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KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

ONE JEFFERSON ROAD
PARSIPPANY, NEW JERSEY 07054

(973) 503-5900

FACSIMILE
(973) 503-5950
www.kelleydrye.com

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

February 5, 2019

LAURI A. MAZZUCHETTI
DIRECT LINE: (973) 503-5910

EMAIL: lmazzuchetti@kelleydrye.com

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Via FedEx and Email

Aida Camacho-Welch, Esq.
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Ave., 3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

**RE: 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.
BPU Docket No. EO18101113**

Secretary Camacho-Welch:

On January 22, 2019 Presiding Commissioner Solomon issued the Prehearing Order Setting Procedural Schedule and Ruling on Motions to Participate and Intervene ("Ruling") in the above-referenced proceeding.¹ The Ruling denied Sunrun intervenor status, but in the alternative granted Sunrun participant status. On January 29, 2019 Sunrun submitted a Motion for Reconsideration requesting that the Ruling be modified to grant Sunrun full party status as an intervenor.²

Sunrun is now aware that while the Board has ruled on the merits of Motions for Reconsideration of Board rulings on motions to intervene in the past, the preferred procedural mechanism for requesting Board review of these matters is through a motion for interlocutory review. Sunrun seeks to address this procedural matter by withdrawing its Motion for Reconsideration and providing the Board with this Motion for Interlocutory Review to ensure that

¹ 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").

² Docket No. EO18101113, Motion for Reconsideration of Sunrun Inc. (Jan. 29, 2019).

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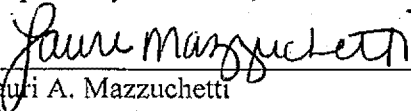
KELLEY DRYE & WARREN LLP

Aida Camacho-Welch, Esq.
February 5, 2019
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the substantive concerns raised, and the relief requested, in Sunrun's Motion for Reconsideration are before the Board as a motion for interlocutory review.

Sunrun's underlying concerns with the Ruling denying Sunrun intervention are substantive and material to Sunrun's ability to represent its interests and meaningfully participate in the proceeding. The issues raised and relief requested in this Motion for Interlocutory Review are the same as those raised and requested in Sunrun's Motion for Reconsideration. Sunrun respectfully requests that the Board take notice that Sunrun's Motion for Reconsideration was filed on January 29, 2019 and as such, Sunrun requests that the Board consider this Motion for Interlocutory Review as timely.³ In the alternative, Sunrun requests that the Board grant Sunrun leave to late file this Motion for Interlocutory Review.

Respectfully submitted,



Lauri A. Mazzuchetti
Glenn T. Graham
Kelley Drye & Warren LLP
One Jefferson Road, 2nd Floor
Parsippany, New Jersey 07054
lmazzuchetti@kelleydrye.com
ggraham@kelleydrye.com

Attorneys for Sunrun Inc.

³ N.J.A.C. 1:1-14.10(b) (providing that "Any request for interlocutory review shall be made to the agency head and copies served on all parties no later than five working days from the receipt of the written order or oral ruling, whichever is rendered first." As such, Sunrun's Motion for Reconsideration dated January 29, 2019 would be considered timely filed as a Motion for Interlocutory Review).

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF PUBLIC)	
SERVICE ELECTRIC & GAS COMPANY FOR)	DOCKET NO.
APPROVAL OF ITS CLEAN ENERGY FUTURE-)	EO18101113
ENERGY EFFICIENCY ("CEF-EE") PROGRAM ON A)	
REGULATED BASIS)	

MOTION FOR INTERLOCUTORY REVIEW OF SUNRUN INC.

Pursuant to N.J.A.C. 1:1-14.10, Sunrun Inc. ("Sunrun") hereby submits this Motion for Interlocutory Review ("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 Ruling denying Sunrun intervenor status be modified to grant Sunrun full party status as an intervenor in this proceeding. In support of this Motion, Sunrun states as follows:

1. N.J.A.C. 1:1-14.10 provides for interlocutory review of an order or ruling by an agency head at the request of a party. New Jersey Supreme Court precedent holds that interlocutory review may be granted only in the interest of justice or for good cause shown. The Court found that "in the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case."¹

¹ See *In re Appeal of Certain Sections of Uniform Administrative Procedure Rules*, 90 N.J. 85, 100 (1982); see also BPU Docket Nos.: EO13020155; GO13020156, *In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, Order on Interlocutory Appeal* (Sept. 18, 2013) *citing* 90 N.J. at 100.

