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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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)

DOCKET NO.
EO18101113

MOTION FOR RECONSIDERATION OF SUNRUN INC.

Pursuant to N.J.A.C. 14:1-8.6, Sunrun Inc. ("Sunrun") hereby submits this Motion for Reconsideration ("Motion") of the New Jersey Board of Public Utilities' ("Board") Prehearing Order Setting Procedural Schedule and Ruling on Motions to Participate and Intervene ("Ruling") dated January 22, 2019 in the above-captioned docket. Sunrun respectfully requests the Board reconsider its ruling denying Sunrun intervenor status and that the Board modify the Ruling to grant Sunrun intervenor status. In support of this Motion, Sunrun states as follows:

1. N.J.A.C. 14:1-8.6(a) provides that a motion for reconsideration shall "state . . . the alleged errors of law or fact relied upon and shall specify whether reconsideration, re-argument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief." Board precedent for evaluating motions for reconsideration holds "the Board will not modify an Order unless the moving party demonstrates that the Board's action constituted an injustice, or that the Board misunderstood or failed to meaningfully consider a significant element of fact or law."¹ It further provides that "a party should not

¹ See e.g., New Jersey Board of Public Utilities Docket No. QS14040316, Michael Manis and Manis Lighting, LLC – New Jersey Clean Energy Program Renewable Energy Incentive Program, Order on Motion for Reconsideration (Apr. 15, 2015) *citing* D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); New Jersey Board of Public Utilities Docket No. GE15040402, Petition of New Jersey Natural Gas Co. for Approval and Authorization

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seek reconsideration merely based upon dissatisfaction with a decision” but that “reconsideration is reserved for those cases where (1) the decision is based upon a ‘palpably incorrect or irrational basis’; or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence.”² Finally, a motion for reconsideration must demonstrate that the decision was “arbitrary, capricious, or unreasonable.”³

2. The Ruling denied Sunrun’s intervention based on a finding 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.”⁴ As an alternative to intervenor status, the Ruling grants Sunrun participant status.⁵ Participants are limited to making an oral argument and filing a brief.⁶

3. As discussed further herein, in denying Sunrun intervention, the Ruling erred in its application of the standard for intervention pursuant to N.J.A.C. 1:1-16.3(a). The Ruling further failed to take into consideration or fully appreciate Sunrun’s demonstrated ability to contribute to the record as it relates to the Board’s obligations to ensure that energy efficiency programs are implemented to further competition, pursuant to N.J. Stat. § 26:2C-45 and certain factors that the Board takes into consideration when evaluating energy efficiency programs and cost recovery proposals, including the impact of

to Construct and Operate the Southern Reliability Link, Order Denying Motions for Reconsideration and Consolidation (Jan. 28, 2016) *citing* D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996).

² *Id.*

³ *Id.*

⁴ Docket Nos. G018101112 & EO18101113, Prehearing Order Setting Procedural Schedule and Ruling on Motions to Participate and Intervene at 17 (Jan. 22, 2019) (“Prehearing Order and Ruling”).

⁵ *Id.* at 17.

⁶ *Id.* at 18.

proposed programs on competitive markets, existing market barriers, and other factors pursuant to N.J. Stat. §.48:3-98.1(b).

4. These errors, combined with the limitations on Sunrun's participation and the limited opportunities to participate based on the procedural schedule contravene due process and New Jersey's fundamental fairness doctrine. New Jersey courts hold that "where constitutional protections do not adequately safeguard an important interest, principles of fundamental fairness come into play. New Jersey's doctrine of fundamental fairness protects against unjust and arbitrary governmental actions, and specifically against governmental procedures that tend to operate arbitrarily."⁷

5. The Ruling specifically found that Sunrun has a significant interest in this proceeding, that its interests are unique and that Sunrun perspective could contribute the record.⁸ Despite these findings, the Ruling denied Sunrun's intervention and limited it to participant status.⁹ The Ruling provides no opportunity for participants to submit testimony or participate in settlement discussions, and given that settlement discussions are likely to commence prior to hearings, Sunrun's ability to present its positions and insights to the Board through oral arguments at hearing and a brief after hearing may be removed entirely or further limited by the outcome of the settlement discussions. The limitations of participant status combined with the procedural schedule are such that it is possible, and even likely, that Sunrun will not have an opportunity to participate even in the limited fashion granted to participants.

⁷ In re Pub. Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 105 (Super. Ct. App. Div. 2000).

⁸ Prehearing Order and Ruling at 17.

