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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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May 17, 2019

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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 Nos. GO18101112 & EO18101113

Dear Secretary Camacho-Welch:

Enclosed are an original and ten (10) copies of the Initial Brief of Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Gateway Energy Services Corporation, NJR Retail Services Company, Centrica Business Solutions, NRG Energy, Inc., and Just Energy Group Inc. (collectively, the "Market Participants") in the above proceeding. By copy of this letter, copies of this Brief 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 Brief to be stamped "filed" and returned to this office in the enclosed self-addressed envelope.

Case Mgmt
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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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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 PROGRAM ON A REGULATED BASIS	:	BPU DOCKET NOS. GO18191112 & EO10121113

INITIAL BRIEF OF DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY BUSINESS MARKETING, LLC, DIRECT ENERGY SERVICES, LLC, GATEWAY ENERGY SERVICES CORPORATION, NJR RETAIL SERVICES COMPANY, CENTRICA BUSINESS SOLUTIONS, NRG ENERGY, INC., AND JUST ENERGY GROUP INC. ("MARKET PARTICIPANTS")

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Dated: May 17, 2019

Attorneys for Direct Energy, Business, LLC, Direct Energy Business Marketing, LLC and Direct Energy Services, LLC, Gateway Energy Services Corporation, NJR Retail Services Company, Centrica Business Solutions, NRG Energy, Inc., and Just Energy Group, Inc.

I. STATEMENT OF THE CASE

Through its Petition filed on October 15, 2018 and supplemented on January 7, 2019, Public Service Electric & Gas Company ("PSE&G") seeks approval from the Board of Public Utilities ("BPU" or "Board") of its Clean Energy Future Energy Efficiency ("CEF-EE") Program. Under its CEF-EE Program, PSE&G proposes to implement twenty-two energy efficiency programs for a total investment over a six-year period of $2.8 million, which it would recover from captive utility ratepayers on its electric and natural gas distribution systems.

On November 16, 2018, Direct Energy Business, LLC ("Direct Business"), Direct Energy Business Marketing, LLC ("Direct Marketing"), Direct Energy Services, LLC ("Direct Services") Gateway Energy Services Corporation ("Gateway"), NJR Retail Services Company ("NJR") and Centrica Business Solutions (collectively, "Direct Energy") filed a Motion to Intervene ("Motion"), largely focused on PSE&G's proposal to use monopoly ratepayer funds to support programs that are already offered in the competitive retail energy market. In its Motion, Direct Energy identified the following specific concerns with the PSE&G proposal:

> (i) the use of its monopoly status as a public utility and reliance on ratepayer funds to subsidize the deployment and installation of smart energy thermostats, appliances, lighting, and other equipment;
>
> (ii) the use of funds collected from ratepayers to offer an up-front rebate on HVAC, smart thermostats, appliances, lighting, and other equipment, thereby placing other vendors in the market at a competitive disadvantage;
>
> (iii) a plan to achieve demand reductions within targeted zones without initiating a competitive process, which could result in lower costs and the use of more innovative approaches;
>
> (iv) the promotion of certain vendors over other competing entities to perform professional installation services;
>
> (v) the use of its public utility bill to finance the products and installation fees to give it an advantage over other entities who do not have a direct billing relationship with customers; and

(vi) the reliance on customer data that is collected by PSE&G in its public utility monopoly role to offer value-added services to consumers, including home energy audits, which are more appropriately offered by entities in the competitive market.

Direct Energy is one of the largest competitive retail providers of electricity, natural gas and home services in North America, with over 4 million customer relationships, multiple brands and roughly 5,000 employees. As third-party energy suppliers in New Jersey, five Direct Energy companies hold electric power and/or gas supplier licenses.[1] Direct Energy provides its residential and business customers with innovative tools, technologies and insights to manage their energy use. Centrica, an affiliate of Direct Energy, integrates localized energy solutions for businesses around the world that leverage its energy insights, onsite generation, and demand management capabilities. Offering innovative distributed energy solutions, Centrica enables organizations to improve operational efficiency, increase resilience and drive their business vision forward.

By a Supplemental Motion filed on December 6, 2018, Direct Energy urged the inclusion of two additional companies, NRG Energy, Inc. ("NRG") and Just Energy Group Inc. ("Just Energy"), in the intervention, renaming the collective entities as the "Market Participants." Through the Supplemental Motion, the Market Participants sought full intervention status in this proceeding. The Market Participants did not add any new issues to Direct Energy's prior recitation of the concerns regarding PSE&G's proposals and pledged to act in every respect as a single party in this proceeding.

Headquartered in Princeton, New Jersey, NRG is a leading integrated power company in the U.S. A Fortunate 500 company, NRG operates a reliable and efficient electric generation, a demand-side business focusing on demand response and other customer-sited energy efficiency and distributed energy investments, and a retail platform serving residential and commercial

[1] Direct Business – ESL-0165 and GSL-0145; Direct Marketing – ESL-0142 and GSL-0128; Direct Services – ESL-0078 and GSL-0088; Gateway – ESL-0166 and GSL-0146; and NJR – GSL-0173.

businesses. Its retail electricity providers serve almost three million customers across more than a dozen states. One million of those customers are in the Northeast markets, which include customers in New Jersey. Its demand-side businesses work with consumers on an "all-of-the-above" approach to controlling their energy costs and content. NRG's retail companies have more than 25 years combined experience with retail energy competition and customer service. The company has several licensed third party suppliers that are actively serving residential, commercial, industrial and institutional customers across New Jersey.[2] These NRG retail companies offer customers a range of products including 100% renewable, cash back and travel rewards.

Just Energy is the parent company of licensed third party suppliers serving retail customers in New Jersey.[3] Specializing in electricity, natural gas and green energy, the Just Energy corporate family serves close to two million residential and commercial customers throughout North America, the United Kingdom, Ireland and Germany, including electric and natural gas supply customers in New Jersey. Just Energy's affiliates generally offer a wide range of energy products and home energy management services such as long-term fixed-price, flat bill programs, smart thermostats and home water filtration.

