order dated April 16, 2015.

[4] In re the Petition of Public Service Electric and Gas Company for Approval of its Energy Efficiency 2017 Program and Recovery of Associated Costs ("EE 2017 Program"), BPU Docket No. EO17030196, Order dated August 23, 2017.

and noted that any party wishing to file a motion for admission of counsel pro hac vice do so concurrently with any motion to intervene or participate.

On November 14, 2018, Staff issued a letter of administrative deficiency.

On January 7, 2019, PSE&G made a supplemental filing. On January 9, 2019, Staff issued a letter indicating that the supplemental filing satisfied the Minimum Filing Requirements. The 180 day period for Board review therefore began on January 7, 2019.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED

A. Nature of Proceedings

Through this proceeding, PSE&G seeks approval to implement twenty-two (22) sub-programs, including seven (7) residential subprograms, seven (7) commercial and industrial ("C&I") subprograms, and eight (8) pilot subprograms (collectively, "2018 EE Programs"). The total proposed investment for the 2018 EE Programs is approximately $2.8 billion, including $2.5 billion for investment and approximately $283 million in operating and expenses over the proposed six (6) year term of the program. The Company proposes to recover the costs associated with the 2018 EE Programs via a new CEF-EE Program component ("CEF-EEC") of the Company's electric and gas Green Programs Recovery Charge ("GPRC"), which would be filed annually after the proposed initial period. In addition, the Company proposes a decoupling mechanism for recovering lost revenues, called the Green Enabling Mechanism ("GEM") and requests Board approval of this mechanism.

B. Issues to be Resolved

The cost effectiveness and cost efficiency of the proposed 2018 EE Programs;

The reasonableness and lawfulness of the proposed cost recovery mechanism; and

The reasonableness and lawfulness of the request to recover lost revenues and of the mechanism proposed to do so.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in PSE&G's service territory at a time(s) and place to be determined.

4. SCHEDULE OF HEARING DATES, TIME AND PLACE

If necessary, evidentiary hearings will be held at a time(s) and place to be determined in the course of this proceeding and communicated to the public at that time.

5. STIPULATIONS

The Company, Rate Counsel, and Staff entered into a Non-Disclosure Agreement on November 19, 2018. On November 19, November 20, and December 7, respectively, Rate Counsel witnesses Ezra Hausman, Dante Mugrace, and David Dismukes acknowledged receipt of the Non-Disclosure Agreement.

6. SETTLEMENT

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. AMENDMENTS TO PLEADINGS

None at this time

8. DISCOVERY AND DATE FOR COMPLETION

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 or as provided in Exhibit A.

9. ORDER OF PROOFS

PSE&G has the burden of proof. The hearings will be conducted by topic (see point 12, below); within each topic, the hearings will be conducted in the following order:

First – PSE&G

Second – Rate Counsel

Third – New Jersey Large Energy Users Coalition

Fourth – Eastern Environmental Law Center

Fifth – Board Staff

10. EXHIBITS MARKED FOR IDENTIFICATION

None at this time

11. EXHIBITS MARKED IN EVIDENCE

None at this time

12. ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES

PSE&G will present the following three witnesses: Karen Reif, Vice President, Renewables and Energy Solutions; Steven Swetz, Senior Director, Corporate Rates and Revenue Requirements; and Daniel Hansen, Vice President, Christensen Associates Energy Consulting, LLC. Additional witnesses may be identified by PSE&G as necessary for purposes of rebuttal or surrebuttal.

Rate Counsel will present the following three witnesses: Dante Mugrace, Senior Consultant, PCMG and Associates; David E. Dismukes, Consulting Economist, Acadian Consulting Group, LLC; and Ezra Hausman, Ph.D., President, Ezra Hausman Consulting.

Additional witnesses may be identified by Rate Counsel or other parties as necessary for purposes of testimony.

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. MOTIONS

Motions to Intervene

NJNG Motion to Intervene

On November 5, 2018 New Jersey Natural Gas Company ("NJNG") filed a motion to intervene on the basis that approval of PSE&G's proposed programs would have a direct impact on NJNG as a customer of PSE&G. NJNG takes retail electric distribution service at an NJNG facility in East Brunswick, New Jersey. Specifically, NJNG notes that PSE&G is seeking approval of up to $2.5 billion in CEF-EE Program investment and proposes a $283 million expense budget over the six (6) year term of the program, which NJNG states would have a direct impact upon it as a customer. NJNG also points to its experience in the gas industry as grounds for asserting that its intervention in this proceeding is likely to add constructively to the proceeding. Stating that it has a history of coordinating its activities in dockets at the Board with those of other utilities where appropriate, NJNG says it will do so in this matter and that it will abide by the schedule set for this proceeding, such that its intervention will not delay this proceeding. In the alternative, NJNG requests that its motion be treated as a motion to participate.