⁹ *Id.*

6. These limitations on Sunrun's participation prevent Sunrun from representing its interests and would deprive the Board and ratepayers critical information that would contribute to a just and expeditious adjudication of Public Service Electric and Gas Company's ("PSE&G") groundbreaking \$2.8 billion energy efficiency proposal. Sunrun's pleadings, and the findings made in the Ruling regarding Sunrun's interest and ability to contribute to the record, clearly demonstrate that Sunrun meets the standard for intervention. The Ruling's finding that Sunrun's interests are not sufficient to grant intervention based on the need for prompt and expeditious administrative proceedings is in error, irrational, and fails to take into consideration or fully appreciate critical elements of law and Sunrun's unique interests and ability to assist the Board in its disposition of this proceeding, and contravene New Jersey's doctrine of fundamental fairness.

7. As such, the Ruling's denial of intervention to Sunrun is arbitrary and capricious and should be modified to grant Sunrun intervention as a party with full procedural and substantive rights in this proceeding. Sunrun is sensitive to and appreciates the Board's need to ensure that this proceeding is conducted expeditiously to meet the 180-day timeline. While Sunrun's participation as a party in this proceeding will not cause undue delay or confusion so as to hinder the Board's ability to meet that timeline, Sunrun is willing to commit to limiting its participation as a party to specific issues pertaining to those proposed programs and investments that impact or relate to solar energy and energy storage.

8. As stated in Sunrun's Motion to Intervene, Sunrun seeks to offer its expertise and perspective as a residential solar and energy storage provider operating in PSE&G's territory and intends to work cooperatively with other parties in the interests of

collaboration and administrative efficiency.¹⁰ As demonstrated in Sunrun's pleadings and herein, Sunrun's participation as a party in this proceeding will advance these interests, not hinder them.¹¹ Sunrun's interest is to ensure that the record is sufficiently robust so as to allow the Board to evaluate PSE&G's solar and energy storage related proposals with the insights of the nation's leading residential solar and energy storage provider. Sunrun's expertise will assist the Board in determining whether cost-effective competitive alternatives are available, or improvements can be made, to certain PSE&G programs and investment proposals. Sunrun can effectively review the design and implementation elements of PSE&G's proposals based on business experience in providing solar and energy storage systems to consumers in New Jersey and elsewhere in the United States. Sunrun can provide the Board information to ensure the Legislature's reference to considering impacts on competitive markets, existing market barriers, and other critical factors are not ignored.

9. In denying Sunrun intervention, the Ruling erred in its application of N.J.A.C. 1:1-16.3(a), which requires the Board to consider (i) the nature and extent of the movant's interest in the outcome of the case, (ii) whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, (iii) the prospect of confusion or undue delay arising from the movant's inclusion, and (iv) other appropriate matters. The Board has consistently interpreted this standard as requiring the Board to:

balance the need and desire to allow for the development of a full and complete record and to ensure the consideration of a diversity of interests, with the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative

¹⁰ See Motion to Intervene of Sunrun Inc. at ¶¶ 11-13 (Nov. 16, 2018) ("Motion to Intervene").

¹¹ See *id.*

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*¹² (emphasis added).

In other words, the implicit balancing test conducted by the Board requires a party to demonstrate a specific interest that is distinct from other parties so as to add constructively to the case *in order to ensure that the proceeding is conducted promptly and expeditiously*. If the Board finds that a party met these requirements, then the Board is satisfied that the party will not cause undue delay or confuse the proceeding, and thereby ensures a prompt and expeditious proceeding.

10. The Ruling found that (1) Sunrun's experience and expertise in offering residential solar, storage, and energy services gives it a significant interest the outcome of this proceeding; (2) that Sunrun's interest is different from that of other parties; and (3) that Sunrun's specific perspective could add to the development of the record.¹³

Moreover, the only parties in addition to Sunrun that the Ruling found had demonstrated interests different from other parties are NJLEUC and EELC—the only two parties the Ruling granted intervention.¹⁴

11. The Ruling's specific findings that Sunrun's interests are significant and distinct from other parties and that Sunrun could add constructively to the record are precisely the findings the Board's balancing test requires the Board to make in order to determine that Sunrun's intervention would *not* cause undue delay or confusion to ensure that the

¹² BPU Docket No. EM05020106; OAL Docket No. PUC1874-05, Joint Petition for a Change in Control of Public Service Gas and Electric Company, Order on Motion of New Jersey Public Interest Group for Interlocutory Review (June 8, 2005); *see also*, BPU Docket No. EO09010058, Public Service Electric and Gas Company Offering an Economic Energy Efficiency Stimulus Program and Cost Recovery Mechanisms, Order Granting Intervention and Admission Pro Hac Vice at 7 (Apr. 28, 2009); BPU Docket No. QO16040382, Application of NJ Land, LLC Seeking a Declaratory Judgment, Order (Aug. 24, 2016) (granting petition to intervene of Jersey Central Power & Light Co.).

