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MAR 11 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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File No.: 300135-70

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March 8, 2019

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
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MAR 11 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**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 Nos. GO18101112 & EO18101113**

Dear Secretary Camacho-Welch:

Enclosed on behalf of Direct Energy Business, LLC ("Direct Business"), Direct Energy Business Marketing, LLC ("Direct Marketing"), Direct Energy Services, LLC ("Direct Services"), Gateway Energy Services Corporation ("Gateway"), and NJR Retail Services Company ("NJR") (collectively, "Direct Energy"), NRG Energy, Inc. ("NRG"), Just Energy Group Inc. ("Just Energy") and Centrica Business Solutions (collectively, the "Market Participants") are an original and ten (10) copies of a Motion for Reconsideration of the Order of the Board of Public Utilities adopted on February 27, 2019 in the above proceeding. By copy of this letter, copies of this Motion for Reconsideration are being forwarded on this date via email to all persons whose names appear on the attached Service List.

I also have enclosed an extra copy of this Motion for Reconsideration to be stamped "filed" and returned to this office in the enclosed self-addressed envelope.

Case mgmt
list copied

Thank you.

Respectfully submitted,



Christopher E. Torkelson

CET/ldr
Enclosures

cc: Stefanie A. Brand, Esq. (w/enc., via email and FedEx)
Matthew M. Weissman, Esq. (w/enc., via email and FedEx)
All Persons on Attached Service List (w/enc., via email only)

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of its
Clean Energy Future – Energy Efficiency (“CEF-EE”) Program on a Regulated Basis

BPU Docket Nos. GO18101112 & EO18101113

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

STATE OF NEW JERSEY

OFFICE OF ADMINISTRATIVE LAW

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

In the Matter of the Petition of	:	BPU Docket Nos. GO18101112 &
Public Service Electric and Gas Company	:	EO10121113
For Approval of its Clean Energy	:	
Future-Energy Efficiency ("CEF-EE") Program	:	
On a Regulated Basis	:	

**MOTION FOR RECONSIDERATION
OF DIRECT ENERGY BUSINESS, LLC,
DIRECT ENERGY BUSINESS MARKETING, LLC,
DIRECT ENERGY SERVICES, LLC, GATEWAY ENERGY SERVICES
CORPORATION, NJR RETAIL SERVICES COMPANY, NRG ENERGY, INC., JUST
ENERGY GROUP INC. AND CENTRICA BUSINESS SOLUTIONS**

I. INTRODUCTION

Pursuant to *N.J.A.C.* 14:1-8.6, Direct Energy Business, LLC ("Direct Business"), Direct Energy Business Marketing, LLC ("Direct Marketing"), Direct Energy Services, LLC ("Direct Services"), Gateway Energy Services Corporation ("Gateway"), and NJR Retail Services Company ("NJR") (collectively, "Direct Energy"), NRG Energy, Inc. ("NRG"), Just Energy Group Inc. ("Just Energy") and Centrica Business Solutions (collectively, the "Market Participants") file this Motion for Reconsideration of the Order of the Board of Public Utilities ("Board" or "BPU") adopted on February 27, 2019 ("February 27 Order"), effective March 9, 2019, in the above-captioned proceeding. The February 27 Order, among other things, granted interlocutory review and affirmed Commissioner Solomon's January 22, 2019 Prehearing Order, which denied Direct Energy's Motion to Intervene and instead limited Direct Energy to participant status. Through this Motion for Reconsideration, the Market Participants request that

the February 27 Order be modified to grant them full party status as intervenors in this proceeding. Given the 180-day statutory timeframe¹ for this case, the Market Participants request that the Board rule on this Motion for Reconsideration on an expedited basis.