PSE&G opposed the original Motion of Direct Energy and the Supplemental Motion of the Market Participants. Both Direct Energy and the Market Participants responded to PSE&G's opposition to their interventions. By Prehearing Order dated January 22, 2019, the presiding Commissioner denied the Supplemental Motion to Intervene of the Market Participants. Rather than permitting the Market Participants full intervention status to have their concerns heard by the

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[2] As third-party energy suppliers in New Jersey, NRG holds electric power and/or gas supplier licenses, as follows: Energy Plus Holdings LLC – ESL-0087, Independence Energy Group LLC – ESL-0100, Energy Plus Natural Gas LLC – GSL-0100, Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business – ESL-0093 and GSL-0176, Green Mountain Energy Company – ESL-0098, and XOOM Energy New Jersey, LLC – ESL-0115 and GSL-0112.

[3] Just Energy holds third-party supplier licenses in New Jersey as follows: Hudson Energy Services, LLC – ESL-0083 and GSL-0069 and Just Energy Solutions, Inc. – ESL-0046 and GSL-0116.

Board and allow for meaningful participation in this proceeding, the Prehearing Order afforded them only "participant status," which limited their participation to offering testimony at the public input hearing, providing verbal comments at the evidentiary hearing[4] and filing post-hearing briefs. The Market Participants were denied the opportunity to participate in discovery, to submit pre-served testimony and to actively participate in the evidentiary hearings through conducting cross-examination and introducing exhibits.

The Market Participants availed themselves of all procedural avenues in an effort to convince the Board of the need to grant full intervention status to protect their due process rights. Through these efforts, the Market Participants also sought to ensure the development of a complete record that would enable the Board to hear the perspectives of PSE&G's competitors in considering its proposals to use ratepayer funds to subsidize products and services that are already available in the private market. On January 29, 2019, the Market Participants filed a Motion for Interlocutory Review of the presiding Commissioner's Prehearing Order. By Order dated February 27, 2019, the Board denied the Market Participants' Motion for Interlocutory Review, stating that its grant of intervention status to Keystone Energy Efficiency Alliance ("KEEA"), whose membership includes multiple participants in energy efficiency markets, would allow it to consider a diversity of interests in this matter alongside those currently represented by the parties in the proceeding.

On March 8, 2019, the Market Participants filed a Motion for Reconsideration, raising several issues supporting their intervention, including an affidavit signed by Eric Miller, Policy Counsel for KEEA, declaring that it did not intend to represent the interests of the Market Participants in this proceeding. The Market Participants' Motion for Reconsideration is still

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[4] By electronic mail dated April 24, 2019, BPU staff explained that the opportunity for verbal comments was limited to a five minute summary by counsel of each intervenor's and participant's position, as opposed to testimony that would be part of the evidentiary record.

pending. By letter dated April 18, 2019, BPU extended its time for reviewing the Motion for Reconsideration, such that it was not deemed denied pursuant to N.J.A.C. 14:1-8.7(c). On May 1 and 2, 2019, evidentiary hearings were held in this matter.

During the public input hearing held on March 21, 2019 at 4:00 p.m., Robert Gibbs, Direct Energy's Director Corporate and Regulatory Affairs, provided verbal testimony and submitted more detailed written testimony, which is attached to this Initial Brief as Exhibit A. .Mr. Gibbs noted Direct Energy's opposition to the PSE&G proposals due to the fact that a robust and mature competitive market exists, in which hundreds, if not thousands, of companies already implementing programs of the type proposed by PSE&G. March 21, 2019 at 4:00 p.m. Transcript ("Transcript") at 26-28. He also pointed to the Electric Discount and Energy Competition Act of 1999, which favors reliance on competitive markets to deliver energy services, where such markets exist, over public utilities providing these services through traditional cost-of-service/rate of return regulation. N.J.S.A. 48:3-50(a)(2). Transcript at 28-29. In the event that the Board allows any portions of the PSE&G filing to be implemented, Mr. Gibbs urged the Board to ensure: (i) that the utility uses competitive processes when selecting their partners; and (ii) that the program is brand and technology neutral, meaning that any group of qualified companies or technologies should be able to participate. Transcript at 28.

Pursuant to the Prehearing Order dated January 22, 2019, Initial Briefs are due on May 17, 2019 and Reply Briefs are due on May 29, 2019. This Initial Brief is submitted on behalf of the Market Participants.

II. SUMMARY OF ARGUMENT

By seeking to expand the provision of energy services well beyond the scope of its traditional role as a public utility that transmits and distributes electricity to end users within New Jersey, PSE&G's proposals are wholly contrary to the stated objectives and express directives of the Electric Discount and Energy Competition Act ("EDECA"). Because competition promotes efficiency, reduces regulatory delay and fosters productivity, EDECA explicitly favors reliance on competitive markets to deliver energy services, where such markets exist, over monopoly providers. Undoubtedly, a mature competitive retail market does, in fact, already exist in New Jersey for the products and services that PSE&G seeks to furnish to customers. To allow the utility, using captive ratepayer funds to subsidize the provision of new energy products and services, would certainly impede the continued development of this robust market. Further, implementation of PSE&G's proposals would skew the prices that competitors would need to charge for these ratepayer-subsidized services, thereby stifling and possibly eliminating competition in the energy efficiency market. In turn, innovation would suffer and New Jersey's residents and businesses would be left with a "one size fits all" solution, irrespective of their own unique needs for tools that allow them to use electricity more efficiently.

Moreover, EDECA prohibits electric utilities from offering competitive services without the express approval of the Board. As PSE&G has not sought that approval, the Board has yet to make a finding regarding the competitive nature of the proposed energy efficiency services. Given the traditional role of electric utilities to transmit and distribute electricity and the widespread deployment of energy efficiency services and products in the private competitive market, PSE&G's proposed foray into this market is clearly designed to offer competitive services.