¹³ Prehearing Order and Ruling at 17.

¹⁴ *Id.* at 14-17.

proceeding may be conducted promptly and expeditiously.¹⁵ To make these findings but then deny Sunrun intervention based on “the need for prompt and expeditious administrative proceedings”¹⁶ is arbitrary and capricious and an erroneous application of the standard for intervention. Sunrun meets the standards for intervention pursuant to N.J.A.C. 1:1-16.3(a) and Board precedent, and the Ruling should be modified to grant Sunrun intervention.

12. In denying Sunrun intervention, the Ruling further erred by failing to consider or appreciate the significance of Sunrun’s interests and ability to contribute to the proceeding; in particular as Sunrun’s interests and expertise in the instant matters before the Board relate to (i) N.J. Stat. § 26:2C-45 finding “that public utility involvement *and competition* in the renewable energy, conservation and energy efficiency industries *are essential to maximize efficiencies*” (emphasis added) and declaration that “the use of renewable energy and that the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) *should be implemented to further competition*” (emphasis added), and (ii) the guidance provided in N.J. Stat. § 48:3-98.1(b) that when determining the recovery by electric and gas public utilities of energy efficiency, conservation and renewable energy program costs, “the [B]oard may take into account the potential for job creation for such programs, *the effect on competition for such programs, existing market barriers, environmental benefits, and the availability of such programs in the marketplace*” (emphasis added).

¹⁵ BPU Docket No. EM05020106; OAL Docket No. PUC1874-05, Joint Petition for a Change in Control of Public Service Gas and Electric Company, Order on Motion of New Jersey Public Interest Group for Interlocutory Review (June 8, 2005); *see also*, BPU Docket No. EO09010058, Public Service Electric and Gas Company Offering an Economic Energy Efficiency Stimulus Program and Cost Recovery Mechanisms, Order Granting Intervention and Admission Pro Hac Vice at 7 (Apr. 28, 2009); BPU Docket No. QO16040382, Application of NJ Land, LLC Seeking a Declaratory Judgment, Order (Aug. 24, 2016) (granting petition to intervene of Jersey Central Power & Light Co.).

¹⁶ Prehearing Order and Ruling at 17.

13. PSE&G's Clean Energy Future -- Energy Efficiency ("CEF-EE") Program proposes to implement twenty-two (22) sub programs and various pilot programs with a proposed investment of approximately \$2.8 billion over 6 years.¹⁷ The enormity and historic nature of this proposal cannot be overstated. PSE&G has proposed multi-billion dollar investments that will impact ratepayers for years to come. Ratepayers deserve to have this proceeding adjudicated as comprehensively as possible, with consideration of input from a diversity of perspectives to ensure that the programs proposed by PSE&G are implemented in a manner that furthers competition and promotes the most cost-effective means to generate savings for the millions of ratepayers who ultimately will pay for these investments.

14. N.J. Stat. § 26:2C-45 directs the Board to ensure that the energy efficiency programs are implemented to encourage competition and N.J. Stat. § 48:3-98.1(b) provides the Board direction on certain factors for the Board's consideration when evaluating energy efficiency program proposals, including the effect on competition, existing market barriers, environmental benefits, and the availability of such programs in the marketplace.

15. As Sunrun demonstrated in its Motion to Intervene, and the Ruling acknowledges in its findings, as a competitive provider of certain solar and storage technologies and grid services from these technologies, which PSE&G seeks to leverage to advance its energy efficiency goals, and the largest provider of residential solar and energy storage in the country, Sunrun has substantial expertise, and a direct and substantial interest in, the programs proposed in PSE&G's CEF-EE. Moreover, Sunrun is the sole party in this

¹⁷ BPU Docket Nos. G018101112 & EO18101113, PSE&G Petition for CEF -- EE Program at 13.

proceeding positioned to provide insights and expertise of a competitive solar and energy storage provider.¹⁸

16. As demonstrated in Sunrun's pleadings, Sunrun has brought its substantial expertise and market insights to similar proceedings in other states around the country and provided significant contributions to those proceedings.¹⁹ Sunrun specifically highlighted its role in two recent proceedings where Sunrun's expertise and collaboration with other stakeholders was instrumental in advancing solutions that reduce costs and risks for ratepayers, enhance competitive markets, remove or reduce existing market barriers, produce greater environmental benefits, and expand the availability of innovative programs in the marketplace. Sunrun seeks intervention in this proceeding to meaningfully represent its interests and bring these insights to bear.