Supplementing the rationale and argument set forth in the Market Participants' Motion to Intervene and Motion for Interlocutory Review, numerous other reasons appear to have been overlooked by the Board, which further support their intervention. Specifically, these reasons are that:

(1) the interests of Keystone Energy Efficiency Alliance ("KEEA") are not similar to the Market Participants, as evidenced by the executed affidavit of KEEA, which is attached hereto as Appendix A, declaring that it does not intend to represent the interests of the Market Participants in this proceeding;

(2) the Electric Discount and Energy Competition Act of 1999 ("EDECA") favors reliance on competitive markets, where such markets exist, over bundled public utility service, *N.J.S.A.* 48:3-50(a)(2), and expressly prohibits public utilities from offering competitive services to retail customers without the prior express written approval of the Board, which is obligated to consider the adverse impact on the ability of the utility to offer traditional poles and wires services in a safe, adequate and proper manner, *N.J.S.A.* 48:3-55(a)(1);

(3) the perspectives of the Market Participants are critical for the Board to hear and understand in considering whether to allow a significant expansion by a public utility into an area already being served by competitive markets; and

(4) the proposed expenditure of a massive amount of funds - \$2.8 billion, as compared to \$95.3 million in the last energy efficiency proceeding, which are involved in this proceeding - warrants careful and thorough scrutiny by the Board, and the Market Participants are uniquely positioned to offer evidence showing that further utility penetration into established competitive markets is unnecessary and inappropriate.

None of the reasons relied upon by the February 27 Order justify the exclusion of the Market Participants as intervenors in this proceeding. As active participants in the competitive energy efficiency market in New Jersey, the Market Participants have demonstrated that their business interests will be substantially and directly affected by the outcome of this proceeding.

1 *See N.J.S.A.* 48:3-98.1(b).

The Market Participants have further shown that their interests are substantially different so as to add measurably and constructively to the scope of the case, as they are comprised of companies with unique business models, product and service offerings, and experiences. Their interests are not and cannot be represented by other parties. If permitted intervention, the Market Participants will comply with the procedural schedule established in this case, and their intervention will not delay or otherwise disrupt the adjudication of this proceeding.

It is imperative that the Board modify the February 27 Order, grant the Market Participants' Motion to Intervene, and allow them full party-status as intervenors. A significant difference exists between the ability to engage in meaningful litigation of a proceeding under participant versus intervenor status. As entities with direct and substantial interests that are entirely different from other parties so as to add measurably and constructively to the scope of the case, and who would not delay the adjudication of the proceeding, the Market Participants are entitled, under fundamental principles of due process, to have their concerns about PSE&G's filing heard and considered by the Board.

II. BACKGROUND

1. On September 26, 2018, PSE&G initially filed this matter with the Board along with its Clean Energy Future – Electric Vehicle and Energy Storage (“CEF-EVES”)² and Clean Energy Future – Energy Cloud (“CEF-EC”)³ Programs. At the request of the Board, PSE&G filed these three Clean Energy Future Programs separately, with their own petitions and docket numbers. On October 11, 2018, PSE&G filed its Petition with the Board pursuant to *N.J.S.A.* 48:2-21 and *N.J.S.A.* 48:2-21.1, *N.J.S.A.* 48:3-98.1, seeking approval for a Clean Energy Future – Energy Efficiency Program.

2 Docket No. EO18101111.

3 Docket No. EO18101115.

2. On October 15, 2018, PSE&G filed its Petition for Approval of its Clean Energy Future-Energy Efficiency Program on a Regulated Basis with the New Jersey Board of Public Utilities ("the Board"). The CEF-EE Program consists of 22 subprograms, including seven residential subprograms, seven commercial and industrial ("C&I") subprograms, and eight pilot subprograms. The total proposed investment for the CEF-EE Program is approximately \$2.5 billion, with a \$283 million expense budget over the proposed 6-year term of the program. PSE&G proposes to recover and track costs 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 mechanism for recovering lost revenues.

3. By Order adopted on October 29, 2018, the Board determined that the Petition should be retained by the Board for hearing and designated Commissioner Dianne Solomon as the presiding officer. The Board further established November 16, 2018 as the date by which entities seeking to intervene or participate must file the appropriate application. The Order went into effect November 8, 2018.