Because PSE&G has not requested the Board's permission to expand into role beyond that of a public utility, the Board has not made a determination – as required by law – of whether the expansion of PSE&G's business would compromise its core functions for which it was granted an exclusive franchise by the State: the safe and reliable distribution of electricity to more than two million New Jersey families, businesses and institutions. The Board has also not taken requisite measures to ensure that PSE&G avoids using captive ratepayer funds to subsidize the provision of competitive energy services.

The Market Participants urge the Board to reject the utility's proposal to saddle New Jersey ratepayers with a $2.5 billion investment over six years in a wide variety of energy efficiency programs and products that the utility believes consumers *might* want, and instead rely on the competitive market to offer energy efficiency solutions that consumers *choose, and that change as markets and preferences evolve*. At the very minimum, the utility should be required to partner with competitive suppliers who are adept at understanding customer needs in order to deliver solutions they want, when they want them. While energy efficiency programs certainly have significant value, PSE&G's proposal – as structured, using ratepayer funds, capitalizing on its monopoly status and promoting certain vendors over other competitive entities – would diminish the flourishing competitive retail market, would not be in the best interest of the public, and is inconsistent with the clear legislative intent to promote energy competition in New Jersey.

III. ARGUMENT

A. Statute Favors Reliance on Competitive Markets

In enacting the Electric Discount and Energy Competition Act ("EDECA") in 1999, the New Jersey Legislature did so for the express purpose of placing "greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers in greater variety and at a lower cost than traditional bundled public utility service." N.J.S.A. 48:3-50(a)(2). The Legislature further found that "traditional utility rate regulation is not necessary to protect the public interest and that ***competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation***." N.J.S.A. 48:3-50(a)(1)-(2), (b)(1)(emphasis added). The Legislature likewise recognized that permitting the energy market to operate without traditional utility rate regulation will "produce a wider selection of services at competitive market-based rates." N.J.S.A. 48:3-50(b)(6). EDECA also stresses the importance of not "unduly impeding competitive markets." N.J.S.A. 48:3-50(a)(3).

1. A Competitive Market Exists

The competitive retail market for providing energy efficiency tools and services is not traditionally, or appropriately, intended to be a monopoly. Rather, cost-of-service or traditional utility regulation is designed to be a substitute for competition where no market exists because of a natural monopoly or because of some market failure. However, neither situation exists here. As Mr. Gibbs testified on behalf of Direct Energy, "[a] mature private market already exists for the products and services included in PSE&G's proposals and PSE&G has not proven that the already existing mature private market is not serving any or all of the markets PSE&G proposes to serve under these subprograms." Exhibit A at 5; Transcript at 26-28.

The subprograms proposed by PSE&G include incentives for the purchase and installation of certain appliances and equipment offered by PSE&G, such as HVAC equipment, smart thermostats, motors & drives, refrigeration, water heaters, air compressors, food service equipment, and lighting. Further, PSE&G is proposing to offer incentives for customers to utilize PSE&G energy services (or the services of specific vendors selected by PSE&G), including energy audits, the installation and replacement of energy equipment, and energy efficiency education services. Despite PSE&G's claim that it is "uniquely positioned" to implement the proposed CEF-EE Program (See PSE&G Attachment 1 at 18), the products and services already being provided by Direct Energy and Centrica, among others, in the private market are the same products and services that PSE&G now proposes to offer through its CEF-EE subprograms. Exhibit A at 6.

Indeed, PSE&G has not even alleged a dearth of market offerings or a failure of the competitive retail market or explained why the State of New Jersey should not rely on the private market. As explained by Mr. Gibbs, PSE&G's proposal fails the "yellow pages test" where one can find hundreds, if not thousands, of companies around the State of New Jersey who offer many if not all of the products and services that PSE&G proposes in this proceeding. Exhibit A at 7; Transcript at 26-28. Mr. Gibbs specifically noted that Direct Energy and its affiliated Connected Home division offer Hive products in the direct to consumer market, as well as through partners such as retail energy providers, which include Hive Active Thermostat™, Hive Active Light™ bulbs, Hive Active Plug™ and Hive Window and Door Sensor. With Hive, consumers can control their heating and cooling, lights, plugs and sensors through a mobile application. In addition, Direct Energy's family brands include Airtron, which offers HVAC solutions including new installations. Exhibit A at 5-6. He further explained that Centrica integrates localized energy solutions for businesses around the world that leverage its energy insights, onsite generation and demand management capabilities. The energy solutions integrated by Centrica Business Solutions include solar, combined heat and power, energy efficiency, energy insight, demand response, power generation and energy storage. Centrica Business Solutions provides end-to-end energy services across the design, manufacture, financing, installation and maintenance phases of a project. Centrica also offers energy audits for larger commercial and industrial customers. Exhibit A at 6.

Undoubtedly, the competitive market is delivering the products, services, programs and solutions that customers want and need, by innovating with technology to deploy solutions that are designed to meet those high expectations. Each day, market participants work to develop and improve energy efficiency products, expand services, and reduce costs. Unregulated market participants must focus on efficient and customer-oriented practices, or they risk going out of business. If market participants are forced out, PSE&G could end up with a monopoly on the market, eliminating the benefits of competition in developing innovative energy-saving solutions.

Exhibit A at 8. As required by the statute, the Board should rely on the competitive market to continue offering energy efficiency and other solutions demanded by today's consumers.

2. *Reasons for Reliance on Market*

Expressly recognizing that competition promotes efficiency, avoids regulatory delay, and fosters innovation, the New Jersey Legislature has a solid basis for favoring reliance on the competitive market to deliver energy services to consumers. More than 70 third party suppliers licensed by the BPU, as well as other entities focused on energy efficiency programs, are better suited to provide the same type of products and services, more efficiently, more cost effectively, with greater nimbleness to respond to changing consumer preferences, with greater speed to market, and most importantly, without taxing ratepayers to foot the bill. As competitors, it is the job of entities in the private market to package products and services for consumers in a way that they understand. Because market participants have to compete for every customer whose business is acquired and retained, they are well aware of the need to meet and even exceed their expectations. The business of offering energy efficiency programs should be left to those entities with the specific expertise to effectively design them and to ensure that customers receive the products they desire without saddling ratepayers with additional and unnecessary financial burdens of an unnecessary and inflexible regulatory framework

Competitive companies, like the Market Participants, drive innovation and have customer engagement programs that position them to understand how to package products and services for consumers in a way that promotes customer adoption of these technologies. Because they have to compete for every customer whose business they acquire and retain, they are driven to ensure an excellent customer experience that includes providing "plug and play" solutions that consumers can quickly and easily assimilate into their daily lives. The only way to ensure customer adoption of these technologies is to enable companies with expertise in delivering those customer experiences to compete.