NJLEUC Motion to Intervene

On November 13, 2018, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a motion to intervene on behalf of its large end-use members who purchase electric and natural gas distribution service from PSE&G and therefore, asserts NJLEUC, has a significant interest in and will be substantially and specifically affected by the rate relief sought by PSE&G in this proceeding. NJLEUC asserts that its experience as an intervenor in other energy efficiency proceedings means that it will contribute constructively to this matter and that it will endeavor to work cooperatively with other parties to promote efficiency and economy.

Tendril Motion to Intervene

On November 15, 2018, Tendril Networks, Inc. ("Tendril") filed a motion to intervene. Tendril, an energy management services company, states that it is currently helping to run PSE&G's residential behavioral energy efficiency program and that its experience with and understanding of these programs would enable it to provide the Board with valuable insights about both the likely impact of the proposed 2018 EE Programs and strategies for their successful implementation. As such, Tendril asserts that it would add measurably and constructively to the proceeding. Tendril also maintains that its experience with PSE&G efficiency programs gives it a significant interest in the outcome of the case and that this interest is sufficiently different from that of other parties to warrant intervenor status.

Direct Energy Motion to Intervene

On November 16, 2018, Direct Energy, representing five affiliated third party energy supplier companies ("TPSs") — including Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Direct Energy Services, LLC; and Gateway Energy Services Corporation — as well as Centrica Business Solutions, an affiliate offering distributed energy solutions (collectively, "Direct Energy"), moved to intervene on the grounds that the energy efficiency programs proposed by PSE&G would provide products and services already being offered in the competitive market, which would adversely affect Direct Energy as participants in that market. Approval of the 2018 EE Programs, they contend, would place them and similarly situated suppliers and vendors at a competitive disadvantage because PSE&G could subsidize its products and services with ratepayer funds; provide on-bill financing that competitive businesses cannot; and use customer data to which competitors did not have access to offer value-added services that are better provided by the competitive market. Moreover, the movants object to the potential for PSE&G to favor some vendors and suppliers over others, as well as the perceived risk that PSE&G's proposed program might achieve demand reductions without using a competitive process or using "innovative approaches designed by the market."

On November 28, 2018, Petitioner filed a letter objecting to Direct Energy's motion to intervene. In its letter, PSE&G urges denial of intervention because, the Company maintains, the movants have not demonstrated that they will be substantially and directly impacted. The Company claims that the New Jersey Legislature and the Governor have already acted on this issue by first permitting and more recently requiring utility participation in energy conservation and efficiency.[5] According to the Company, the anti-competitive claims made by Direct Energy constitute a misplaced attempt to "rehash" their policy arguments against utility involvement in

[5] Citing N.J.S.A. 26:2C-45; N.J.S.A. 48:3-98.1; and P.L. 2018, c. 17 sections 3(a)–(e)(1) ("Clean Energy Act").

an inappropriate forum and, as such, would confuse and/or delay this proceeding.[6] PSE&G argues that the movants do not meet the standard for participant status but asks that the Board limit the movants to that status if it allows them any role in the matter.

On December 3, 2018, Direct Energy filed a letter responding to the Company's objection. The movants contend that the new energy efficiency standards for energy utilities have no bearing on the question of whether they meet the standard for being granted intervention. Reiterating their claims of a direct and substantial interest in several of PSE&G's proposed programs, as well as the threat to its interests if the Board approves the 2018 EE Programs, the movants maintain that they need the opportunity to propound discovery and cross examine witnesses in order to develop a record that will ensure that their interests are protected. As a result, the movants say, participant status would not suffice.

On December 6, 2018, Direct Energy filed a supplemental motion to intervene ("Supplemental Motion"), reiterating the arguments in its original motion and urging the eligibility of two additional companies, notwithstanding their addition to the motion being made out of time. The Supplemental Motion states that Just Energy and NRG are seeking intervention on the same grounds as the original movants. According to the motion, Just Energy is the parent company of a group of TPSs licensed to do business in New Jersey, and NRG is a leading integrated power company with customers in New Jersey.

On December 17, 2018, PSE&G filed a letter in opposition to the Supplemental Motion in which it argued that the addition of Just Energy and NRG would inevitably cause and was already causing confusion and undue delay. PSE&G asserts that the Supplemental Motion makes contradictory and thus confusing statements regarding the interests of Just Energy and NRG and whether or not these interests align with those of Direct Energy. PSE&G supports this assertion by pointing to a statement in one part of the Supplemental Motion that the interests of the two new movants are aligned with those of Direct Energy and then to a statement elsewhere in the papers that Just Energy and NRG will contribute to a full record because they have unique products, services, and experiences. In addition, PSE&G states that no reason is given for the motion of these companies to be considered when it was submitted three weeks after the last date for motions to intervene.