4. On November 14, 2018, Staff issued a letter of administrative deficiency to PSE&G's CEF-EE filing.

5. On November 16, 2018, pursuant to *N.J.A.C.* 1:1-16.1 and 16.2, Direct Energy and Centrica Business Solutions filed a Motion to Intervene ("Motion to Intervene") in the CEF-EE proceeding.

6. On November 28, 2018, PSE&G filed a letter objecting to Direct Energy's Motion to Intervene.

7. On December 3, 2018, Direct Energy and Centrica Business Solutions filed a letter responding to the Company's objection.

8. On December 6, 2018, the Market Participants filed a Supplemental Motion to Intervene ("Supplemental Motion") to include NRG and Just Energy. Other than providing information relative to the addition of NRG and Just Energy, the Supplemental Motion did not make any substantive changes to the original Motion to Intervene. Neither the number of parties nor the issues to be addressed were modified as a result of the Supplemental Motion.

9. On December 19, 2018, the Market Participants filed a letter responding to the Company's objection.

10. On January 7, 2019, PSE&G made a Supplemental Filing. On January 9, 2019, Staff issued a letter indicating that PSE&G's Supplemental Filing satisfied the minimum filing requirements.

11. On January 22, 2019, Commissioner Solomon issued a Prehearing Order, where she, among other things, denied the Motion to Intervene of the Market Participants and, instead, granted them participant status. January 22 Order at 15. The January 22 Order also established that the 180-day statutory timeframe for Board review⁴ began on January 7, 2019. *Id.* at 3.

12. The Market Participants filed a Motion for Interlocutory Review, seeking to modify the January 22 Order insofar as it relates to the denial of the Market Participants' Motion to Intervene and Supplemental Motion. In the Motion for Interlocutory Review, the Market Participants submitted that the January 22 Order erred in arbitrarily setting a limit on the number of interested parties that could intervene in the proceeding. A failure to reverse the January 22

4 See N.J.S.A. 48:3-98.1(b).

Order will also deprive the Market Participants of due process by denying them an opportunity to be heard on valid issues in which they have a direct and substantial interest.

III. ARGUMENT

13. *N.J.A.C. 1:1-16.1* provides that “[a]ny person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene. *N.J.A.C. 1:1-16.1(a)*. In ruling on a Motion to Intervene, the BPU is instructed to evaluate: (1) the nature and extent of the movant’s interests in the outcome of the case; (2) determination of whether 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; (3) the prospect of confusion or undue delay arising from the movant’s inclusion; and, (4) any other appropriate matters. *N.J.A.C. 1:1-16.3*.

14. Through the Motion to Intervene and the Motion for Interlocutory Review, the Market Participants have demonstrated their substantial and direct business interests in the PSE&G proposals advanced in this proceeding, have shown that their interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, and have explained that no confusion or undue delay will arise from their inclusion.

A. KEEA Does Not Represent the Interests of the Market Participants

15. In the February 27 Order, the Board endorses the rationale of the January 22 Order that the Market Participants’ “participation together with that of the multiple entities seeking intervention on the basis of similar interests would tend to produce confusion and delay.” February 27 Order at 7. The Board points to KEEA as a party having similar interests to the Market Participants merely because as an association, its membership includes a multitude of energy efficiency businesses, whose members include NRG. February 27 Order at 11.

Importantly, however, KEEA has executed an affidavit, which is attached as Appendix A, declaring that it is not representing the interests of the Market Participants in this proceeding.

16. As explained in the original Motion to Intervene, and reiterated in subsequent pleadings, the Market Participants are largely focused on avoiding any further penetration by the public utility into the private, competitive market that has developed for energy efficiency programs. Operating as third party suppliers in New Jersey, the Market Participants are particularly concerned with features of the PSE&G proposal that would use ratepayer funds to subsidize programs that readily available in the market, thereby distorting prices and the proper-functioning of the market. Similarly, the Market Participants are poised to challenge PSE&G's proposal to offer on-bill financing and to choose the companies providing installation services. Simply, the Market Participants are not aligned with any party in this proceeding, including KEEA.