The local utility is not structured and does not have an aptitude for, developing and delivering innovative products and services to consumers. And that is because consumer needs and desires evolve quickly. And, technology evolves quickly. The regulated model is simply too slow to adapt to the ever-changing consumer needs and technological advances – it is just not designed for innovation. Moreover, the regulated monopoly by its very nature treats all customers the same and produces "one size fits all" solutions. The local utility does not possess the skills or tools required to translate the multiple and often complex technology options into something consumers want in a quickly evolving competitive market.

The business of offering energy efficiency solutions to consumers must reside with those entities with the expertise to effectively design them and to ensure that customers receive the products they desire without the barriers of an unnecessary and inflexible regulatory framework – competitive third party suppliers. Third party suppliers are highly motivated to identify customer needs and deliver the products and services that customers want in order to attract and retain customers. They have customer call centers that listen to consumers, and product development teams focused on creating products that meet those consumers' needs. Third party suppliers do not have captive ratepayers and do not get guaranteed cost recovery if they fail. They must provide products and services at prices customers want because if they fail, customers either will not choose their service or they will leave. By relying on the competitive market to deliver innovative solutions, the Board, and most importantly consumers, can be certain that customers will get the best price and the best value for those products.

3. *Approval of PSE&G's Petition Would Impede Competitive Markets*

Allowing PSE&G to utilize its monopoly status as a public utility and rely on ratepayer funds to subsidize the deployment and installation of smart energy thermostats, appliances, lighting, and other equipment would have a detrimental effect on the competitive energy market. This outcome is unavoidable because other entities offering the same or similar products and services would be at distinct competitive disadvantage on account of the ratepayer-subsidized nature of these programs. Exhibit A at 5.

Certainly, encouraging energy efficiency is in the public interest. The Market Participants are not opposing energy efficiency education or measures aimed at promoting energy efficiency practices. Rather, the Market Participants oppose the provision of these products and services by the monopoly distribution utility on a subsidized basis using ratepayer funds that are paid by all ratepayers, including those who might purchase similar products and services offered by the private market. The Market Participants are concerned with the detrimental effects that PSE&G's proposal may have on the competitive retail market aimed at providing innovative tools and technologies to help consumers manage their energy use.

Of particular concern to the Market Participants are the many proposals advanced by PSE&G that seek to leverage its monopoly status and that rely on ratepayer funding to subsidize the deployment and installation of products for which a competitive market currently exists, thereby exacerbating the already uneven playing field that exists in New Jersey's electricity market. PSE&G has a long-standing relationship with distribution customers, and as such, third party suppliers already face challenges in building their own relationships with customers and earning their trust as "the energy company." If PSE&G is permitted to offer these programs and services, third party suppliers will be at a competitive disadvantage and unable to compete on a level playing field. In addition to the benefits of having a long-standing relationship with its customers, PSE&G is able to offer incentives that are not available to other market participants. Exhibit A at 8-9.

Examples of how PSE&G's proposal would, if allowed to proceed, undermine New Jersey's competitive electricity market include:

- *Up-front Rebates*. PSE&G proposes to use ratepayer funds to significantly expand its rebate program to offer customers an up-front rebate on HVAC, smart thermostats, appliances, lighting, and other equipment. Competitive suppliers lack the ability to offer similar ratepayer subsidized rebates and are thus at a distinct competitive disadvantage. If rebate programs are going to continue, competitive suppliers should be able to compete for a share of those funds – to which their customers also contribute – so that they too can offer rebates to consumers who choose eligible technologies – thereby expanding the options and opportunities for New Jersey customers.

- *No Competitive Process*. PSE&G proposes to design a plan to achieve desired demand reductions within targeted zones. PSE&G's demand response proposal is in direct competition with those services offered by competitors. If such a program is going to move forward, then at a minimum, PSE&G should be required to employ a competitive process that invites market participants specializing in demand response services to compete to deliver the most demand reductions at the lowest price.

- *Use of Utility Bill*. PSE&G's proposes to leverage its "established customer relationships" – relationships that exist entirely because of its monopoly status, and to use its monthly customer invoice to enable customers to finance products and installation fees. Not only does this ratepayer-funded on-bill financing proposal provide consumers with convenience of having financing done through the utility bill, no such option is available to third party suppliers or other entities in the market who want to offer similar products and financing. Therefore, if implemented, it would place market participants at a competitive disadvantage.

All of these proposals may have a substantial and detrimental effect on the private market. Exhibit A at 8-10.

Regarding rebates, it is important to keep in mind that in order to compete on any level with these offers, market participants will be forced to drastically reduce the market price of these items, without the benefit of subsidies paid by captive ratepayers. This scenario could skew market prices and may drive market participants who are currently offering innovative energy solutions out of the market, a consequence which would not be in the public interest. If market participants are forced out, PSE&G could end up with a monopoly on the market, eliminating the benefits of competition in developing innovative energy-saving solutions. Exhibit A at 9.

PSE&G has also proposed to provide energy audits to certain customers at no charge – services that are also already available through the private market. In its role as a public utility, PSE&G would be able to capture customer data that is not readily available to other market participants and use it to provide value-added services to consumers that are more appropriately offered in the competitive market. Because PSE&G would be offering these services at no cost to customers, using ratepayer-funded subsidies, the value of these services in the market would be minimized. To the extent that other entities would attempt to offer these services as a value-add to other products or to sell these services to consumers, PSE&G's proposal would adversely affect those efforts. The Board should not permit PSE&G to use ratepayer funds to skew the private market for energy audit services. Exhibit A at 10. It is also critical that the Board make clear that customer data collected by PSE&G belongs to the customer, who may opt to have it shared with other energy services providers.