17. In a recent proceeding before New Hampshire Public Utilities Commission, Sunrun was instrumental in working with stakeholders and the utility to come to a settlement on an innovative pilot program that will utilize customer-sited energy storage for peak load reduction and deliver savings and other benefits throughout the utility's service territory. Sunrun submitted expert testimony advocating for the inclusion of a "bring-your-own-device" ("BYOD") program in addition to the utility's proposed utility-owned battery program to allow customers to participate in the pilot through third-party (non-utility) providers and aggregators. Sunrun participated extensively in settlement negotiations, which resulted in including the BYOD program as a component of the pilot. The New Hampshire Commission approved the Settlement Agreement and specifically cited the inclusion of Sunrun's proposed BYOD program as a critical improvement upon

¹⁸ Motion to Intervene at ¶¶ 4-10; Procedural Order and Ruling at 17.

¹⁹ See Motion to Intervene at ¶¶ 9-10; Sunrun Letter Response to PSE&G Letter in Opposition at ¶ 7 (Dec. 3, 2018) ("Letter Response").

the original proposal. In approving the Settlement Agreement, the New Hampshire Commission specifically noted its statutory obligation to consider the pilot's "effect on competition within the region's electricity markets and the state's energy services market" and found that "utility ownership of DERs [distributed energy resources], such as customer-sited battery storage systems, may affect the competitive market for such products and services" and that the inclusion of the BYOD would serve to mitigate potential negative impacts on competitive markets.²⁰

18. Sunrun also highlighted in its pleadings its recent contributions to PSE&G Long Island's Utility 2.0 Long Range Plan 2018 Annual Update proceeding.²¹ Sunrun provided detailed recommendations for improving PSE&G's proposed Behind-the-Meter ("BTM") Energy Storage and Solar Program, including clarifications to market rules and providing up-front pricing for integrating cost-effective DER solutions to meet short-term and long-term grid needs and recommending the program be expanded across PSE&G's Long Island territory.²² The New York Department of Public Service echoed Sunrun's recommendations and proposed PSE&G LI "initiate an open solicitation of third party aggregators to install energy storage solutions paired with solar, while also providing load relief through direct load control" and recommended that PSEG LI pursue the BTM Energy Storage and Solar Program and expand it "outside of load constrained areas on Long Island to be available system wide, to all classes of ratepayers, and include both

²⁰ See New Hampshire Public Utilities Commission, Docket DE-17-189, Liberty Utilities Petition to Approve Battery Storage Pilot Program, Order No 26,209 at 37 (Jan. 17, 2019).

²¹ Letter Response at ¶ 7.

²² New York State Department of Public Service, Matter No. 14-01299, In the Matter of PSEG LI Utility 2.0 Long Range Plan, Comments of Sunrun Inc. (Aug. 30, 2018).

paired [solar] and energy storage projects as well as standalone energy storage projects designed to reduce customer load during utility demand response events.”²³

19. Sunrun has a strong record of collaboration and providing substantial contributions to proceedings before public utility regulatory authorities. Sunrun’s expertise and market insights provide constructive recommendations to improve upon innovative and laudable utility program goals that seek to leverage solar and energy storage assets.

20. As demonstrated in Sunrun’s pleadings, Sunrun’s expertise and understanding of DER integration and grid services management can assist the Board and stakeholders’ understanding of the impacts of PSE&G’s proposals on competitive markets, confirm the capabilities of private providers and develop solutions to limitations of existing market barriers that could otherwise impede the implementation PSE&G’s programs, and provide recommendations for improving the structure and operation of certain programs through competitive provider solutions.

21. Moreover, the importance of including Sunrun as a party in this proceeding cannot be overstated given PSE&G’s stated intent to work with private, competitive non-utility providers to implement certain programs, which include leveraging solar and storage assets located at residential customer homes.²⁴ These proposals directly impact Sunrun, as the target customer group for these types of programs will very likely include existing or future Sunrun customers.

²³ New York State Department of Public Service, Matter No. 14-01299, In the Matter of PSEG LI Utility 2.0 Long Range Plan, Department of Public Service Recommendations Regarding PSEG LI Annual 2018 Update at 15-16 (Nov. 1, 2018).

²⁴ See Letter Response at ¶ 3 citing PSE&G Petition for CEF – EE Program at 75.