On December 19, 2018, Direct Energy, Just Energy, and NRG responded. They stated that there is no confusion or contradiction found in the Supplemental Motion; the companies stand by their contention that the interests of NRG, as a demand-side and energy efficiency business, and of Just Energy, as the parent of multiple licensed New Jersey TPSs, are aligned with those of Direct Energy. If the motion and Supplemental Motion are granted, they say, they will serve discovery, submit testimony, file briefs, and in every respect act as a single party. Finally, they reiterated the contention that each of the businesses named will be specifically and directly affected by the outcome of this proceeding given the nature of their businesses and that no other party can effectively represent them, as no other party stand in that position.

EELC Motion to Intervene

On November 16, 2018, the Eastern Environmental Law Center ("EELC") submitted a motion to intervene on behalf of Environment New Jersey ("ENJ"), Sierra Club ("SC"), Environmental Defense Fund ("EDF"), New Jersey League of Conservation Voters ("NJ LCV"), and Natural

[6] Previously made, says PSE&G, "in various PSE&G matters, including the last iteration of the Company's energy efficiency filing." December 17, 2018 Letter at pp4-5.

Resources Defense Council ("NRDC"). The EELC first states that the BPU's decision on PSE&G's energy efficiency and decoupling proposals will substantially, specifically, and directly affect the economic interests, environmental interests, and health of the movants and their members who live within PSE&G's service territory. The EELC also states that the movants have a material interest in ensuring that, if approved, the energy efficiency and decoupling proposals are implemented in the manner most beneficial to customers. Second, the EELC argues that the impacts to the movants and their members are sufficiently different from impacts to any other party in this proceeding due to the movants' unique position as nonprofit organizations working to use partnerships, best practices, and market mechanisms to inform energy policy that benefits the environment. The EELC argues that, with their expertise and experience on related issues, the movants would provide material and unique contributions to and would assist with development of a complete record in this matter, particularly with respect to the potential for the decoupling proposal to enable PSE&G to achieve the optimal level of investment in energy efficiency programs. Third, the EELC asserts that the movants would abide by schedules set for the proceeding and work with all parties to ensure an efficient hearing process and avoid duplication of efforts, confusion, and delays.

Enel X Motion to Intervene

On November 16, 2018, Enel X North America, Inc. ("Enel X") filed a motion to intervene. Enel X states that it is an energy services company which provides complete solutions to businesses and consumers nationwide, including some in PSE&G's service territory. Enel X moved to intervene on the basis that PSE&G's proposed programs would have a substantial impact across the energy service business in its service territory, asserting that Enel X's interests will be directly affected by the outcome of this proceeding and that only as an intervener can it ensure that its interests are adequately represented. In addition, Enel X claims that it has experience partnering with utilities in delivering energy services programs and unique experience in demand response programs such as the Non-Wires Alternative Pilot and Non-Pipes Alternative Pilot. Enel X asserts that this background would make it a valuable contributor to the proceeding and also makes it impossible for any other party to adequately represent it.

KEEA Motion to Intervene

On November 16, 2018, Keystone Energy Efficiency Alliance ("KEEA") filed a motion to intervene. KEEA, a nonprofit, tax exempt 501(c)(6) corporation composed of approximately fifty energy efficiency businesses working in Pennsylvania and New Jersey, moved to intervene on the ground that since its members manufacture, design, and implement energy efficiency programs in buildings across New Jersey, including in the Petitioner's service territory, the Petitioner's proposed programs would directly affect the utilization of their services and products. KEEA also represents that its interests in the proceeding are unique and not adequately represented by any other party; that its members can offer valuable perspectives on the design and implementation of the proposed programs; and that its intervention will not cause confusion or undue delay since it will coordinate its representation with similarly situated parties to the extent that it deems such coordination appropriate.

MaGrann Associates Motion to Intervene

On November 16, 2018, MaGrann Associates ("MaGrann") filed a motion to intervene or, in the alternative, to participate. MaGrann describes itself as a New Jersey consulting and engineering firm specializing in energy efficiency and green building, including within PSE&G's service territory, and asserts that, as a small business deeply engaged in the design and

delivery of energy efficiency at both measure-specific and comprehensive levels, MaGrann, its employees, and its clients will be substantially, specifically, and directly affected by the outcome of this proceeding. MaGrann contends that, as a New Jersey based small business, its interests are unique, and its extensive experience in the design and implementation of utility-run energy efficiency programs enable it to offer a perspective specific to the residential market and the impact of PSE&G's proposal on homeowners and tenants in both affordable and market rate housing.