Specific to PSE&G's Volt Var Pilot proposal, suppliers may be placed at a competitive disadvantage if PSE&G is not required to select suppliers through a competitive process to meet demand reductions and to use technology designed by the market. Exhibit A at 10. By requiring PSE&G to initiate a competitive process, the Board could increase the potential for lower costs and the use of more innovative approaches.

Issues regarding the adverse impact of PSE&G's proposal on competitive markets were also highlighted during the public input hearing on March 21, 2019 by Nicole Sitaraman, Senior Manager of Public Policy for the Mid-Atlantic Region at Sunrun, Inc. As Ms. Sitaraman pointed out, utility ownership of competitive market products contravenes the clear intend of New Jersey law to promote competitive markets in energy efficiency. Transcript at 66-67. A better solution, suggested Ms. Sitaraman, is to permit competitive market providers to be on equal footing with the utilities in their ability to furnish energy efficiency tools to customers. Transcript at 67-68.

While the Market Participants do not question the validity or usefulness of the various energy efficiency programs proposed by PSE&G, it is imperative that the Board recognize that it is both unnecessary and inappropriate to allow the local utility to use its monopoly status to subsidize the provision of competitive services that are already available in the market. Programs that offer value to consumers beyond the delivery of electricity, by allowing consumers to better manage their energy consumption and reduce their electric costs, are best deployed by competitive entities skilled at tailoring energy products that are designed to meet the unique needs of their consumers. When a local utility does the same, all customers pay, whether or not they want or use the service or product. Even worse, competition is stifled – resulting in fewer options for customers. By contrast, allowing competition to thrive creates choices and higher quality options, and provides customers with the opportunity to have a better experience

B. <u>Statute Requires Prior Board Approval for Utility to Offer Competitive Services</u>

In addition to favoring reliance on competitive markets over monopolies to provide energy services, EDECA explicitly prohibits an electric public utility from offering "any competitive service to retail customers within this State without the prior express written approval of the board." N.J.S.A. 48:3-55(a). Under EDECA, the Board is authorized to determine, after notice and hearing, whether any service offered by the public utility is a "competitive service." The standards for making that determination must include "evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant market segment and geographic area." N.J.S.A. 48:3-56.

1. Energy Efficiency Services and Tools are Competitive Services

An "electric public utility" is defined by EDECA as a public utility "that transmits and distributes electricity to end users within" New Jersey. N.J.S.A. 48:3-51. These are the public utility's core functions. EDECA also allows electric public utilities to continue to "offer customer account services on a regulated basis." N.J.S.A. 48:3-54. Subject to the approval of the Board, EDECA permits public utilities to provide competitive services related to metering, billing, safety and reliability. N.J.S.A. 48:3-55(f). These provisions relating to regulated utility functions and competitive services are silent on the provision of energy efficiency programs.

The evidence offered in this proceeding, as discussed above, demonstrates the "competitive nature" of the energy efficiency products and services that PSE&G seeks to provide to customers on its distribution system. The very presence of private-sector market participants shows that competition is possible and appropriate. In fact, as discussed above, a robust private market already exists that is offering these same tools and services. Exhibit A at 8. Given the ease of market entry, the presence of other competitors and the availability of energy efficiency products and services in the market, it is clear that PSE&G's proposal contemplates the provision of competitive services. Yet, at no time has PSE&G sought the Board's approval to furnish "competitive services" of the nature described in the Petition. To the contrary, PSE&G described its proposal as being offered on a "regulated basis," thereby disguising the competitive component of its proposed services. As a result, BPU has yet to hold a hearing and consider whether PSE&G's proposed expansion into the energy efficiency arena would constitute the provision of "competitive services."

2. Additional Inquiries Required by Statute

Importantly, the Board also has yet to fulfill its statutory duties to ensure PSE&G is not compromising its core statutory functions of safely and reliably delivering electricity or using its monopoly revenues to provide services that are "competitive." Even upon finding that a service offered by the public utility is a "competitive service," the Board is authorized by the statute to approve the provision of a competitive service only upon a determination that such activity will "not adversely impact the ability of the electric public utility to offer its non-competitive services to customers in a safe, adequate and proper manner" and that the price is not "less than the fully allocated cost of providing such service." N.J.S.A. 48:3-55(a)(1) and (2). In making this determination, it is incumbent upon the Board to ensure that "where resources are jointly deployed by the utility, to provide competitive and non-competitive services and resource constraints arise, the provision of non-competitive services shall receive a higher priority." N.J.S.A. 48:3-55(a)(1).

a. Compromising Ability to Perform Core Functions

Allowing PSE&G to stray from its traditional utility obligations of providing safe and adequate delivery services and through the development of programs that are already being provided by the competitive market – and in fact are better left to the competitive market – jeopardizes the ongoing safety and adequacy of its distribution facilities. The Board need not look far for examples illustrating the fundamental necessity for electric utilities to keep safety and reliability at the forefront of their operations. For instance, in 2012, Hurricane Sandy caused particularly severe damage in New Jersey, with record-breaking, long-lasting power outages. PSE&G itself was reported to have had as many as 1.7 million outages lasting up to 8 days.[5] More recently, California's extensive wildfire damage has been blamed in part on failed utility equipment and lays bare the absolute necessity to keep our regulated monopoly utilities squarely focused on their core function of delivering safe and reliable electricity service. California's largest utility has declared bankruptcy, while another utility has expressed a desire to get out of power

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[5] Riddell, R. (2013, January 23). The 10 Longest Power Outages of 2012, *Utility Dive*, Retrieved from http://www.utilitydive.com.

supply business altogether so that it can focus on its core reliability function.[6] Consequently, the Governor of California, the General Assembly and the California Public Utility Commission are considering a menu of policy options to relieve the utility companies of the commodity supply business so that they may focus solely on the poles and wires.[7]