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."² As an alternative to intervenor status, the Ruling granted Sunrun participant status.³ Participants are limited to making an oral argument and filing a brief.⁴

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 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

² 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").

³ *Id.* at 17.

⁴ *Id.* at 18.

fairness protects against unjust and arbitrary governmental actions, and specifically against governmental procedures that tend to operate arbitrarily.”⁵

5. The Ruling specifically found that Sunrun has a significant interest in this proceeding, that its interests are unique and that Sunrun’s perspective could contribute to the record.⁶ Despite these findings, the Ruling denied Sunrun’s intervention and limited it to participant status.⁷ 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.

6. These limitations on Sunrun’s participation prevent Sunrun from representing its interests and would deprive the Board and ratepayers of 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

⁵ 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).

⁶ Prehearing Order and Ruling at 17.

⁷ *Id.*

in error 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. The Ruling's grounds for denial of intervention to Sunrun is arbitrary and capricious, there is good cause to grant this Motion and the interests of justice require modification the Ruling 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.⁸ As demonstrated in Sunrun's pleadings and herein, Sunrun's participation as a party in this proceeding will advance these interests, not hinder them.⁹ 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

⁸ See Motion to Intervene of Sunrun Inc. at ¶¶ 11-13 (Nov. 16, 2018) ("Motion to Intervene").

⁹ See *id.*

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. Sunrun's pleadings and this Motion demonstrate that an interlocutory order will have an impact upon Sunrun's ability to participate as a party, the identity and scope of issues, the presentation of evidence, the decisional process, and the outcome of the case. As such there is good cause to grant this Motion and the interests of justice require modifying the Ruling to grant Sunrun intervenor status.

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 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*¹⁰ (emphasis added).

¹⁰ 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

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.¹¹ 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.¹²

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 proceeding may be conducted promptly and expeditiously.¹³ To make these findings but

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.).

¹¹ Prehearing Order and Ruling at 17.

¹² *Id.* at 14-17.

¹³ 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

then deny Sunrun intervention based on “the need for prompt and expeditious administrative proceedings”¹⁴ 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).

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

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.).

¹⁴ Prehearing Order and Ruling at 17.

proposed investment of approximately \$2.8 billion over 6 years.¹⁵ 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

¹⁵ 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.¹⁶

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.¹⁷ 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

¹⁶ Motion to Intervene at ¶¶ 4-10; Procedural Order and Ruling at 17.

¹⁷ See Motion to Intervene at ¶¶ 9-10; Sunrun Letter Response to PSE&G Letter in Opposition at ¶ 7 (Dec. 3, 2018) ("Letter Response").

cited the inclusion of Sunrun's proposed BYOD program as a critical improvement upon 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.¹⁸

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.¹⁹ 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.²⁰ 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

¹⁸ 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).

¹⁹ Letter Response at ¶ 7.

²⁰ 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.”²¹

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.²² These proposals directly impact Sunrun, as the target customer group for these types of programs will very likely include existing or future Sunrun customers.

²¹ 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).

²² 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.

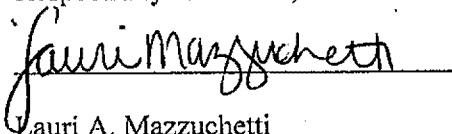
25. Sunrun has no control over the size and complexity of PSE&G's CEF-EE filing or the 180-day statutory timeline for completing this proceeding, nor the number of potential intervenors who may seek to become parties to the proceeding. The Board, however, has a duty to develop a full and complete record 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.²³ Good cause exists to grant this Motion and the interests of justice require the Ruling be modified to grant Sunrun intervention as a party to this proceeding.

WHEREFORE, 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,



Lauri A. Mazzuchetti
Glenn T. Graham
Kelley Drye & Warren LLP
One Jefferson Road, 2nd Floor
Parsippany, New Jersey 07054
lmazzuchetti@kelleydrye.com
ggraham@kelleydrye.com

Attorneys for Sunrun Inc.