Sunrun Motion to Intervene

On November 16, 2018, Sunrun Inc. ("Sunrun") filed a motion to intervene. Sunrun describes itself as the largest residential solar, storage, and energy services provider in the country and a leader in deployment of residential distributed energy resources ("DER"). Stating that it has operated in New Jersey for almost ten years, Sunrun represents that its thousands of customers include customers in PSE&G's service territory. Sunrun argues that it has a direct and substantial interest in the 2018 EE Programs because some incorporate residential solar and energy storage components, including the Smart Homes, Volt Var, and Non-Wires Alternative Pilot Sub-programs. Its residential solar and storage business in PSE&G's territory, Sunrun contends, make its interest in the proceeding distinct from that of any other entity. In addition, Sunrun represents itself as a leader in residential DER deployment and describes a solar-plus-storage device that it offers, which it represents as having functions that overlap with those in some of the proposed pilots. Sunrun suggests that the Board broaden the scope of the proceeding to look at opportunities for residential storage behind the meter and appropriate tariff mechanisms, as well as PSE&G's petition.

In its letter of opposition to Sunrun's motion to intervene dated November 28, 2018, PSE&G asserts that Sunrun has failed to assert a proper basis for intervention, relying instead on a general assertion that the proceeding's outcome will have an impact on the residential energy storage and residential energy market in PSE&G's territory. Similarly, Petitioner dismisses Sunrun's statement that it can make a significant contribution to the development of a full record as a vague general claim that fails to meet the standard for intervention. PSE&G contends that Sunrun has not demonstrated that the device referenced in its motion is offered within PSE&G's service territory or that it had plans to do so. PSE&G also objects to Sunrun's request for the Board to broaden the proceeding on PSE&G's petition and, lastly, claims that "the interests of all ratepayers are more than adequately represented by the New Jersey Division of Rate Counsel[.]" November 28 Letter at 7.

On December 3, 2018, Sunrun filed a letter response to the November 28 Letter. In Sunrun's view, PSE&G's stated reason for opposing its motion to intervene is only a cover for its desire to exclude a leading residential solar and storage company from meaningful participation in the proceeding. Sunrun argues that the Board needs Sunrun as a party to fully examine alternative, "less costly" methods of advancing energy efficiency to the PSE&G proposal to expend billions of ratepayer dollars. Sunrun also rejects PSE&G's characterization of its grounds for intervention as being overly vague, noting that its memo references its unique perspective as a developer of residential solar and storage in the Petitioner's service territory.

Motions to Participate

Atlantic City Electric Company, Jersey Central Power & Light, and Rockland Electric Company Motions to Participate

Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), and Rockland Electric Company ("RECO") (collectively, "EDCs") each submitted a motion to participate. Each stated that it is a New Jersey public utility incorporated in the State of New Jersey engaged in the transmission, distribution, and sale of electric energy for residential, commercial, and industrial purposes within New Jersey. Each claimed a significant interest in the outcome of the proceeding because the substantive policy or procedural requirements established in this proceeding are likely to have a precedential effect on subsequent proceedings involving the other EDC. Each also argued that its interest as an investor-owned electric utility serving retail customers is materially different from that of PSE&G and from that of the other parties. Finally, each also stated that its participation would not cause delay or confusion because it would abide by any schedule set for the proceeding and, in the case of ACE and RECO, that their intention was to participate only to receive testimony, briefs, and other materials; to monitor developments and be apprised of potential substantive and procedural policy developments on the issues of the proceeding; and possibly to file briefs or exceptions. JCP&L represented that it would coordinate its representation with other similarly situated entities in the docket where appropriate.

Google Motion to Participate

On November 16, 2018, Google, LLC ("Google"), submitted its motion to participate. Google stated that it is a multinational technology company, an industry leader in smart home technology, including the Nest Learning Thermostat and the Nest Thermostat E. Google first argued that it has a significant interest in the outcome of this proceeding because Google already participates in energy efficiency programs with PSE&G and believes that implementation of PSE&G's proposals will expand deployment of Google products and services. Second, Google asserted that it would add constructively to this matter by clarifying certain issues and contributing to the development of a complete record based on its unique, significant interests in employing its technology to assist PSE&G and the state in reaching energy efficiency goals. Third, Google stated that it will not seek to delay the proceeding in any manner.