The monopoly utilities are structured specifically to provide a regulated service to consumers at cost plus a rate of return, set by the Board. They are not structured and do not have an aptitude for developing and delivering innovative products and services to consumers. They also do not possess the skills or tools required to translate the multiple and often complex technology options into something consumers want in a quickly evolving competitive market. Indeed, they should not be expected to possess, develop or hone these skills, as their resources must be devoted to their essential core function of delivering electricity to their distribution customers – as the legislature clearly articulated in 1999 when it obligated the BPU to ensure that the provision of non-competitive services are prioritized above non-commodity services.

b. Using Ratepayer Funds to Subsidize Competitive Services

EDECA also requires the Board to ensure that the price charged by the utility is not less than the fully allocated cost of providing the competitive service. Importantly, the Board is charged with ensuring "that rates for non-competitive public utility services do not subsidize the provision of competitive services by public utilities." N.J.S.A. 48:3-50(a)(6). Indeed, ECEDA expressly prohibits an electric public utility from using "regulated rates to subsidize its competitive services" and states that "expenses incurred in conjunction with its competitive services shall not

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[6] Nikolewksi, R. (2019, January 13). Why SDG&E Wants to Get Out of the Business of Buying Electricity, *The San Diego Union-Tribune*, Retrieved from http://www.sandiegouniontribune.com. Blunt, K. and Gold, R. (2019, January 29). PG&E Files for Bankruptcy Following California Wildfires, *The Wall Street Journal*, Retrieved from http://www.wsj.com.

[7] Stoel Rives LLP (2019, March 15). California Public Utilities Commission Opens Rulemaking to Consider Expansion of Direct Access, *Renewable + Law*, Retrieved from http://www.jdsupra.com. Informational Hearing, The Changing Electricity Landscape: The Need for a New Regulatory Approach, *California State Senate Committee on Energy, Utilities and Communications*, March 19, 2019.

be borne by its regulated rate customers." N.J.S.A. 48:3-55(h). Moreover, the BPU is obligated to monitor the market and take such actions as it deems necessary and appropriate to restore competition in the event that one or more entities are in a position to dominate the market and charge anti-competitive prices. N.J.S.A. 48:3-50(c)(5).

As for ensuring that the utility does not subsidize the competitive services it is offering, many examples are discussed above of how the pending Petition would allow PSE&G to do just that. For instance, the utility would rely on ratepayer funds to subsidize the deployment and installation of smart energy thermostats and other energy efficient equipment. Also, as proposed, PSE&G would use monopoly revenues to finance energy efficiency products and installation fees on its utility bill. Allowing PSE&G to utilize its monopoly status as a regulated public utility to directly compete with services that are available through the private market, and use those revenues to subsidize those competitive services, would place other vendors at a disadvantage and violate the provisions of EDECA to which the Board is required to adhere. Exhibit A at 8.

IV. CONCLUSION

Based upon the foregoing, the Market Participants respectfully urge the Board of Public Utilities to deny the Petition of Public Service Electric and Gas Program for Approval of its Clean Energy Future-Energy Efficiency Program. To the extent that the Board permits any portions of the proposed Program to go into effect, the Market Participants respectfully request that the Board ensure that; (i) utility rates are not used to subsidize energy efficiency products and services; (ii) competitive processes are utilized in selecting vendors; (iii) certain vendors are not promoted over other vendors in providing installation services; (iv) PSE&G is not permitted to use its bill to finance products and installation fees; and (v) customer data that is gathered by PSE&G is labeled as belonging to the customer so that the customer has the option of sharing the information with other energy services providers.

Respectfully Submitted,

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Dated: May 17, 2019

EXHIBIT 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**

TESTIMONY OF ROBERT GIBBS
ON BEHALF OF DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY BUSINESS MARKETING, LLC, DIRECT ENERGY SERVICES, LLC, GATEWAY ENERGY SERVICES CORPORATION, NJR RETAIL SERVICES COMPANY, AND CENTRICA BUSINESS SOLUTIONS

I. Introduction

I am Robert Gibbs and my testimony today is presented to the Board of Public Utilities ("Board) 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"), NJR Retail Services Company ("NJR") (collectively, "Direct Energy"), and Centrica Business Solutions ("Centrica"). I am employed by Direct Energy as the Director of Corporate and Regulatory Affairs.

Direct Energy is one of the largest competitive retail providers of electricity, natural gas and home services in North America, with over 4 million customer relationships, multiple brands and roughly 5,000 employees. As third-party energy suppliers in New Jersey, all five Direct Energy companies hold electric power and/or gas supplier licenses, as follows: Direct Business – ESL-0165 (electric power) and GSL-0145 (gas supplier); Direct Marketing – ESL-0142 (electric power) and GSL-0128 (gas supplier); Direct Services – ESL-0078 (electric power) and GSL-0088 (gas supplier); Gateway – ESL-0166 (electric power) and GSL-0146 (gas supplier); and NJR – GSL-0173 (gas supplier). Direct Energy is licensed to sell natural gas and electricity to customers in PSE&G's service territory. Direct Energy provides its residential and business customers with innovative tools, technologies and insights to manage their energy use.

Centrica, an affiliate of Direct Energy, integrates localized energy solutions for businesses around the world that leverage its energy insights, onsite generation, and demand management capabilities. Offering innovative distributed energy solutions, Centrica enables organizations to improve operational efficiency, increase resilience and drive their business vision forward.

The purpose of my testimony is to oppose the Petition of Public Service Electric and Gas Company ("PSE&G") for Approval of its Clean Energy Future-Energy Efficiency ("CEF-EE") Program on a Regulated Basis ("Petition") and discuss a number of concerns with the proposed CEF-EE subprograms, as well as PSE&G's proposal to use ratepayer funds to support these programs.

