



STATE OF NEW JERSEY
Board of Public Utilities
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DIVISIONS OF CLEAN ENERGY
AND ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)
P.L. 2018, C. 17 REGARDING THE)
ESTABLISHMENT OF ENERGY EFFICIENCY AND)
PEAK DEMAND REDUCTION PROGRAMS)
PREHEARING ORDER SETTING)
PROCEDURAL SCHEDULE AND)
RULING ON MOTIONS TO)
PARTICIPATE AND INTERVENE)
)
IN THE MATTER OF THE PETITION OF)
ROCKLAND ELECTRIC COMPANY FOR)
APPROVAL OF ITS ENERGY EFFICIENCY AND)
PEAK DEMAND REDUCTION PROGRAMS)
DOCKET NOS. QO19010040 AND)
EO20090623)

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Margaret Comes, Esq., Rockland Electric Company
Erin Cosgrove, Esq., Counsel for Energy Efficiency Alliance of New Jersey

BY PRESIDENT FIORDALISO:

Background and Procedural History

On January 13, 2008, L. 2007, c. 340 ("RGGI Act") was signed into law based on the New Jersey Legislature's findings that energy efficiency ("EE") and conservation measures must be essential elements of the state's energy future and that greater reliance on EE 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 EE industries are essential to maximize efficiencies.

Pursuant to Section 13 of the RGGI Act, codified as N.J.S.A. 48:3-98.1(a)(1), an electric or gas public utility ("Utility" or collectively "Utilities") may provide and invest in EE and conservation programs in its service territory on a regulated basis. Upon petition, such investment in EE and conservation programs may be eligible for rate treatment approval by the Board, including a return on equity, or other incentives or rate mechanisms that decouple utility revenue from sales of electricity and gas. 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.

By Order dated June 10, 2020, the New Jersey Board of Public Utilities (“Board”) approved an EE transition framework for EE programs implemented pursuant to the Clean Energy Act, L. 2018, c. 17, including requirements for the Utilities to establish programs that reduce the use of electricity and natural gas within their territories.¹ In the June 2020 Order, the Board directed New Jersey’s electric and gas companies to file three-year program petitions by September 25, 2020 for approval by the Board by May 1, 2021 and implementation beginning July 1, 2021.

SEPTEMBER 2020 PETITION

On September 25, 2020, Rockland Electric Company (“RECO” or “Company”) filed the requisite petition with the Board (“September 2020 Petition” or “Petition”). In the Petition, the Company proposed to invest approximately \$18 million in its EE Program (“EE Program”) over a three (3) year period (July 1, 2021 through June 30, 2024). The proposed programs and associated costs are summarized in the table below:

Programs/Products	Proposed Budget (for 3 Year Program)
Residential Energy Efficiency Products	\$3,602,956
Residential Home Performance with ENERGystar	\$1,834,755
Multi-Family	\$1,307,654
Commercial and Industrial Direct Install	\$4,321,849
Commercial and Industrial Rebates	\$3,905,236
Clean Heat Beneficial Electrification	\$1,822,196
Peak Demand Reduction Pilot	\$1,214,572
Total	\$18,009,217

In addition to approval of the plan to implement the EE Program, the Company requested approval of a cost recovery mechanism. Specifically, RECO proposed to establish a Clean Energy Act component of its Societal Benefits Charge (“SBC”) to recover costs of the EE Program. RECO also sought the Board’s approval of a modified electric Conservation Incentive Program to recover a portion of the Company’s revenues that will be lost as a result of the successful implementation of the EE Program and the related decrease in energy sales.

RECO estimated that, based on its proposed EE Program, the annual bill impact for a typical residential customer on Basic Generation Service using 808 kilowatt-hours (“kWh”) per summer month and 7,800 kWh per year would be an increase of \$2.44 or 0.16% for the first year of the EE Program.

By Order dated September 23, 2020, the Board determined that RECO’s Petition should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated myself as the presiding officer 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

¹ In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket Nos. QO19010040, QO19060748, QO17091004, Order dated June 10, 2020 (“June 2020 Order”).

expeditious determination of the issues.² Further, the September 23, 2020 Order directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by October 2, 2020 and that entities file with the Board any responses to those motions by October 9, 2020.