Lime Motion to Participate

On November 16, 2018, Lime Energy Co. ("Lime") submitted its motion to participate. Lime stated that it designs and implements direct install energy efficiency programs both nationally and in New Jersey for utilities that target energy savings for commercial customers through the upgrade of existing equipment and installation of new, more energy efficient equipment. Lime argued that the outcome of this proceeding would impact Lime's current and future business activities in New Jersey; that its experience in providing energy efficiency solutions gives it a distinct viewpoint on PSE&G's proposed programs; and that it will abide by the schedule set forth in this proceeding.

Philips Motion to Participate

On November 16, 2018, Philips Lighting North America Corporation ("Philips"), representing itself as a global market leader with recognized expertise in the development, manufacture, and

sale of innovative energy efficient lighting products, and services, submitted its motion to participate. Philips argued that it has a significant interest in this proceeding because PSE&G's proposal will likely directly and specifically affect Philips's products, and services; that its experience in energy efficient lighting and related energy efficiency services will enable it to add constructively to the proceeding; and that it will coordinate its representation with other similarly situated entities where appropriate and abide by any schedule set for this proceeding.

Motions for Admission Pro Hac Vice

By motion dated November 13, 2018, NJLEUC, via Steven S. Goldenberg, Esq., moved for the admission pro hac vice of Paul F. Forshay, Esq. Mr. Goldenberg states that Mr. Forshay is a member in good standing admitted to the bar of the District of Columbia, has had significant experience representing the interests of large end-use customers in utility rate and regulatory proceedings, and has an attorney-client relationship with NJLEUC. The motion included a sworn affidavit by Mr. Forshay, in which he represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and he has experience representing large end-use customers before the Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in regulatory matters and issues, with a particular emphasis on the litigation of utility rate cases and the regulatory treatment of rate-related issues. Mr. Forshay also states that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice.

By motion dated November 16, 2018, Direct Energy, via Christopher E. Torkelson, Esq., filed a motion for admission pro hac vice of Karen O. Moury, Esq. and Kristine E. Marsilio, Esq. Mr. Torkelson states that Ms. Moury and Ms. Marsilio are members in good standing of the Bar of the Commonwealth of Pennsylvania who have a long-standing attorney-client relationship with Direct Energy and who have substantial experience representing the interests of retail energy providers in regulatory and administrative proceedings. The motion included sworn affidavits by Ms. Moury and Ms. Marsilio, in which they represent that they are associated with Mr. Torkelson as New Jersey counsel of record and that their participation would substantially facilitate the representation of Direct Energy and Centrica Business Solutions. Ms. Moury and Ms. Marsilio agree to be bound by and comply with the requirements of all applicable rules, including the requirements of R. 1:20-1(b), R. 1:21-2, and R. 1:28-2, and to pay all fees as required by these rules.

By motion dated December 3, 2018, Sunrun, via Glenn T. Graham, Esq., filed a motion for admission pro hac vice of Beren Argetsinger, Esq. Mr. Graham states that Mr. Argetsinger is a member in good standing of the bar of New York. The motion included a sworn affidavit by Mr. Argetsinger, in which he represents that he is associated with Mr. Graham as New Jersey counsel of record, Sunrun has requested his representation in this matter, and the proceeding involves a specialized area of practice in which he has expertise. Mr. Argetsinger represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice.

SPECIAL MATTERS

None at this time

DISCUSSION AND FINDINGS

Procedural Schedule

I have reviewed the proposal for a procedural schedule, after giving due consideration to the positions of Staff, Rate Counsel, and the Company. I **HEREBY ISSUE** the attached as the Prehearing Order, along with the procedural schedule, identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

Motions to Intervene and Participate

In the instant matter, nine (9) entities have moved for intervenor status and six (6) for participant status. Each motion is addressed below.

Motions to Intervene

The Board considers these motions pursuant to the standards f set forth at N.J.A.C. 1:1-16.3(a). That rule requires that the decision-maker consider the following factors when deciding a motion for intervention:

1. The nature and extent of the moving party's interest in the outcome of the case;

a. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;

2. The prospect for confusion and delay arising from inclusion of the party; and

3. Other appropriate matters.

Alternatively, motions for intervention shall be treated as requests for permission to participate pursuant to N.J.A.C. 1:1-16.5 if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. N.J.A.C. 1:1-16.6(c). Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener establish that it would be substantially, specifically, and directly affected by the outcome of the proceeding and that its interest is sufficiently different from that of the other parties so as to add measurably and constructively to the scope of the case. See Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

Motions to Intervene

NJNG Motion to Intervene

NJNG, a gas utility serving customers in New Jersey, notes that PSE&G proposes to spend up to $2.5 billion on energy efficiency as well as almost $300 million in expenses. Thus, it notes that the Board's decision is likely to have precedential effect and impact on NJNG. NJNG also argues that, as a retail customer, it will be directly affected by the outcome of this proceeding. I acknowledge that the 2018 EE Programs, if approved, would affect NJNG as a retail customer. However, I **FIND** that, as a commercial customer of the Petitioner, NJNG may be represented by Rate Counsel, in its role as the public interest representative and advocate for all ratepayers.