II. PSE&G Proposal

In this proceeding, PSE&G seeks Board approval of 22 CEF-EE subprograms, including seven residential subprograms, seven commercial and industrial ("C&I") subprograms, and eight pilot subprograms. The Direct Testimony of Karen Reif ("PSE&G Attachment 1") describes the 22 CEF-EE subprograms, which are summarized as follows:

- **Residential Efficient Products:** PSE&G proposes to provide rebates and on-bill repayment for HVAC, smart thermostats, appliances, lighting, and other equipment.

- **Residential Existing Homes:** PSE&G proposes to provide rebates and on-bill repayment for energy audits, direct installation of efficient equipment, and broader weatherization / appliance replacement services
- **Residential Behavioral:** PSE&G proposes to provide data analytics, home energy reports, and online energy audits.
- **Residential K-12 Education:** PSE&G proposes to provide curriculum to teach energy efficiency and a take-home kit with efficient products.
- **Residential New Construction:** PSE&G proposes to provide rebates to builders and owners for new construction meeting energy efficiency standards.
- **Residential Multi-Family:** PSE&G proposes to provide energy audits and direct installation of efficient equipment at no charge to tenants.
- **Residential Income Eligible:** PSE&G proposes to provide energy audits, direct installation of efficient equipment, and broader weatherization/appliance replacement services at no charge.
- **C&I Perspective:** PSE&G proposes to provide rebates and on-bill repayment for HVAC, lighting, motors & drives, refrigeration, water heaters, air compressors, and food service equipment.
- **C&I Custom:** PSE&G proposes to provide custom incentives for large energy efficiency projects, including on-bill repayment.
- **C&I Small Non-Residential Efficiency:** PSEG proposes to provide rebates and on-bill repayment for direct-installed EE measures to small non-residential customers of lighting, controls, refrigeration, heating and air conditioning upgrades, etc.

- **C&I New Construction:** PSE&G proposes to provide rebates to builders and owners for new construction meeting energy efficiency standards.
- **C&I Energy Management:** PSE&G proposes to provide retro-commissioning and strategic energy management: optimizing existing systems with little to no equipment upgrades.
- **C&I Engineered Solutions:** PSE&G proposes to provide whole-building engineered energy saving solutions to hospitals, school districts, universities, municipalities, apartment buildings and other non-profit public entities.
- **C&I Streetlight:** PSE&G proposes to provide replacement of HPS and LED luminaires and smart cities pilot.
- **Emerging Technologies & Approaches:** PSE&G proposes to provide funding and support to identify, demonstrate, and deploy the next generation of energy efficiency technologies.
- **Energy Efficiency as a Service Pilot:** PSE&G proposes to provide monthly service contracts, incentives, and extensive guidance on energy efficient building equipment and software.
- **Smart Homes Pilot:** PSE&G proposes to provide automated and personalized savings measures using an ecosystem of energy efficient devices and technologies working in coordination.
- **Non-Wires Alternative Pilot:** PSE&G proposes to defer or replace the need for electric infrastructure upgrades through the extensive deployment of energy efficiency and demand response resources.

- **Non-Pipes Solution Pilot:** PSE&G proposes to defer or replace the need for gas infrastructure upgrades through the extensive deployment of energy efficiency and demand response resources.
- **Volt Var Pilot:** PSE&G proposes to use smart-grid technology to automate control of the electric power distribution grid to reduce energy consumption, peak demand, system losses and enable more solar.
- **Business Energy Reports Pilot:** PSE&G proposes to use data analytics, home energy reports and online energy audits for businesses.
- **Building Operator Certification Pilot:** PSE&G proposes to provide a training program for building operations staff responsible for energy-using equipment.

PSE&G Attachment 1 at 6-9. PSE&G proposes to use ratepayer funds to subsidize these programs.

III. Opposition to Subprograms

Direct Energy and Centrica strongly oppose these subprograms. Simply put, a mature private market already exists for the products and services included in PSE&G's proposals and PSE&G has not proven that the already existing mature private market is not serving any or all of the markets PSE&G proposes to serve under these subprograms. Allowing PSE&G to utilize its monopoly status as a public utility and rely on ratepayer funds to subsidize the deployment and installation of smart energy thermostats, appliances, lighting, and other equipment would have a detrimental effect on the competitive energy market and would place other entities offering the same or similar products and services, including Direct Energy and Centrica, at a competitive disadvantage on account of the subsidized nature of these subprograms.

Direct Energy and its affiliated Connected Home division offer Hive products in the direct to consumer market, as well as through partners such as retail energy providers, which include

Hive Active Thermostat™, Hive Active Light™ bulbs, Hive Active Plug™ and Hive Window and Door Sensor. With Hive, consumers can control their heating and cooling, lights, plugs and sensors through a mobile application. In addition, Direct Energy's family brands include Airtron, which offers HVAC solutions including new installations.

Centrica integrates localized energy solutions for businesses around the world that leverage its energy insights, onsite generation and demand management capabilities. The energy solutions integrated by Centrica Business Solutions include solar, combined heat and power, energy efficiency, energy insight, demand response, power generation and energy storage. Centrica Business Solutions provides end-to-end energy services across the design, manufacture, financing, installation and maintenance phases of a project. Centrica also offers energy audits for larger C&I customers.

As discussed, the subprograms proposed by PSE&G include incentives for the purchase and installation of certain appliances and equipment offered by PSE&G, including HVAC equipment, smart thermostats, motors & drives, refrigeration, water heaters, air compressors, food service equipment, and lighting. Further, PSE&G is proposing to offer incentives for customers to utilize PSE&G energy services (or the services of specific vendors selected by PSE&G), such as energy audits, the installation and replacement of energy equipment, and energy efficiency education services. Despite PSE&G's claim that it is "uniquely positioned" to implement the proposed CEF-EE Program (See PSE&G Attachment 1 at 18), the products and services already being provided by Direct Energy and Centrica, among others, in the private market are the same products and services that PSE&G now proposes to offer through its CEF-EE subprograms.