On October 16, 2020, Board Staff (“Staff”) issued a letter of administrative deficiency. In response to this letter, the Company made a supplemental filing on November 2, 2020. On November 5, 2020, Staff issued a letter indicating that the supplemental filing satisfied the Minimum Filing Requirements. The 180-day period for Board review therefore began on November 5, 2020.

THE MOTIONS

Motions to Intervene

On October 2, 2020, motions to intervene in this matter were received by New Jersey Natural Gas Company (“NJNG”), Public Service Electric and Gas Company (“PSE&G”), and the Energy Efficiency Alliance of New Jersey (“EEANJ”).

NJNG

NJNG stated that the Board accepted the recommendation of Staff to have the Utilities collaborate with Staff to develop program design and requirements that are complementary to, and not competitive or overlapping with, the designs and requirements of State-administered or co-managed programs and to have the Utilities collaborate to consistently implement the Utility core programs. Additionally, in areas where gas and electric services territories overlap, in addition to establishing programs that include agreed-upon program design requirements, the Utilities are required to design a program structure that results in coordinated, consistent delivery of programs among all of the Utilities and allocates costs and energy savings appropriately based on the fuel type(s) treated by EE measures, ensuring that customers do not face confusion as a result of overlapping territories and can access both electric and gas measures simultaneously, where appropriate. NJNG asserted that RECO’s proposed EE Program would directly affect NJNG, as the two Utilities will need to collaborate efforts to ensure consistency of their respective EE programs. Accordingly, NJNG maintained that it should be granted full intervener status so as to avoid customer confusion with program offerings. NJNG also argued that the Board’s decision in this proceeding is likely to have precedential effect and impact not only on RECO and its customers, but also New Jersey’s other gas and electric Utilities. NJNG asserted that a variety of issues that will be addressed in this case may have an impact on NJNG by establishing precedent and argued that NJNG will likely be directly and specifically affected by the relief provided in the matter. In the alternative, NJNG requested that its motion be treated as a motion to participate.

PSE&G

In its motion, PSE&G stated that, as the state’s largest electric and gas distribution company and the only combined electric and gas distribution Utility, it has a significant interest in the outcome of the case. PSE&G argued that it is imperative, as noted in the June 2020 Order directing the Utilities to establish EE and peak demand reduction programs, that in areas where gas and

² In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket No. QO19010040, Order dated September 23, 2020 (“September 23, 2020 Order”).

electric services territories overlap, the Utilities design a program structure that results in coordinated, consistent delivery of programs among all of the Utilities and allocates costs and energy savings appropriately based on the fuel type(s) treated by EE measures. Additionally, PSE&G stated that coordination among the Utilities is necessary to avoid redundant or competing offerings and to ensure that customers do not face confusion as a result of overlapping territories and can access both electric and gas measures simultaneously. Since PSE&G's gas territory overlaps with RECO's electric territory, PSE&G asserted that any decision by the Board with respect to RECO's filing could have precedential effect and other impacts on PSE&G that could directly impact the Company's EE Program. More specifically, PSE&G maintained that any Board decision in the RECO matter could directly impact the cost sharing and investment split associated with EE sub-program structure in overlapping territories. PSE&G asserted that it is in a unique position as the only energy Utility whose service territories overlap with the service territories of the other major Utilities and as the Utility with the most extensive experience administering EE programs in the state, most recently completing its Clean Energy Future - Energy Efficiency proceeding. Accordingly, PSE&G argued that its intervention in this proceeding is likely to add constructively to the proceeding.

EEANJ

EEANJ is a 501(c)(6) trade association that, together with its sister organization, the Keystone Energy Efficiency Alliance, represents 75 business members. These members manufacture, design, and implement EE improvements in buildings across Pennsylvania and New Jersey on behalf of regulated utilities, the State, and ratepayers. EEANJ asserted that the proposed programs would directly affect the utilization of their services and products. EEANJ also represented 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.