Further I acknowledge that NJNG's experience running its own energy efficiency programs in the gas industry puts it in a position to add to the development of the record in this matter. I am not persuaded, however, that its interest is sufficiently distinct from that of the other parties that it merits intervener status or that NJNG will be affected by the alleged precedential effect of this case. All of the proposed programs will be examined based on their specific components, just as programs proposed or to be proposed by NJNG will be reviewed and analyzed upon their own merits. After weighing the issues, I **FIND** that NJNG has not made a showing that its interest in this matter warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** NJNG's motion for intervention.

Pursuant to N.J.A.C. 1:1-16.5, I will treat this motion, in the alternative, as a motion to participate. Considered under this standard, I **FIND** that NJNG has a significant interest in this proceeding and that, as a participant, NJNG is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** NJNG participant status.

NJLEUC Motion to Intervene

NJLEUC asserts that its members, as large end use customers, will be substantially and directly affected by the outcome of this proceeding and that their perspective cannot be adequately represented by another party. I concur and **FIND** that NJLEUC has a substantial, unique interest. I also **FIND** that NJLEUC's experience as a party to PSE&G energy efficiency proceedings in the past make it likely that this entity will add constructively to the proceedings and unlikely to cause confusion or delay. I **HEREBY GRANT** NJLEUC's motion to intervene.

Tendril Motion to Intervene

Tendril asserts that, because it has helped and is currently helping to implement PSE&G's residential energy efficiency programs, it has a significant interest in the outcome of the case that is sufficiently different from that of other parties, and it is in a position to provide valuable insights about the impact of and strategies for implementation of the 2018 EE Programs. While I acknowledge that Tendril's partnership with PSE&G puts it in a position to be affected by the outcome of the proceeding and that its implementation experience could help it to add to the development of the record in this matter, I am not persuaded that its interest is sufficiently distinct from that of the other parties that it merits intervener status. In addition, these considerations must be weighed against the Board's need to meet its statutory obligations in a timely manner. After weighing the issues, I **FIND** that Tendril has not made a showing that its interest in this matter warrants granting its motion to intervene, given the need for prompt and

expeditious administrative proceedings. Therefore, I **HEREBY DENY** Tendril's motion for intervention.

Pursuant to N.J.A.C. 1:1-16.5, I will treat this motion, in the alternative, as a motion to participate. Considered under this standard, I **FIND** that Tendril has a significant interest in this proceeding and is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** Tendril participant status.

Direct Energy Motion to Intervene

Direct Energy filed a motion to intervene on November 16, 2018. Direct Energy filed a Supplemental Motion identifying NRG and Just Energy as joining in the original request to intervene, on December 6, 2018, following the November 16, 2018 deadline for motions to intervene or participate. Direct Energy, NRG, and Just Energy state that they request intervention because they seek to guard against being placed at a competitive disadvantage relative to the Petitioner in the provision of products and services to customers that are already available in the private market.[7]

I recognize that the active participation of these businesses in offering energy efficiency products and services in the competitive market gives them a significant interest in the outcome of this proceeding. I also acknowledge that they seek to offer the perspectives of companies with specific business models, product and service offerings, and experiences. However, I reject the claim that their interests, perspectives, and business models are so substantial that they merit these entities becoming parties to this proceeding. Moreover, their concerns must be weighed against the Board's need to meet its statutory obligations in a timely manner. Multiple entities have moved to intervene on the same or very similar bases. Admitting each entity that has presented this argument would tend to produce delay or disruption in the proceeding, while distinguishing among them such that some participants in the energy efficiency market are found to have an interest justifying intervention while others do not would likely prove problematic. After weighing the issues, I **FIND** that these entities have not demonstrated that their interest in this matter warrants granting their motion to intervene, given the need for prompt and expeditious administrative proceedings. Therefore, I **HEREBY DENY** Direct Energy, NRG, and Just Energy's motion for intervention.

Pursuant to N.J.A.C. 1:1-16.5, I will treat this motion, in the alternative, as a motion to participate. Considered under this standard, I **FIND** that Direct Energy, NRG, and Just Energy have a significant interest in this proceeding and are likely to add constructively to the case as participants without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** Direct Energy, NRG, and Just Energy participant status.