Dated: February 5, 2019

²³ 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 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.



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

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)
)
) 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 Order¹ 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, 2011², 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, 2015³, 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

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

Counsel for Public Service Electric and Gas Company

Matthew Weissman, Esq.
Justin B. Incardone, Esq.
PSEG Services Corporation
80 Park Plaza, T5
P.O. Box 570
Newark, NJ 07102
matthew.weissman@pseg.com
justin.incardone@pseg.com

Counsel for the Staff of the New Jersey Board of Public Utilities:

Alex Moreau, DAG
Timothy Oberleiton, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
alex.moreau@law.njoag.gov
timothy.oberleiton@law.njoag.gov

Counsel for the New Jersey Division of Rate Counsel:

Stefanie Brand, Esq., Director
Kurt Lewandowski, Esq.
Sarah Steindel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625
sbrand@rpa.nj.gov
klewando@rpa.nj.gov
ssteinde@rpa.nj.gov

Counsel for Environment New Jersey, Sierra Club, Environmental Defense Fund, New Jersey League of Conservation Voters, and Natural Resources Defense Council:

Aaron Kleinbaum, Esq.
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
akleinbaum@easternenvironmental.org

Counsel for the New Jersey Large Energy Users Coalition:

Steven S. Goldenberg, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
sgoldenberg@ghclaw.com

Paul F. Forshay, Esq.
Eversheds Sutherland (US) LLP
700 Sixth Street, N.W., Suite 700
Washington, D.C. 20001-3980
paulforshay@eversheds-sutherland.com

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 Mgrace, 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 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 intervenor 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. 17:27-16.5, 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

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

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

SERVICE LIST

Public Service Electric and Gas Company

PSEG Services Corporation
80 Park Plaza, T5
P.O. Box 570
Newark, NJ 07102

Matthew M. Weissman, Esq.
General State Regulatory Counsel
matthew.weissman@pseg.com

Joseph F. Accardo, Jr., Esq.
Deputy General Counsel and Chief Regulatory
Officer
joseph.accardo@pseg.com

Justin B. Incardone, Esq.
Associate General Regulatory Counsel
justin.incardone@pseg.com

Danielle Lopez, Esq.
danielle.lopez@pseg.com

Joseph A. Shea, Jr., Esq.
joseph.sheajr@pseg.com

Michele Falcao
Regulatory Filings Supervisor
michele.falcao@pseg.com

Caitlyn White
Regulatory Case Coordinator
caitlyn.white@pseg.com

Kenneth Maloney, Esq.
Cullen and Dykman LLP on behalf of Public
Service Electric and Gas Company
One Riverfront Plaza
Newark, New Jersey 07102
kmaloney@cullenanddykman.com

New Jersey Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch, Secretary of the Board
aida.camacho@bpu.nj.gov

Paul Flanagan, Esq., Executive Director
paul.flanagan@bpu.nj.gov

Division of Clean Energy

Sara Bluhm Gibson, Director
sara.bluhm@bpu.nj.gov

Sherri Jones, Assistant Director
sherri.jones@bpu.nj.gov

Benjamin S. Hunter
Director, Bureau of Clean and Renewable Energy
benjamin.hunter@bpu.nj.gov

Mahogany A. Hall, Program Specialist 2
mahogany.hall@bpu.nj.gov

Benjamin Goldstein, Program Specialist Trainee
benjamin.goldstein@bpu.nj.gov

Division of Energy

Stacy Peterson, Director
stacy.peterson@bpu.nj.gov

Paul Lupo, Bureau Chief, Rates & Tariffs
paul.lupo@bpu.nj.gov

Bart Kilar
bart.kilar@bpu.nj.gov

Andrea Reid
andrea.reid@bpu.nj.gov

New Jersey Board of Public Utilities, cont'd

Counsel's Office

Noreen Giblin, Esq., Chief Counsel
noreen.giblin@bpu.nj.gov

Bethany Rocque-Romaine, Esq.
Deputy Chief Counsel
bethany.romaine@bpu.nj.gov

Rachel Boylan, Esq.
rachel.boylan@bpu.nj.gov

Stacy Ho Richardson, Esq.
stacy.richardson@bpu.nj.gov

New Jersey Division of Law

124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

Caroline Vachier, Public Utilities Section Chief, DAG
caroline.vachier@law.njoag.gov