Motions to Participate

ACE, JCP&L, SJG, ETG

Atlantic City Electric Company ("ACE"), Jersey Central Power and Light Company ("JCP&L"), South Jersey Gas Company ("SJG"), and Elizabethtown Gas Company ("ETG") each submitted motions to participate.³ 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 electricity or gas for residential, commercial, and industrial purposes within New Jersey. Each claimed a significant interest in the outcome of the proceeding because the substantive policy and or procedural requirements established in this proceeding are likely to have a precedential effect on proceedings involving the other Utilities. Each also argued that its interest as an investor-owned electric or gas Utility serving retail customers is materially different from that of RECO 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.

Although ACE, SJG, ETG and JCP&L sought participant status, each indicated that it is aware that certain Utilities may seek intervener status in their individual cases pending before the Board. Each pointed out that any Board order approving intervention for a Utility in their case would have

³ SJG and ETG submitted a joint motion to participate.

to find that, based on the common/overlapping concerns in the June 2020 Order, the Utility satisfies the standard of being “substantially, specifically, and directly affected by the outcome” of the case, pursuant to N.J.A.C. 1:1-16.1(a). ACE, SJG, ETG and JCP&L each stated that, if the Board determines that another Utility has a sufficient interest to be an intervener in one of their individual cases, then they would have the identical sufficient interest to be an intervener in that Utility’s case. Accordingly, ACE, SJG, ETG, and JCP&L each indicated that its motion for participant status is provisional and should be treated as a motion to intervene should RECO be granted intervener status in its case.

BPA

The Building Performance Association (“BPA”) is a 501(c)6 industry association committed to supporting policies that will improve and increase the expansion of home and building performance, EE businesses, and industries. BPA is made up of more than 9,800 members who are working professionals in contracting services, weatherization, product manufacturing and distribution, program administration, building science, and nonprofits. BPA asserted that it and its New Jersey members have a significant interest in the outcome of the case and will add constructively to the case. Additionally, BPA stated that its participation will not cause undue delay or confusion. By letter dated October 16, 2020, BPA withdrew its motion to participate.

RESPONSES

On October 9, 2020, RECO submitted a letter responding to the filed motions to intervene and participate. In its letter, RECO indicated that it had no opposition to the motions to participate filed by ACE, ETG, JCP&L, and SJG. RECO also indicated that it was unclear whether BPA’s motion to participate was filed by an attorney authorized to practice in New Jersey. RECO stated that it did not oppose participant status for BPA but reserved the right to object to future motions to intervene or participate filed by or on behalf of BPA.

Additionally, RECO did not oppose the intervention of EEANJ. With respect to the motions to intervene filed by NJNG and PSE&G, RECO argued that NJNG and PSE&G failed to meet the basic standards for intervention in the proceeding and that their involvement in the proceeding should be limited to participant status.

DISCUSSION AND FINDINGS

Motions to Intervene or Participate

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. 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;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," 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. 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 that 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 intervenor's interest be specific, direct, and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that EEANJ will be directly affected by the outcome of this proceeding and will add measurably and constructively to the case without causing undue delay or confusion. I **HEREBY FIND** that EEANJ has met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** the motion for intervention of EEANJ pursuant to the authority granted to me by the Board under the September 23, 2020 Order.

NJNG and PSE&G, both utilities serving customers in New Jersey, noted that the Board's decision is likely to have precedential effect and impact on their utilities. I acknowledge that NJNG's and PSE&G's experience running their own EE programs in New Jersey put them in a position to add to the development of the record in this matter. I am not persuaded, however, that their interests are sufficiently distinct from those of the other parties that they merit intervenor status or that NJNG or PSE&G will be affected by the alleged precedential effect of this case. All of the proposed EE programs will be examined based on their specific components, just as programs proposed by NJNG and PSE&G will be reviewed and analyzed upon their own merits. After weighing the issues, I **FIND** that NJNG and PSE&G have not made showings that their interests in this matter warrant granting their motions to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** NJNG's and PSE&G's motions for intervention. Pursuant to N.J.A.C. 1:1-16.5, I will treat these motions, in the alternative, as motions to participate. Considered under this standard, I **FIND** that NJNG and PSE&G have significant interests in this proceeding and that, as participants, NJNG and PSE&G are likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** NJNG and PSE&G participant status, limited to the right to argue orally and file a statement or brief, as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