EELC Motion to Intervene

EELC, representing five state and national environmental organizations, submits that each of its clients has expertise in energy efficiency and that the members of these organizations living in New Jersey will be directly affected by the outcome of this proceeding. In addition, EELC represents several state and national organizations that the Board has found merit intervenor status in prior filings involving energy efficiency. I **FIND** that EELC has a substantial interest in

[7] PSE&G argued that no reason was given for the motion of NRG and Just Energy to be considered when it was submitted three weeks after the deadline for motions to intervene. Given the resolution reached on the substantive motion for intervention, I will not reach this procedural argument.

ensuring that PSE&G's energy efficiency and decoupling proposals, if approved, are implemented in the manner most beneficial to its members. I also **FIND** that this interest is sufficiently different from that of other parties, due to the movants' positions as nonprofit organizations working to promote energy policy that benefits the environment. Moreover, I **FIND** that based on the movants' experience and expertise in energy efficiency programs and decoupling policies, the movants' intervenor status could add measurably and constructively to the scope of the case without resulting in undue delay or confusion. Accordingly, I **HEREBY GRANT** EELC intervenor status.

Enel X Motion to Intervene

Enel X asserts that approval of the 2018 EE Programs would have a substantial impact on Enel X's energy service business in Petitioner's service territory and that its unique experience partnering with utilities in developing demand response programs and delivering energy services would make it a valuable contributor to the proceeding. I acknowledge that the 2018 EE Programs, if approved, would affect Enel X's services and products and that Enel X's experience in utility-run energy efficiency programs could help it add to the development of the record in this matter. These considerations, however, must be weighed against the Board's need to meet its statutory obligations in a timely manner. After weighing the issues, I **FIND** that Enel X has not made a showing that its interest in this matter warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** Enel X's motion for intervention.

Pursuant to N.J.A.C. 1:1-16.5, I will treat this motion, in the alternative, as a motion to participate. Considered under this standard, I **FIND** that Enel X has a significant interest in this proceeding and is likely to add constructively to the case as a participant without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** Enel X participant status.

KEEA Motion to Intervene

KEEA's motion to intervene was filed by its Executive Director, Matt Elliot. Mr. Elliot is not an attorney authorized to practice in New Jersey and therefore may not represent KEEA before the Board without filing an appropriate motion pursuant to N.J.A.C 1:1-5.2. Consequently, I will not consider KEEA's motion at this time.

MaGrann Associates Motion to Intervene

MaGrann asserts that, based on commitment to designing and implementing energy efficiency upgrades across the state of New Jersey, including in Petitioner's service territory, it has a significant interest in the outcome of the case that is sufficiently different from that of other parties, and it is in a position to provide valuable perspective about how the 2018 EE Programs would impact the residential energy efficiency market. I acknowledge that the 2018 EE Programs, if approved, would affect MaGrann Associates, its employees, and its clients, and that MaGrann's experience in utility-run energy efficiency programs could help it add to the development of the record in this matter. These considerations, however, must be weighed against the Board's need to meet its statutory obligations in a timely manner. After weighing the issues, I **FIND** that MaGrann has not made a showing that its interest in this matter warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** MaGrann's motion for intervention.

MaGrann has moved, in the alternative, to participate. Considered under the standard for participation, I **FIND** that MaGrann has a significant interest in the proceeding and is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** MaGrann participant status.

Sunrun Motion to Intervene

Sunrun asserts that, based on its unique experience and perspective as the largest residential solar and energy storage provider in the country and its operations in PSE&G's service territory, Sunrun's direct and significant interest in the 2018 EE Programs are distinct from those of other parties. I acknowledge that Sunrun's experience and expertise in offering residential solar, storage, and energy services gives it a significant interest in the outcome of this proceeding that is different from that of other parties. I also acknowledge that Sunrun seeks to offer its own specific perspective, which could add to the development of the record in this matter. These considerations, however, must be weighed against the Board's need to meet its statutory obligations in a timely manner. After weighing the issues, I **FIND** that Sunrun has not made a showing that its interest in this matter warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings. Therefore, I **HEREBY DENY** Sunrun's motion for intervention.

Pursuant to N.J.A.C. 1:1-16.5, I will treat this motion, in the alternative, as a motion to participate. Considered under this standard, I **FIND** that Sunrun has a significant interest in this proceeding and is likely to add constructively to the case as a participant without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** Sunrun participant status.

Motions to Participate

EDCs' Motions to Participate

The EDCs assert that the potential exists for a decision in this matter which would have a precedential effect on PSE&G's existing and possible future clean energy investments. Having reviewed the EDCs' motions to participate, I **FIND** that, on the basis of their experience in the electricity industry, they may add constructively to this proceeding. Given their familiarity with this process and its timeline, their stated interest in monitoring developments in the proceeding, and their commitments to coordinate with similarly situated entities and abide by the procedural schedule in this matter, I do not believe that granting participant status to the EDCs will result in undue delay or confusion. Accordingly, I **HEREBY GRANT** the EDCs participant status.

Google Motion to Participate

Having reviewed Google's motion to participate, I **FIND** that, given that it is the developer of smart home thermostats currently in use with PSE&G and that its technology can assist PSE&G and the State of New Jersey in reaching energy efficiency goals, Google may add constructively to this case by participating in discussions about the deployment of its smart home technology and thereby contributing to the development of a complete record. I do not believe that granting participant status to Google will result in undue delay or confusion. Accordingly, I **HEREBY GRANT** Google participant status.

Lime Motion to Participate

Having reviewed Lime's motion to participate, I **FIND** that, on the basis of its experience in providing energy efficiency solutions to commercial customers in New Jersey, Lime may add constructively to the proceeding. Given Lime's commitment to abide by the procedural schedule in this matter, I do not believe that granting participant status to Lime will result in undue delay or confusion. Accordingly, I **HEREBY GRANT** Lime participant status.

Philips Motion to Participate

Having reviewed Philips's motion to participate, I **FIND** that, on the basis of its experience in energy efficiency lighting and related services, Philips may add constructively to this proceeding. Given Philips's commitments to coordinate with similarly situated entities and abide by the procedural schedule in this matter, I do not believe that granting participant status to Philips will result in undue delay or confusion. Accordingly, I **HEREBY GRANT** Philips participant status.

All participants shall have the right to make an oral argument and file a brief.

All grants of intervention and participation are conditioned upon execution of the Agreement of Non-Disclosure.

Motions for Admission Pro Hac Vice

I have reviewed Direct Energy's, Sunrun's, and Tendril's motions for admission pro hac vice and the supporting affidavits, respectively, of Mr. Forshay; Ms. Maury and Ms. Marsilio; and Mr. Argetsinger. I **FIND** that Mr. Forshay, Ms. Maury, Ms. Marsilio, and Mr. Argetsinger have satisfied the conditions for admission pro hac vice. Therefore, Mr. Forshay, Ms. Maury, Ms. Marsilio, and Mr. Argetsinger are **HEREBY ADMITTED** to practice before the Board pro hac vice in this matter, provided that they shall:

(1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;

(2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;

(3) Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and

(4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

I **HEREBY DIRECT** Staff to post this Order on the Board's website.

This ruling is provisional and subject to ratification or other alteration by the Board as deemed appropriate during the proceeding in this matter.

The effective date of this Order is January 22, 2019.

DATED: 1/22/19

DIANNE SOLOMON
PRESIDING COMMISSIONER

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of Its Clean Energy Future – Energy Efficiency ("CEF-EE") Program on a Regulated Basis
BPU Docket Nos. GO18101112 & EO18101113

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Exhibit A

PROCEDURAL SCHEDULE

Motions to Intervene/Participate	Fri, November 16, 2018
Opposition to Intervention/Participation	Wed, January 16, 2019
Martin Luther King, Jr. Day (State holiday)	*Mon, January 21, 2019*
Discovery Requests on Initial Testimony+	Tue, January 22, 2019
Responses to Discovery on Initial Testimony	Tue, February 5, 2019
Discovery Teleconference Conference (Tentative)	TBD
Additional Discovery	Wed, February 13, 2019
Presidents' Day (State holiday)	*Mon, February 18, 2019*
Responses to Additional Discovery	Wed, February 27, 2019
Discovery/Settlement Conference (Tentative)	Week of March 4 or 11, 2019
Public Hearing	TBD
Intervener/Respondent Testimony	Fri, March 22, 2019
Discovery on Intervener/Respondent Testimony	Wed, March 27, 2019
Responses to Discovery on Intervener/Respondent Testimony	Wed, April 3, 2019
Rebuttal Testimony	Mon, April 15, 2019
Discovery on Rebuttal Testimony	Thurs, April 18, 2019
Good Friday (State holiday)	*Fri, April 19, 2019*
Responses to Discovery on Rebuttal Testimony	Thurs, April 25, 2019
Evidentiary Hearings with oral surrebuttal	Wed & Thu, May 1 & 2, 2019
Initial Briefs	Fri, May 17, 2019
Memorial Day (State holiday)	*Mon, May 27, 2019*
Reply Briefs	Wed, May 29, 2019
Final Board Action	TBD

+ Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C. 1:1-10.4, subject to the scheduled end dates. The aforementioned dates are subject to modification by the presiding Commissioner. The parties on the service list will be notified accordingly.