Geoffrey Gersten, DAG
geoffrey.gersten@law.njoag.gov

Andrew Kuntz, DAG
andrew.kuntz@law.njoag.gov

Alex Moreau, DAG
alex.moreau@law.njoag.gov

Timothy R. Oberleiton, DAG
timothy.oberleiton@law.njoag.gov

Emma Xiao, DAG
emma.xiao@law.njoag.gov

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.nj.gov

Brian O. Lipman, Esq., Litigation Manager
blipman@rpa.nj.gov

Felicia Thomas-Friel, Esq.
Managing Attorney – Gas
ftomas@rpa.nj.gov

Kurt Lewandowski, Esq.
Assistant Deputy Rate Counsel
klewando@rpa.nj.gov

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel
ssteinde@rpa.nj.gov

Shelly Massey
smassey@rpa.nj.gov

Rate Counsel Consultants

David E. Dismukes, Ph.D., Consulting Economist
Acadian Consulting Group, LLC
5800 One Perkins Place Drive
Suite 5-F
Baton Rouge, LA 70808
daviddismukes@acadianconsulting.com

Dante Mugrace, Senior Consultant
c/o Karl Richard Pavlovic
PCMG and Associates, LLC
22 Brookes Avenue
Gaithersburg, MD 20877
dmugrace@pcmqregcon.com

Ezra Hausman, Ph.D.
77 Kaposia St.
Auburndale, MA 02466
ezra@ezrahausman.com

Atlantic City Electric Company

Philip J. Passanante, Esq.
Assistant General Counsel
Mailstop 92DC42
500 N. Wakefield Drive
Newark, DE19702
philip.passanante@pepcoholdings.com

Jersey Central Power & Light Company

Lauren M. Lepkowski, Esq.
FirstEnergy Service Company
Legal Department
2800 Pottsville Pike
Reading, PA 19712-6001
llepkoski@firstenergycorp.com

New Jersey Natural Gas Company

Andrew K. Dembia, Esq.
Regulatory Affairs Counsel
1415 Wyckoff Road
P.O. Box 1464
Wall, NJ 07719
adembia@njng.com

Rockland Electric Company

4 Irving Place, Suite 1815-S
New York, NY 10003

Margaret Comes, Esq.
Associate Counsel
comesm@coned.com

Jack Carley, Esq.
Assistant General Counsel
Consolidated Edison Company of New York, Inc.
carleyj@coned.com

James C. Meyer
Riker Danzig Scherer Hyland & Perretti LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
jmeyer@riker.com

Direct Energy; NRG Energy, Inc.; Just Energy Group Inc.; and Centrica Business Solutions

Christopher Torkelson, Esq.
Eckert Seamans Cherin & Mellott, LLC
P.O. Box 5404
Princeton, NJ 08543
ctorkelson@eckertseamans.com

Karen O. Moury, Esq.
Kristine Marsilio, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
kmarsilio@eckertseamans.com

Environment New Jersey, Sierra Club, Environmental Defense Fund, New Jersey League of Conservation Voters, and Natural Resources Defense Council

Aaron Kleinbaum, Esq.
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
akleinbaum@easternenvironmental.org

Enel X North America, Inc.

One Marina Park Drive
Boston, MA 02210

Katie Guerry, Vice President
Regulatory Affairs – North America
katie.guerry@enel.com

Brian Kauffman
Manager
Regulatory Affairs
brian.kauffman@enel.com

William Harla, Esq.
Alice M. Bergen, Esq.
Decotiis, Fitzpatrick, Cole & Giblin, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666
wharla@decotiislaw.com
abergen@decotiislaw.com

Google, LLC

Murray E. Bevan, Esq.
William K. Mosca, Jr., Esq.
Bevan, Mosca & Giuditta P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
mbevan@bmq.law
wmosca@bmq.law

Keystone Energy Efficiency Alliance

14 S. 3rd Street, Second Floor
Philadelphia, PA 19106

Eric Miller
emiller@keealliance.org

Matt Elliott, Executive Director
melliott@keealliance.org

Lime Energy Company

4 Gateway Center, 4th Floor
100 Mulberry Street
Newark, NJ 07102

Lloyd Kass
Senior Vice President, Utility Strategy
lkass@lime-energy.com

MaGrann Associates

Ben Adams
701 East Gate Drive, Suite 100
Mount Laurel, NJ 08054
policy@magrann.com