22. These considerations must be brought to bear in this proceeding to ensure that PSE&G's energy efficiency proposals are implemented to further competition in the marketplace, reduce unnecessary risks to ratepayers, and ensure that the substantial investments in New Jersey's energy efficiency future are cost-effective and implemented to advance competitive markets. Denying Sunrun intervention in this proceeding constitutes an injustice to both Sunrun and to ratepayers because it means that Sunrun will not have the opportunity to meaningfully contribute to the record, thereby depriving Sunrun of the opportunity to represent its interests, and the Board of the opportunity to hear from the very type of partner with whom PSE&G seeks to work with to implement important components of its CEF-EE plan. As Sunrun demonstrated, and the Ruling confirmed, Sunrun's contributions to this proceeding will assist the Board in developing a complete record for evaluating PSE&G's proposal to ensure that these investments are prudent and the programs implemented have the best chance of long-term success.

23. PSE&G's CEF-EE proposal contains innovative and laudable energy efficiency proposals, including investments and innovative pilot programs that seek to leverage residential solar and energy storage for a variety of grid services. The Ruling, however, admitted only two parties as intervenors to this proceeding; neither of which represent the interests of the residential solar and energy storage industry and neither of which can speak to critical competitive market considerations that PSE&G's CEF-EE proposal raises for this sector.

24. Denying Sunrun intervention based on the need for an expeditious proceeding is unjust, unreasonable and arbitrary and capricious given the Ruling's findings that Sunrun's interests are significant, different from other parties and that Sunrun could

contribute to the development of the record. The Ruling further fails to consider or fully appreciate probative evidence discussed above that Sunrun has offered in support of intervention; which will result in constructive and collaborative contributions aimed at ensuring that the Board has the benefit of evaluating PSE&G's proposed solar and energy storage related proposals with these perspectives and insights developed and on the record.

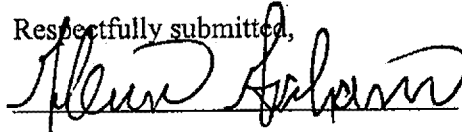
25. Sunrun has no control over the size and complexity of PSE&G's CEF-EE filing or the 180-day statutory timeline for completing this proceeding, nor the number of potential intervenors who may seek to become parties to the proceeding. The Board, however, has a duty to develop a full and complete record and ensure the consideration of a diversity of interests while balancing these interests against the need for an expeditious proceeding. Limiting Sunrun to oral arguments and submitting a brief does not satisfy the Board's duty to consider a diversity of interests and develop a full and complete record and it precludes the only residential and energy storage developer in this proceeding from protecting its interests and meaningfully providing important input for the Board's consideration.

26. The Ruling found that Sunrun's interests are significant and different from those of other parties and that Sunrun's unique experience and insights would contribute to the development of the record. By definition of the Board's intervention standard, these findings warrant granting Sunrun intervention. The additional considerations regarding specific elements of law and fact that the Board failed to consider or fully appreciate, as detailed herein, further demonstrate that Sunrun's interests warrant intervention.²⁵

²⁵ Sunrun recommends that the Board facilitate a participant-stakeholder working group process for participants that do not have intervenor / party status that ensures meaningful opportunities for participants

WHEREFORE, pursuant to N.J.A.C. 14:1-8.6, Sunrun respectfully requests that this Motion be granted and that the Ruling denying Sunrun intervention be modified to grant Sunrun intervention with the procedural and substantive rights of a party in this proceeding.

Respectfully submitted,



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Dated: January 29, 2019

to provide input in settlement discussions, including a review of, and opportunity to comment on, a draft settlement agreement prior to the parties' submission of a proposed settlement to the Board. For the avoidance of doubt, Sunrun has demonstrated that its interests warrant intervention and Sunrun does not suggest a participant-stakeholder working group as an alternative to the relief sought in this Motion to modify the ruling to grant Sunrun intervention as a party. Sunrun's suggestion for the participant-stakeholder working group is offered however as a recommendation for the Board to provide a process inclusive of the diversity of perspectives that should be considered in this highly consequential proceeding to further the Board's obligations to ensure fair and meaningful opportunity for participants to contribute to the record, and that the programs proposed by PSE&G are implemented in a manner that furthers competition and promotes the most cost-effective means to generate savings for the millions of ratepayers who ultimately will pay for these investments.

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)
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)

DOCKET NO.
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CERTIFICATE OF SERVICE

I, Blake Elder, hereby certify that I have this day caused a copy of the foregoing document to be served upon the official service list for **EO18101113**, attached hereto, by electronic mail to all persons with a valid email address. I further certify that on this date two copies of this document have been sent for filing to the Board of Public Utilities.

Dated: January 29, 2019.

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