Certainly, encouraging energy efficiency is in the public interest. Direct Energy and Centrica are not opposing energy efficiency education or measures aimed at promoting energy efficiency practices. Rather, Direct Energy and Centrica oppose the provision of these products and services by the monopoly distribution utility on a subsidized basis using ratepayer funds that are paid by all ratepayers, including those who might purchase similar products and services offered by the private market. Direct Energy and Centrica are concerned with the detrimental effects that PSE&G's proposal may have on the competitive retail market aimed at providing innovative tools and technologies to help consumers manage their energy use.

The competitive retail market for providing energy efficiency tools and services is not traditionally, or appropriately, intended to be a monopoly. Indeed, PSE&G's proposal fails the yellow pages test where one can find hundreds, if not thousands, of companies around the State of New Jersey who offer many if not all of the products and services that PSE&G proposes in this proceeding. Moreover, no argument has been set forth establishing that the utility monopoly is appropriate due to a dearth of market offerings or failure of the competitive retail market or why the State of New Jersey should not rely on the private market. If any utility involvement is appropriate, it should simply be as a conduit for additional funds that would be used by consumers in the private market that is brand and technology neutral and where consumers have the ultimate choice of what they want to buy. Cost-of-service regulation is intended to be a substitute for competition where no competitive market exists because there is a natural monopoly or because of some market failure. Competition is often considered more desirable if a monopoly is not necessary to achieve an essential service.

The New Jersey Legislature has highlighted the importance of a competitive energy market in lowering energy costs, improving the quality of lives, reducing regulatory delay, and fostering productivity and innovation. For example, in enabling energy competition in the State of New Jersey, the New Jersey Legislature found and declared that it is New Jersey policy to: "Lower the current high cost of energy, and improve the quality and choices of service, for all of this State's residential, business and institutional consumers, and thereby improve the quality of life and place this State in an improved competitive position in regional, national and international markets" and to "[p]lace greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers in greater variety and at lower cost than traditional, bundled public utility service [...]." The Legislature further found that "traditional utility rate regulation is not necessary to protect the public interest and that ***competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation*** [...]." Electronic Discount and Energy Competition Act, N.J. Stat. §§ 48:3-50(a)(1) – (2), (b)(1)(emphasis added).

The very presence of private-sector market participants, such as Direct Energy and Centrica, demonstrates that competition is possible and appropriate. In fact, and as discussed, there is already a robust private market offering these same tools and services. Allowing PSE&G to utilize its monopoly status as a regulated public utility to directly compete with services that are available through the private market would place these market participants, including Direct Energy and Centrica, at a competitive disadvantage.

Each day, market participants work to develop and improve energy efficiency products, expand services, and reduce costs. Unregulated market participants must focus on efficient and customer-oriented practices, or they risk going out of business. If market participants are forced out, PSE&G could end up with a monopoly on the market, eliminating the benefits of competition in developing innovative energy-saving solutions.

PSE&G has a long-standing relationship with distribution customers, and as such, third party suppliers already face challenges in building their own relationships with customers and earning their trust as "the energy company." If PSE&G is permitted to offer these programs and services, third party suppliers will be at a competitive disadvantage and unable to compete on a level playing field to be the customers' trusted "energy company." In addition to the benefits of having a long-standing relationship with its customers, PSE&G is able to offer incentives that are not available to other market participants. For example, for many of the CEF-EE subprograms, PSE&G proposes to provide rebates and on-bill repayment for the purchase or installation of these products and services. Both of these proposals may have a substantial and detrimental effect on the private market.

Regarding rebates, it is important to keep in mind that PSE&G has proposed to subsidize the subprograms with ratepayer funds, which will enable PSE&G to offer rebates for these products and services. In order to compete on any level with these offers, market participants will be forced to drastically reduce the market price of these items, without the benefit of subsidies paid by captive ratepayers. This scenario could skew market prices and may drive market participants who are currently offering innovative energy solutions out of the market, a consequence which would not be in the public interest. If market participants are forced out, PSE&G could end up with a monopoly on the market, eliminating the benefits of competition in developing innovative energy-saving solutions.

Similarly, the on-bill financing proposal places other market participants at a competitive disadvantage. First, on-bill repayment provides consumers with the convenience of having the financing done through the existing utility bill, an option which is not available to other market participants. Centrica clearly does not have a utility billing relationship with consumers and, even though the Direct Energy companies are licensed third-party suppliers in New Jersey, they also do not have a direct billing relationship with consumers. As a result, it would be difficult for market participants, like Direct Energy and Centrica, to compete with the preferred vendors selected by

PSE&G since no convenient financing option would be available. Second, captive ratepayers are subsidizing the on-bill financing of these products and services – an option that is not available to other market participants, who would thereby be competitively disadvantaged.

PSE&G has also proposed to provide energy audits to certain customers at no charge, services which are also already available through the private market. In its role as a public utility, PSE&G would be able to capture customer data that is not readily available to other market participants and use it to provide value-added services to consumers that are more appropriately offered in the competitive market. Because PSE&G would be offering these services at no cost to customers, using ratepayer-funded subsidies, the value of these services in the market would be minimized. To the extent that other entities, including Direct Energy, would attempt to offer these services as a value-add to other products or to sell these services to consumers, PSE&G's proposal would adversely affect those efforts. The Board should not permit PSE&G to use ratepayer funds to skew the private market for energy audit services.

Specific to PSE&G's Volt Var Pilot proposal, suppliers may be placed at a competitive disadvantage if PSE&G is not required to select suppliers through a competitive process to meet demand reductions and to use technology designed by the market.

For the reasons explained above, PSE&G's proposal could diminish the flourishing competitive retail market, would not be in the best interest of the public, and is inconsistent with the clear Legislative intent to promote energy competition in the State of New Jersey.

IV. Conclusion

Direct Energy and Centrica strongly oppose PSE&G's CEF-EE proposal. A mature private market already exists for the products and services included in PSE&G's proposed subprograms. Allowing PSE&G to utilize its monopoly status as a public utility and rely on ratepayer funds to subsidize the deployment and installation of smart energy thermostats, appliances, lighting, and other equipment could have a detrimental effect on the competitive energy market and would place other entities offering the same or similar products and services, including Direct Energy and Centrica, at a competitive disadvantage.

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