17. Therefore, the Board's reliance on the Market Participants' interests being adequately represented by KEEA is not based in reality. It is imperative that the Board afford the Market Participants an adequate and meaningful opportunity to be heard on the issues they have raised. Being afforded the ability to offer comments during public input hearings and file post-hearing briefs do not equate to a meaningful opportunity to be heard, which also entails the service of discovery, the cross-examination of Company witnesses and the filing of exceptions to the initial decision. In short, full party status is necessary to ensure that the Market Participants are not restricted in their litigation strategy and ultimate appellate remedies.

B. The EDECA Obligates the Board to Consider the Impact of Utilities Offering Services Available in the Competitive Market

18. The EDECA favors reliance on competitive markets, where such markets exist, over bundled public utility service. N.J.S.A. 48:3-50(a)(2).

19. Further, the EDECA expressly prohibits public utilities from offering competitive services to retail customers without the prior express written approval of the Board. During the Board's review, it is obligated to taken into consideration the adverse impact on the ability of the utility to offer traditional utility services in a safe and appropriate manner. N.J.S.A. 48:3-55(a)(1).

20. In this proceeding, the perspectives of the Market Participants are critical for the Board to hear and understand before deciding whether to allow a significant expansion by PSE&G into an area that is already being served by competitive markets. The Market Participants can provide valuable information showing how robust this market is, such that it is not appropriate to divert PSE&G from performing its critical poles and wires functions. When programs are already available to consumers in the competitive market, it does not make sense to allow PSE&G to offer competitive services at the risk of adversely impacting its ability to offer traditional utility services in a safe and appropriate manner.

C. No Reason Cited by the February 27 Order Justifies Exclusion of the Market Participants as Parties

21. No other reason offered by the Board in the February 27 Order justifies the exclusion of the Market Participants as intervenors in this proceeding.

22. For example, the Board refers to Direct Energy being granted intervention in PSE&G's 2017 energy efficiency program where similar issues were raised and the same 180-day timeframe was in place for making a decision. However, the Board cited four distinctions

to justify a different result: (a) a difference in the amount of the budgets; (b) Direct Energy was only one of two entities requesting intervention, as opposed to nine entities “most with similar competitive concerns” seeking intervention; (c) the intervention in 2017 was not opposed by PSE&G; and (d) Direct Energy’s intervention in 2017 was limited to the two new pilot sub-programs. February 27 Order at 8. None of these distinctions justify a different result.

23. As to the difference in the amount of the budgets between the 2017 proceeding and this proceeding, the Market Participants note that in 2017, PSE&G sought approval to invest \$95.3 million over two years to continue three sub-programs and to implement two new subprograms. By contrast, in this proceeding, PSE&G is seeking approval for \$2.8 billion over six years to implement twenty-two subprograms. The vast difference between the amounts proposing to be spent and the scope of the programs does not support the exclusion of the Market Participants in this proceeding. To the contrary, these disparities support their inclusion. A program that involves a budget that is nearly thirty times the budget that was proposed two years ago, and a program that would span a period of six years instead of two years, with twenty-two subprograms being implemented as opposed to two new subprograms, certainly warrants a more thorough consideration by the Board that would benefit from the unique perspectives of the Market Participants.

24. With respect to the number of entities seeking intervention, the Market Participants contend that this factor is irrelevant to whether they met the standards for intervenor status. Fundamentally, the Market Participants have shown that their interests are not similar to the other entities seeking intervention and that more importantly KEEA will not represent their interests in this proceeding. To the extent that the number of entities seeking to intervene may be a factor, it should be considered only in the context of the Board directing parties with similar

interests to coordinate the presentation of their positions, which the Market Participants offered to do in the Motion for Interlocutory Review.