With regard to the motions to participate filed by ACE, JCP&L, SJG, and ETG, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of ACE, JCP&L, SJG, and ETG in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motions to participate filed on behalf of ACE, JCP&L, SJG, and ETG, limited to the right to argue orally and file a statement or brief, as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

In addition, I reviewed the proposal for a preliminary schedule, which has been agreed to by Staff, the New Jersey Division of Rate Counsel ("Rate Counsel"), and the Company. I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, RECO seeks approval to invest approximately \$18 million in its EE Program over a three (3) year period (July 1, 2021 through June 30, 2024). In addition to approval of the plan to implement the EE Program, the Company requested approval of a cost recovery mechanism. Specifically, RECO proposed to establish a Clean Energy Act SBC to recover costs of the EE Program. RECO also sought the Board's approval of a modified electric Conservation Incentive Program to recover a portion of the Company's revenues that will be lost as a result of the successful implementation of the EE Program and the related decrease in energy sales.

Issues to be Resolved

- A. The cost effectiveness and cost efficiency of the proposed activities and programs.
- B. The lawfulness of the proposed program offerings.
- C. The reasonableness and lawfulness of the proposed cost recovery mechanism.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:

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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 RECO's service territory. The dates, times, and locations of the public hearings are to be determined.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Evidentiary hearings are tentatively scheduled for March 23, 25, and 26, 2021 at a time and location to be determined based upon the availability of the parties and myself.

5. **STIPULATIONS:**

Staff, Rate Counsel, and RECO have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

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 as provided in Exhibit A or in accordance with N.J.A.C. 1:1-10.4.

9. **ORDER OF PROOFS:**

RECO has the burden of proof. The hearings will be conducted by topic in the following order:

First – RECO

Second – Rate Counsel

Third – EEANJ

Fourth –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:**

RECO will present the following witnesses: Donald E. Kennedy, Cheryl Ruggiero, Hock Ng, and Michael DiGravina (“Rate and Forecasting Panel”), Wenqi Wang and Kevin Lyons (“Accounting Panel”), and Andrew w. Cottrell.

Rate Counsel and Intervener witnesses will be determined at a later time.

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:**

All pending motions to intervene and/or participate have been addressed.

14. **SPECIAL MATTERS:**

None at this time.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board’s website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: December 9, 2020

BY:

A handwritten signature in black ink, appearing to read "Joe Fiordaliso", written over a horizontal line.

JOSEPH L. FIORDALISO
PRESIDENT

IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, c. 17 REGARDING THE
ESTABLISHMENT OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION
PROGRAMS

IN THE MATTER OF THE PETITION OF ROCKLAND ELECTRIC COMPANY FOR
APPROVAL OF ITS ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS

DOCKET NOS. QO19010040 AND EO20090623

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EXHIBIT A

DOCKET NOS. QO19010040 AND EO20090623

Procedural Schedule

Motions to Intervene/Participate	October 2, 2020
Responses to Intervention/Participation	October 9, 2020
First Round Discovery Requests	November 9, 2020
First Round Discovery Answers	November 24, 2020
Second Round Discovery Requests	December 9, 2020
Second Round Discovery Answers	January 4, 2021
Discovery Conference	TBD
Rate Counsel/Intervener Testimony	January 27, 2021
Discovery on Testimony	February 4, 2021
Responses to Discovery	February 11, 2021
Rebuttal Testimony	February 18, 2021
Discovery on Rebuttal	February 26, 2021
Answers to Rebuttal Discovery	March 8, 2021
Public Hearing	TBD
Settlement Conference	March 10, 2021
Evidentiary Hearings with oral surrebuttal	March 23, 25, & 26, 2021
Initial Briefs	April 8, 2021
Reply Briefs	April 14, 2021

+ Petitioner agrees that discovery is ongoing and will endeavor to answer all discovery within seven business days of service.