New Jersey Large Energy Users Coalition

Steven S. Goldenberg, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
sgoldenberg@qhclaw.com

Paul F. Forshay, Esq.
Eversheds Sutherland (US) LLP
700 Sixth Street, N.W., Suite 700
Washington, D.C. 20001-3980
paulforshay@eversheds-sutherland.com

Phillips Lighting North America Corporation

Ben Brinkert, Esq.
3 Burlington Woods Drive
Burlington, MA 01803
ben.brinkert@signify.com

Barbara Koonz, Esq.
T. David Wand, Esq.
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive, Suite 900
Woodbridge, NJ 07095
bkoonz@wilentz.com
dwand@wilentz.com

Sunrun Inc.

Lauri A. Mazzuchetti
Glenn T. Graham
Kelley Drye & Warren LLP
One Jefferson Road, 2nd Floor
Parsippany, NJ 07054
lmazzuchetti@kellevdrye.com
ggraham@kelleydrye.com

Tendril Networks, Inc.

Kerry Cahill, Esq.
Florio Perrucci Steinhardt & Capelli, LLC
235 Broubalow Way
Phillipsburg, NJ 08865
kcahill@floriolaw.com

Exhibit A

PROCEDURAL SCHEDULE

Motions to Intervene/Participate	Fri, November 16, 2018
Opposition to Intervention/Participation	Wed, January 16, 2019
<i>Martin Luther King, Jr. Day (State holiday)</i>	<i>Mon, January 21, 2019</i>
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
<i>Presidents' Day (State holiday)</i>	<i>Mon, February 18, 2019</i>
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
<i>Good Friday (State holiday)</i>	<i>Fri, April 19, 2019</i>
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
<i>Memorial Day (State holiday)</i>	<i>Mon, May 27, 2019</i>
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.

BPU DOCKET NOS. GO18101112
& EO10121113

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)
)

DOCKET NO.
EO18101113

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: February 5, 2019.

/s/ Blake Elder
Blake Elder
Keyes & Fox LLP
1155 Kildaire Farm Rd., Ste. 203
Cary, NC 27511
T: (919) 825-3339
E: beler@keyesfox.com

SERVICE LIST – EO18101113

PSEG

PSEG Services Corporation
80 Park Plaza, T5G
Post Office Box 570
Newark, NJ 07102

Matthew M. Weissman, Esq.
matthew.weissman@pseg.com

Joseph F. Accardo, Jr., Esq.
joseph.accardojr@pseg.com

Justin Incardone, Esq.
justin.incardone@pseg.com

Danielle Lopez, Esq.
danielle.lopez@pseg.com

Joseph A. Shea, Esq.
joseph.shea@pseg.com

Michele Falcao, Esq.
michele.falcao@pseg.com

Caitlyn White
caitlyn.white@pseg.com

Kennth Maloney, Esq.
Cullen and Dykman LLP
kmaloney@cullenanddykman.com

BPU

Board of Public Utilities
44 S. Clinton Ave., 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch
Secretary of the Board
board.secretary@bpu.nj.gov
aida.camacho@bpu.nj.gov

Paul E. Flanagan, Esq.
Executive Director
paul.flanagan@bpu.nj.gov

Sara Bluhm Gibson
Director, Division of Clean Energy
Sara.bluhm@bpu.nj.gov

Sherri Jones
Asst. Director, Division of Clean Energy
sherri.jones@bpu.nj.gov

Benjamin S. Hunter
Director, Bureau of Clean and
Renewable Energy
benjamin.hunter@bpu.nj.gov

Mahogany A. Hall
Division of Clean Energy
mahogany.hall@bpu.nj.gov

Benjamin Goldstein
Division of Clean Energy
benjamin.goldstein@bpu.nj.gov

Stacy Peterson
Director, Division of Energy
stacy.peterson@bpu.nj.gov

Paul Lupo,
Bureau Chief, Rates & Tariffs
Paul.lupo@bpu.nj.gov

Bart Kilar
Division of Energy
bart.kilar@bpu.nj.gov

Andrea Reid
Division of Energy
andrea.reid@bpu.nj.gov

Noreen Giblin, Esq.
Chief Counsel
Noreen.giblin@bpu.nj.gov

Bethany Rocque-Romaine, Esq.
Deputy Chief Counsel
bethany.romaine@bpu.nj.gov

Rachel Boylan, Esq.
Counsel's Office
rachel.boylan@bpu.nj.gov

Stacy Ho Richardson, Esq.
Counsel's Office
stacy.richardson@bpu.nj.gov

Rate Counsel:

Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.nj.gov

Brian O. Lipman, Esq.
blipman@rpa.nj.gov

Felicia Thomas-Friel, Esq.
ftthomas@rpa.nj.gov

Kurt Lewandowski, Esq.
klewando@rpa.state.nj.us

Sarah H. Steindel, Esq.
ssteindel@rpa.state.nj.us

Shelly Massey, Paralegal
smassey@rpa.nj.gov

David E. Dismukes
Acadian Consulting Group, LLC
daviddismukes@acadianconsulting.com

Dante Mugrace
PCMG and Associates LLC
dmugrace@pcmgregcon.com

Ezra Hausman
Ezra@ezrahausman.com

Division of Law

Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

Caroline Vachier, Esq.
Deputy Attorney General
caroline.vachier@law.njoag.gov

Geoffrey Gersten, Esq.
Deputy Attorney General
geoffrey.gersten@law.njoag.gov

Andrew Kuntz, Esq.
Deputy Attorney General
andrew.kuntz@law.njoag.gov

Alex Moreau
Deputy Attorney General
alex.moreau@law.njoag.gov

Timothy Oberleiton
timothy.oberleiton@law.njoag.gov

Emma Xiao, Esq.
Deputy Attorney General
emma.xiao@law.njoag.gov

Atlantic City Electric Company

Philip J. Pasanante, Esq.
Assistant General Counsel
philip.pasanante@pepcoholdings.com

Jersey Central Power & Light Co.

Lauren M. Lepkowki, Esq.
FirstEnergy Service Co., Legal Dept.
llepkoski@firstenergycorp.com

New Jersey Natural Gas Co.

Andrew K. Dembia, Esq.
Regulatory Affairs Counsel
adembia@njng.com

Rockland Electric Co.

4 Irving Place, Suite 1815-S
New York, NY 10003

Margaret Comes, Esq.
Associate Counsel
comes@coned.com

Jack Carley, Esq.
Assistant General Counsel
Consolidated Edison Co.
carleyj@coned.com

James C. Meyer
Riker Danzig Scherer Hyland & Perretti
jmeyer@riker.com

**Direct Energy; NRG Energy, Inc.,
Just Energy Group Inc. and Centrica
Business Solutions**

Christopher Torkelson, Esq.
Karen O. Moury, Esq.
Kristine Marsilio, Esq.
Eckert Seamans Cherin & Mellott, LLC
ctorkelson@eckertseamans.com
kmoury@eckertseamans.com
kmarsilio@eckertseamans.com

**Environment New Jersey, Sierra
Club, Environmental Defense Fundm
New Jersey League of Conservation
Voters, and Natural Resources
Defense Council**

Aaron Kleinbaum, Esq.
Eastern Environmental Law Center
akleinbaum@easternenvironmental.org

Enel X North America, Inc.

One Marina Park Drive
Boston, MA 02210

Katie Guerry, Vice President
Regulatory Affairs – North America
Katie.guerry@enel.com

Brian Kauffman
Manager, Regulatory Affiars
Brian.kauffman@enel.com

William Haria, Esq.
Alice M. Bergen, Esq.
Decotiis, Fitzpatrick, Cole & Giblin LLP
wharla@decotiislaw.com
abergen@decotiislaw.com

Google, LLC

Murray E. Bevan, Esq.
William K. Mosca, Jr., Esq.
mbevan@bmg.law
wmosca@bmg.law

Keystone Energy Efficiency Alliance

14 S. 3rd Street, Second Floor
Philadelphia, PA 19106

Eric Miller
emiller@keealliance.org

Matt Elliott, Executive Director
melliott@keealliance.org