25. While PSE&G did not object to Direct Energy's intervention in the 2017 proceeding, it was still incumbent upon Direct Energy to establish that it met the standards for intervention, which the Board concluded that it did. Indeed, Direct Energy was only seeking intervention in that proceeding to address the two new sub-programs and therefore voluntarily limited its intervention to those issues. Merely because PSE&G seeks to exclude a group of third-party suppliers with whom it is proposing to compete on an unfair basis and unlevel playing field does not mean that the Market Participants have not met the standards for intervention. To the contrary, the Board should view PSE&G's efforts with skepticism and embrace the concerns that the Market Participants desire to raise in this proceeding as a way of not only protecting the competitive market, but also by avoiding a situation where ratepayers are required to subsidize programs that are already available from private entities.

26. Direct Energy's limited intervention in the 2017 proceeding does not warrant a denial of intervention status in this proceeding. In 2017, as explained above, PSE&G proposed the limitation to two new subprograms that were identified by Direct Energy's Motion to Intervene. Since those were the only issues Direct Energy sought to pursue, it voluntarily limited its intervention to those two new subprograms. PSE&G's filing in this case proposes a whole host of new subprograms, providing an even stronger basis that they be carefully scrutinized with input from the Market Participants.

27. For the reasons expressed in the Motion to Intervene, the Motion for Interlocutory Review and above, the Market Participants meet the standards for full party intervention.

Therefore, the Market Participants respectfully request that the Board reconsider the February 27 Order and modify it to grant them the Motion to Intervene.

IV. CONCLUSION

For the reasons explained above, the Market Participants respectfully requests that the Board of Public Utilities modify the February 27 Order to grant them full party status as intervenors in this proceeding. Given the 180-day statutory timeframe⁵ for this case, the Market Participants request that the Board grant their Motion to Intervene on an expedited basis.

Respectfully Submitted,



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Dated: March 8, 2019

5 See N.J.S.A. 48:3-98.1(b).

APPENDIX A

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

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 &
EO10121113

AFFIDAVIT OF ERIC MILLER

I, Eric Miller, being duly sworn according to law, hereby deposes and says:

1. I have been employed as Policy Counsel for Keystone Energy Efficiency Alliance ("KEEA") since October 2015. As Policy Counsel, I lead KEEA's regulatory advocacy efforts to expand the market for energy efficiency in Pennsylvania and New Jersey.

2. My business address is 14 S. 3rd St, Philadelphia PA 19106.

3. This affidavit is based on my knowledge, information and belief regarding the proceeding initiated by the filing of a Petition with the Board of Public Utilities ("Board") by the Public Service Electric and Gas Company ("PSE&G") for Approval of its Clean Energy Future-Energy Efficiency Program on a Regulated Basis.

4. By Order adopted on February 27, 2019 ("February 27 Order"), the Board granted the Motion to Intervene of KEEA in the above-captioned proceeding.

5. In granting KEEA's Motion to Intervene, the Board, in part, referred to KEEA as "a trade organization representing multiple companies with similar or identical concerns in this matter" and noted that NRG Energy, Inc. ("NRG") is a member of KEEA. February 27 Order at 11.

6. I am aware that NRG, along with Direct Energy and Just Energy Group Inc. ("Market Participants"), have filed a Motion to Intervene in this proceeding, which was denied by the February 27 Order.

7. Having reviewed the Market Participants' Motion to Intervene, I note that they oppose PSE&G proposals that would use ratepayer funds to further deploy energy efficiency equipment.

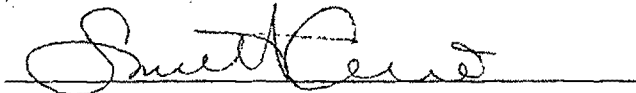
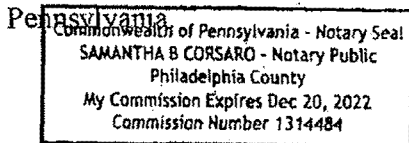
8. The purpose of this Affidavit is to state that KEEA does not intend to represent the interests of the Market Participants in this proceeding.

9. I have read this Affidavit and affirm under oath that all statements in it are true to the best of my knowledge, information and belief.



Eric Miller

Subscribed and sworn to before me this 8 day of March, 2019 in the Commonwealth of



Notary Public

My Commission expires: 12/20/2022 SEAL:

