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May 17, 2019

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 No. EO1810112 and GO18101113

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625

Dear Secretary Camacho-Welch:

Enclosed please find the original and ten copies of initial brief of New Jersey Large Energy Users Coalition ("NJLEUC") in the above-referenced matter.

Thank you for your consideration and review.

Very truly yours,

STEVEN S. GOLDENBERG

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cc: Commissioner Dianne Solomon (via email)
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POST-HEARING BRIEF OF INTERVENOR NEW JERSEY LARGE ENERGY USERS COALITION

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PRELIMINARY STATEMENT

Consistent with the Murphy Administration's goals to curtail global climate change caused by greenhouse gas emissions, the issuance of Executive Order 28 and the enactment of the Clean Energy Act, N.J.S.A. 48:3-87.8 *et. seq*, ("CEA"), the Board has renewed authority to foster the development of responsible energy efficiency programs. The members of the New Jersey Large Energy Users Coalition ("NJLEUC") know well the challenges that lie ahead and support the Board's efforts to reduce overall electric and natural gas usage as well as system peak demands.

NJLEUC's members were among the first in the State to actively pursue energy efficiency as a means to control energy costs, improve energy infrastructure and reduce their carbon footprints. As early adopters of energy efficiency, NJLEUC members support responsible energy efficiency programs that will reduce energy usage and peak demand, while properly structuring the respective roles of the Board, the Office of Clean Energy ("OCE"), the Division of Rate Counsel, utilities, and third party providers in the formulation and delivery of those programs. At the same time, however, the programs must also carefully consider the interests of the ratepayers who will foot the bill.

PSE&G's CEF-EE Program

On its face, Public Service Electric and Gas Company's ("PSE&G") CEF-EE program responds to the State's significant greenhouse gas and climate change concerns through, among other things, increased emphasis on energy efficiency and peak load reduction. Upon closer examination, however, the company's CEF-EE proposals ignore the State's climate change policies as embodied in the CEA, and would instead chart a very different, self-serving course. The company's proposals would arrogate to PSE&G critical policy decisions regarding the regulated energy efficiency programs offered in its service territory, while all but bypassing the

multiple year-long stakeholder proceedings mandated by the CEA to address the critical issues regarding the future direction of the State's regulated energy efficiency program.

As the Board well knows, the CEA required interested stakeholders to engage in a year-long study to address, among other things, (i) appropriate energy savings targets and how best to achieve them, (ii) the parties responsible for the future delivery of energy efficiency programs, (iii) the establishment of quantitative performance indicators that would provide long-sought uniform metrics to assess the viability of the chosen programs and to permit program comparisons, (iv) the establishment of Board-approved energy efficiency and peak reduction programs, (v) a system of incentives and penalties to encourage utility participation in the State's efforts, and (vi) a stakeholder process and independent advisory group to study the measurement and verification process for the programs adopted as part of this process.

However, instead of complying with this carefully crafted statutory framework, PSE&G had its own ideas. The company brazenly ignored the clear mandates of the CEA and instead developed its own preferred energy efficiency program, based on its own independent research regarding utility energy efficiency program offerings in other states that it deemed "successful". The proposed PSE&G programs would be offered in lieu of, and would purportedly outperform, the current program offerings of the Board's Clean Energy Program.

The PSE&G proposals are comprised of twenty-two subprograms that are purportedly "comparable" to the out-of-state utility programs that PSE&G chose to emulate. Notwithstanding its assurances to the Board that its programs--which include a number of new offerings including pilot programs featuring new technologies--would achieve energy reductions that exceed the OCE programs, PSE&G conceded that it did not conduct any New Jersey-based market research to either promulgate its program or support its energy and peak reduction claims. Nor has the

company volunteered any performance-related benchmarks or proposed penalties should its programs fail to deliver the "expected" results. (5/1/19 Tr. at 108-129)

Déjà Vu All Over Again

The Board has been here before.

In response to the major storms that occurred in 2011 and 2012 and ensuing concerns regarding the resilience of the State's energy infrastructure, the Board issued the Hurricane Irene Order in *I/M/O the Board's Review of the Utilities' Response to Hurricane Irene*, Docket No. EO11090543 ("Irene Order"). The Irene Order directed PSE&G and the State's other utilities to take specific actions to improve their response to major storm events, including the preparation of detailed, months-long flood mitigation studies and proposals to implement the recommended mitigation measures, supported by a detailed cost-benefit analysis intended to enable the Board to choose between the alternative infrastructure upgrades proposed by the utilities.

The ink was barely dry on the Irene Order when PSE&G filed its Energy Strong Petition less than one month later. The petition sought Board approval for an expansive, $4 billion program of capital investments, which included technologies that were untested and not yet commercially available. The Energy Strong petition included none of the reports, cost-benefit analyses or studies that the Board had mandated in the Irene Order. To its credit, the Board rejected the petition and directed PSE&G to comply with the provisions of the Irene Order.

Here, too, as it did with the Hurricane Irene Order, PSE&G has completely disregarded the CEA's clear requirements and procedures, preferring instead its own "broader vision" of the State's clean energy future. The PSE&G vision would enable the company to leverage the State's worthy energy efficiency and peak load reduction goals to further the company's business plan to

pursue low risk, high return, investor-friendly, multi-billion dollar capital investments through the utility as a means to fuel the revenue growth of the Public Service Enterprise Group.

In this latest example of the company's "rules are for others" attitude, PSE&G developed the CEF-EE proposal completely outside the stakeholder proceedings and studies directed by the CEA and prior to the development of the quantitative performance indicators the CEA requires the Board to utilize to determine the merits of all energy efficiency programs. Instead, the proposed programs were prepared and vetted primarily by PSE&G employees and their hand-picked experts based upon research conducted regarding purportedly successful out-of-state utility energy efficiency programs. Literally no attention was paid to the OCE programs, the New Jersey market generally or customer demographics. Indeed, the testimony of Ms. Reif, the company officer in charge of the CEF-EE program, underscored the company's view of OCE programs as essentially substandard and unable to meet the State's energy efficiency goals. (5/1/19 Tr. at 109).

In place of the OCE programs, PSE&G proposes a number of new subprograms of unproven effectiveness, some in the form of pilots that would test new technologies whose uncertain savings contrasted with their all-too-certain expensive price tags. The Petition assures the Board that the company's cost-benefit analysis demonstrates that the proposed program is "valuable" and "cost-effective" (P-1, par. 17) and that the company "expects" that the program will produce significant reductions in energy consumption and carbon dioxide emissions, and $5.7 billion in savings over the life of the energy efficiency measures (P-1, par. 20, 22). The Petition also projects the creation of a certain number of "green jobs" for every million dollars invested in energy efficiency. (P-1, par. 23). However, noticeably absent from the Petition are any performance-related commitments by the company to assure that the proposed programs will perform as suggested or produce results that are superior to the programs currently offered by the

OCE. Nor are any penalties for non-performance offered beyond those contained in the CEA. Nor does the Petition address the potential for non-"green" job losses or other economic harm occasioned by the impact of high program costs on the company's ratepayers and, in particular, its largest customers.

PSE&G's Request for Exclusivity

Apparently not content with the usual assortment of regulatory goodies that have become standard fare for PSE&G, the CEF-EE proposal adds several new and objectionable pre-conditions to secure PSE&G's participation. First, the company "requires" that it be designated the exclusive provider of regulated energy efficiency products and services in its service territory. In other words, the company demands that the Board substitute the company's preferred energy efficiency program offerings for those currently provided by the OCE. (5/1/19 Tr. at 140-141)

Contrary to PSE&G's high-handed approach, the issue of whether the OCE, the utilities, TRC, an independent third party, or some combination of them, should be responsible for the future provision of the State's clean energy programs is a serious topic, one that has been debated for more than a decade. Indeed, during these years, the responsibility for delivery of the clean energy programs has shifted between the Board, the OCE, TRC, the utilities, a single program manager and independent market managers to address the perceived shortcomings associated with each as program provider. For present purposes, the CEA required resolution of that question as part of its contemplated stakeholder processes, not by utility fiat. This is particularly so where, as here, the viability of PSE&G's CEF-EE proposal stands unsupported by New Jersey-based data and the Board has yet to establish uniform quantitative metrics to evaluate the merits of potential energy efficiency offerings. In enacting the CEA, the Legislature unmistakably intended that all

energy efficiency program offerings be developed only after approved, market-based studies are conducted.

Rate Decoupling (The Latest Attempt)

Equally objectionable is PSE&G's second "must-have" condition: approval of its proposed Green Enabling Mechanism or "GEM", the latest iteration of the company's decade-long pursuit of rate decoupling (P-1, par. 26). The renewed request for rate decoupling comes despite the inclusion within the CEA of provisions that would allow utilities a return of and on capital investments, as well as performance-related incentives (and penalties), including a provision that authorizes the Board to permit utilities to recover lost sales revenues that are directly attributable to the utilities' energy efficiency and peak load reduction programs, as well as adjustments to the utilities' return on equity.

These seemingly generous financial protections are apparently insufficient for PSE&G, which continues to insist upon a form of rate decoupling that would provide the utility with guaranteed annual revenues, regardless of the reason why the utility's sales revenues may vary from year to year. Under PSE&G's preferred form of rate decoupling, the company would be credited for lost sales revenues that are totally unrelated to the utility's energy efficiency activities, including, among others, those that are the result of exogenous events such as recessions, extreme weather conditions, independent energy efficiency efforts of its customers and third party competitors, and expanded implementation of distributed energy resources.

Thus viewed, PSE&G insists upon receiving *guaranteed annual revenues* as a quid pro quo for its compliance with the CEA. The concept of guaranteed revenues is one that is both offensive and alien to the New Jersey businesses (participants in competitive markets) that pay PSE&G's rates. The concept also contravenes more than a century of utility ratemaking principles—

principles that were designed to protect ratepayers by only affording a utility an *opportunity*, rather than a *guarantee*, to recover its reasonable and prudently incurred costs.

Because the company's rate decoupling proposal represents such an obvious regulatory over-reach, PSE&G's numerous efforts to win approval of decoupling in various proceedings over the past decade predictably have been rejected time and time again by the Legislature, the Board and a majority of energy stakeholders. This latest iteration—the GEM—merits similarly swift rejection, particularly given the generous financial protections and incentives afforded PSE&G by the CEA. Those protections are more than adequate to compensate the company for any sales losses that are directly attributable to its energy efficiency and peak reduction activities.

The Cost Implications of PSE&G Programs for Large Energy Users

Recently, increased attention has been paid to the cost impact of utility programs on large energy users like NJLEUC members. This is a welcome development because the viability of the State's struggling business community should be a considerable concern to the State. Clearly all is not well with many businesses that face stiff competition from out-of-state competitors that are not burdened by these program costs, as well as those national companies whose New Jersey facilities must remain cost-competitive with company-owned facilities located in other, less costly, states.

These businesses have all observed PSE&G invest billions of dollars in regulated assets ostensibly to make up for revenue losses suffered by its unregulated generating plants in recent years. This "pump up the rate base" strategy has rewarded PSEG with double digit year-over-year earnings growth and its shareholders with consistently increasing dividends. Given the company's plan to invest many more billions of dollars in the coming years, we have no reason to doubt that the company's impressive revenue growth will continue for years to come. (NJLEUC-1, p. 33).

Business people associated with large publicly traded companies certainly appreciate a good corporate success story. That said, utility "success" built on a foundation of regulatory overreach and captive ratepayer abuse deserves repudiation, not admiration. In PSEG's case, both business and residential ratepayers, have reached the point where they now consistently say, to anyone who cares to listen, "enough is enough".

It is well-known that because the costs associated with ZECs, CEF-EE and Energy Strong II, as well as all the other multi-billion dollar investment programs that have preceded them, are recovered on a per kWh or per therm basis, they have proven to be enormously expensive to large energy users. What has not been fully appreciated, however, is that the combined costs of these programs impose multi-million dollar obligations on large businesses each and every year over multi-year spans.

NJLEUC recently advised that Board that the ZEC subsidy would cost NJLEUC members up to $1 million each, per year for up to ten years. *We now advise that the CEF-EE program, if approved as presented, would actually cost NJLEUC members more each year than the ZEC subsidy*. This is particularly sobering in light of the company's proposal to amortize the CEF-EE investments over a fifteen-year period. NJLEUC members are also well aware that the company's $2.5 billion Energy Strong II proposal looms large on the horizon, a proposal whose cost impact on large energy users could easily rival that of the ZEC and CEF-EE programs. The New Jersey business community simply cannot absorb these costs.

Therefore, the Board should pay particular attention to the company's rose-colored depiction of the economic benefits that will purportedly flow from the CEF-EE program. Notwithstanding the frothy depiction of "green" jobs and economic development fueled by benefit "multipliers", it is more likely that the prohibitive cost of these multi-billion dollar programs will

stunt economic development in most sectors (except for PSE&G and the companies that would assist in offering these programs), cause the loss of jobs, and cause companies to invest less capital in their New Jersey operations; a trend that unless reversed, could ultimately lead to the loss of the businesses themselves to other, less costly states. It must be appreciated that the dollars New Jersey businesses spend on utility programs are every bit as real as the dollars used to pay taxes, compensate employees, invest in facilities and cover the daily costs associated with running a business.

We end where we began. NJLEUC supports reasonable, well-designed, well-delivered, cost-justified energy efficiency programs that properly balance the needs of all stakeholders, including the interests of the ratepayers who will pay for them. Because it fails to meet this fundamental standard, NJLEUC urges the Board to reject PSE&G's Clean Energy Future—Energy Efficiency program.

STATEMENT OF FACTS

On May 23, 2018, Governor Murphy signed the Clean Energy Act, P.L. 2018, c.17, into law. The CEA issued the same day that the Governor signed Executive Order Number 28, which announced the 2019 Energy Master Plan process. The two initiatives seek to advance the State's climate change policies by facilitating deeper reductions in the emission of greenhouse gases in accordance with the State's goal to convert its energy production profile to 100% clean energy sources by 2050.

The CEA contains provisions that address several methods adopted by the Legislature and Governor to achieve this goal, including the mandated introduction of energy storage technologies and community solar, and an expansive energy efficiency program. To facilitate the goal to expand energy efficiency initiatives statewide, the CEA set forth mandated electric and natural gas savings targets for the State's public utilities and other stakeholders. Within a year from date of the CEA's enactment, the Board must require each electric utility to achieve annual reductions in the use of electricity in its service territory by two percent of the average annual usage in the prior three years which must be achieved within five years of implementation of a Board-approved energy efficiency program. Each natural gas utility must achieve annual reductions of 0.75 percent in a similar fashion. N.J.S.A. 48:3-87.9 (3)(a).

The CEA represents the latest in a series of initiatives intended to redefine and enhance how the State administers its clean energy and energy efficiency programs. Since the introduction of the energy efficiency program in the aftermath of the 1970's energy crisis, the governance of the Board's Clean Energy Program has been continually reviewed and restructured to determine the most effective way to develop, budget, administer, evaluate and market the program in general and to respond to market changes and exogenous events. At various points in time, different

models have been adopted, including models in which the Board and utilities traded the responsibility to administer the program, and in which management and oversight responsibilities were divided between the OCE and independent market managers. Through the years, no single model has emerged as the preferred approach, only sporadic marketing efforts have occurred, and the absence of uniform evaluation metrics has prevented the Board from meaningfully evaluating and comparing OCE and utility programs to determine which have produced superior results.

It is evident from the language of the CEA that its drafters recognized the complexities and challenges entailed in the development of the programs needed to achieve the CEA's energy usage and peak reduction goals. This recognition is reflected in the clear legislative intent that all critical programmatic decisions result from a broad-based deliberative process, including a series of year-long studies and inclusive stakeholder processes designed to address the proper development, evaluation, comparison and approval of specific program offerings, and how and by whom the programs would be delivered to all utility customers located throughout the State. The CEA also directed the adoption of long-needed quantitative performance indicators which would, for the first time, enable the Board to evaluate the performance of OCE program offerings and whether they achieve their goals, and to compare OCE and utility program offerings to determine which deliver superior results, which can be improved and which should be replaced

The CEA addressed each of these issues in a series of provisions that directed the Board, Rate Counsel, the utilities and other energy efficiency stakeholders to engage in these year-long studies and proceedings to assist the Board in determining how best to leverage energy efficiency program offerings to achieve the electric and natural gas usage and peak reduction targets established by the CEA. The CEA directed the Board to, among other things:

--Conduct a one year study to determine appropriate energy savings targets and potential for peak demand reduction by the customers of each utility and a timetable for achieving the reductions. (Section 3(b));

--Adopt within one year quantitative performance indicators for each utility, which establish reasonably achievable targets, taking into account utility and non-utility energy efficiency measures, including measures to support building and appliance code changes, the Clean Energy Programs and other State-sponsored programs and existing utility programs; and a methodology that incorporates weather, economic factors, customer growth and other factors to ensure that the utility incentives and penalties adopted by the Board are based on performance and take into account growth in the use of electric vehicles, microgrids and distributed energy resources. (Section 3(c));

--Approve energy and peak demand reduction programs for each electric and gas utility that comply with the cost/benefit requirements and quantitative performance indicators adopted by the Board (Section 3(d)(1) and (2));

--Direct each utility to file implementation and reporting plans with the Board as well as evaluation, measurement and verification strategies to determine the energy and peak demand reductions achieved by the programs (Section 3(d)(3));

--Establish an incentive, to be determined by the Board through an accounting method established under RGGI Section 13, to be awarded to a utility that achieves the performance target established in the quantitative performance indicators (Section 3(e)(2));

--Establish a penalty, to be determined by the Board, to impose on a utility that fails to achieve its reduction target, which may be made through adjustments to the utility's return on

equity, limited only to the energy efficiency or peak demand reduction programs, or a specified dollar amount (Section 3(e)(3) and (4));

--Establish a stakeholder process to evaluate economically achievable reduction requirements, rate adjustments, quantitative performance indicators, and the process for evaluating, measuring and verifying usage and peak demand reductions for each utility; and establish an independent advisory group to study the evaluation, measurement and verification process for energy efficiency and peak demand reduction programs, including representatives from the public utilities, Division of Rate Counsel and environmental and consumer organizations, to provide recommendations to the Board for improvements to the programs (Section 3(f)(1));

--Direct each utility to conduct a demographic analysis as part of the stakeholder process to determine if all customers are able to participate fully in implementing the approved measures, identify market barriers, and make recommendations to overcome the market barriers, including cost recovery for utilities (Section 3(f)(2)).

However, ignoring the timetables, requirements and procedures contained in the CEA, PSE&G filed its CEF-EE Petition only four months after enactment of the CEA. PSE&G seeks Board approval of an expansive--and expensive--energy efficiency program that represents the company's "broader vision for a Clean Energy Future". (P-2, at 4). The CEF-EE Program consists of 22 subprograms proposed for all customer rate classes and includes eight pilot programs that are designed to test new technologies and processes to attain energy savings. (P-1 at 6 and 9).

The Petition states, without more, that the program is "expected" to reduce energy consumption by approximately 41 billion kWh and 675 million therms, resulting in a net reduction in participating customers' energy bills by $5.7 billion over the life of the energy efficiency measures. Once fully implemented, the company projects the program will produce electric

savings of 1.8% per year and gas savings of 0.8% annually. (P-1 at 10). The program is also "expected" to reduce carbon dioxide emissions and create "green jobs", measured not in terms of full-time hires, but in "direct job years". (P-1 at 11).

The CEF-EE Program comes with a heavy price tag: $2.5 billion plus a $283 million expense budget over the six-year program term. Amortization of the energy efficiency measures would occur over an extended 15-year period, adding significantly to the underlying cost of the investments. Consistent with its prior filings, the company seeks accelerated cost recovery with the usual regulatory bells and whistles through a new program component of the company's Green Programs Recovery Charge. (P-1, par. 33-34).

The Petition also sets forth two apparent "must haves" before PSE&G agrees to lend its "vision" to the State's energy efficiency program. First, the company "reintroduces" its request for a Green Enabling Mechanism ("GEM"), a rate decoupling device that was proposed and withdrawn due to lack of support from the parties to the company's last base rate case or, in the alternative, "another form of decoupling or an annual lost revenue adjustment mechanism". (P-1 at 12). Second, the Petition seeks authorization to establish PSE&G "as the exclusive provider of regulated energy efficiency programs that are offered in the Company's service territory" as a "prerequisite" to implementing the program "and satisfying the mandatory usage reduction targets imposed on utilities by the CEA". (P-1 at 13). At hearing, the company clarified that this provision is intended to transfer responsibility for the OCE and other regulated energy efficiency programs to PSE&G for customers located in the company's service territory. (5/1/19 Tr. at 141).

The Petition is devoid of any tangible performance-related commitments by PSE&G to assure that the proposed billions of dollars in investments will actually fulfill the company's vague

and unenforceable energy, emissions and rate reduction "expectations", nor does the company volunteer any penalties for non-performance beyond those set forth in the CEA.

As was made clear by the testimony of Karen Reif, PSE&G's newly-appointed Vice President of Renewables and Energy Solutions, the company did not wait for the CEA or the outcome of any of the proceedings directed by the CEA to formulate what the company aptly describes as its "broader vision". There can be no question that the CEF-EE program is not the result of the detailed study and stakeholder processes directed by the CEA, and is not supported by any of the CEA's mandated reports, studies or analyses detailed above. Indeed, several of these processes and reports, including the quantitative performance indicators, have yet to be finalized.

Rather, as it did with Energy Strong, PSE&G willfully ignored the requirements that the State established for the program, choosing instead to chart its own, self-serving course. Ms. Reif's testimony at hearing underscored that PSE&G alone developed the CEF-EE Program, on its own terms, by its own employees and experts, and without input from the Board, the OCE, Rate Counsel or any New Jersey trade allies, competitors or customers potentially affected by the company's proposal.

Ms. Reif, who was appointed to her position shortly after the enactment of the CEA and whose energy efficiency credentials and familiarity with the OCE programs are questionable based upon her testimony (5/1/19 Tr. at 81-82 and 90-96), testified at length regarding the process that led to the development of the CEF-EE Program. Ms. Reif described the CEF-EE program, which was introduced soon after her appointment to head the program, as "the Company's vision regarding the energy efficiency initiatives that should be deployed in the Company's service territory to accomplish the goals of the Clean Energy Act". (5/1/19 Tr. at 97.)

Ms. Reif described a year-long PSE&G internal review process that did not include a detailed analysis of the OCE programs, or consideration whether they were worth continuing or improving because, according to the company's benchmarking, "the OCE is not looked at as a leader in this space". (5/1/19 Tr. at 109). Ms. Reif could not say whether the PSE&G offerings were superior to certain OCE programs. Instead, she testified that the PSE&G suite of programs was compiled "based on best practices" developed by a third party tasked with identifying the "top programs in the country" based on the amount of energy efficiency savings realized. Here, again, the company ignored OCE's offerings because "New Jersey, unfortunately today, is not considered best in class in most programs". (5/1/19 Tr. at 109-111).

PSE&G's internal investigation focused on programs developed by twenty-two utilities in states as diverse as Michigan, Minnesota, Iowa and Massachusetts. The programs that comprise the CEF-EE program are characterized as "broadly comparable" to the offerings of these twenty-two utilities that were achieving results "well ahead of the energy efficiency savings that New Jersey is achieving today". (5/1/19 Tr. at 119-122; PS-3, Exhibit 2 p. 105, 106). Because the PSE&G benchmarking process that was the basis for the CEF-EE Program was solely an internal process at PSE&G, aided by experts retained by the company, by definition it did not include the active participation or input of Board staff, the OCE, Rate Counsel or any energy efficiency stakeholders. PSE&G reviewed the requirements of the CEA, disagreed regarding how the energy efficiency programs should be developed, and then agreed internally that its approach to energy efficiency program development complied with the CEA. (5/1/19 Tr. at 128-129).

While Ms. Reif stopped short of testifying that the company assumes that the costs and performance of the plans it would emulate are predictive of how the programs would fare in NJ, she stated that in implementing comparable programs, PSE&G would have an advantage because

New Jersey is behind other states that exhibited customer behaviors that are similar to those in New Jersey. (5/1/19 Tr. at 122-123). PSE&G, however, did not conduct actual demographic studies of utility customers in the other states, some of which bear little facial resemblance to New Jersey.

Nor did the company formally compile data regarding New Jersey customers, perform New Jersey-based market research or convene any focus groups to determine whether the company's proposed offerings would be attractive to New Jersey customers and local trade partners (as opposed to those in Iowa or Minnesota) or whether the proposed incentives are properly set. The pricing of proposed customer incentives was only accomplished through the benchmarking study PSE&G conducted regarding the other utilities. None of the PSE&G programs presented would be self-funded through the savings generated by energy efficiency measures, the approach of the Energy Savings Improvement Programs (ESIP) program, a well-established New Jersey program unknown to Ms. Reif. (5/1/19 Tr. at 124-127).

POINT I

PSE&G HAS NOT DEMONSTRATED THAT THE PROPOSED CLEAN ENERGY FUTURE-ENERGY EFFICIENCY PROGRAM IS CONSISTENT WITH THE CLEAN ENERGY ACT OR APPROPRIATE FOR NEW JERSEY

PSE&G's Petition and supporting testimony touts the "consistency" of the CEF-EE program with the CEA. These "consistencies" purportedly include how PSE&G has developed and designed the CEF-EE program, the alleged need to anoint PSE&G the exclusive provider of regulated energy efficiency programs in its service territory, and a decoupled rate mechanism (the GEM) that supposedly aligns the interests of PSE&G and its customers.

The record, however, tells a far different story, exposing the CEF-EE program as, in all respects, at odds with both the unambiguous requirements of the CEA and ratepayer interests.

The Development of the CEF-EE Program

There can be no question that, contrary to the CEA, the CEF-EE program was developed (like Energy Strong) solely as the proverbial "inside job." Prepared and vetted by PSE&G personnel, aided only by experts chosen by the company, who relied on their own judgment, unfettered by input from the Board, the OCE, Rate Counsel or anyone else, to derive the company's preferred "broader vision" for the State's energy efficiency initiatives. PSE&G neither waited for, nor demonstrated any interest in obtaining guidance from any stakeholders as mandated by the CEA. PSE&G similarly demonstrated a lack interest in having the merits of its "vision" assessed by the long-awaited quantitative performance indicators, yet to be finalized, that the CEA deems critical to the selection of future energy efficiency offerings. While the CEA does not affirmatively authorize either a GEM-type decoupling mechanism, or "exclusive provider" status for a utility (or any other entity for that matter) regarding regulated energy efficiency programs in a service

territory, PSE&G interprets the CEA as nonetheless permitting such proposals because it did not categorically exclude them.

PSE&G does not contest that its energy efficiency initiative began well before the enactment of the CEA which, in turn, enabled the company to present the CEF-EE program soon after the CEA was signed into law. (5/1/19 Tr. at 107-109). It is also beyond dispute that the process PSE&G used to develop the CEF-EE program bears no resemblance to the year-long collaborative process mandated by the CEA. Rather, unencumbered by the generally applicable statutory and regulatory processes established by the Legislature and Board, PSE&G simply chose to go its own way, arrogating to itself the responsibility to determine what is best for the State, the Board and customers in its service territory.

To develop the CEF—EE program, PSE&G conducted its own study, which focused on what the company considered the "best practices" of out-of-state utilities in delivering energy efficiency programs to customers located in distant states. PSE&G largely ignored the well-established programs offered by the OCE and conducted no independent study of the New Jersey marketplace or customer demographics. Nor did the company analyze in any detail the programs offered by the OCE, primarily because the company determined that the OCE is not "a leader in this space". Based on this determination, the company apparently decided to simply discard the OCE's programs as substandard and not worthy of retention in light of the energy usage and peak reduction requirements mandated by the CEA. (5/1/19 Tr. at 108-111)

Consequently, PSE&G's development of its CEF-EE program was based on questionable and selective research, and is therefore light on substance and long on self-serving assumptions and unenforceable "expectations" regarding the company's ability to significantly outperform the State's existing energy efficiency programs. Most of the programs proposed are new to PSE&G

or would significantly expand its current offerings. Thus, lacking any discernable track record, the company can offer only vague, mantra-like assurances that its proposed programs are "best in class". Based entirely on results achieved by utilities in other States in "comparable" programs, the company advances the regulatory non-sequitur that its proposals are better positioned than the OCE programs to achieve the CEA's energy reduction goals. Because the company apparently lacks the courage of its convictions, its projections and assurances come unsupported by any performance-related commitments or proposed penalties beyond those included in the CEA that might otherwise provide substance to these assurances should the programs fail to deliver as promised.

PSE&G as the Exclusive Provider of Regulated Energy Efficiency Programs

PSE&G's self-nomination as the "exclusive provider" of regulated energy efficiency programs within its service territory finds no support in the CEA and, in fact, would render the accomplishment of the CEA's goals more difficult should PSE&G fail to perform. The Board should carefully consider the potential consequences of establishing PSE&G as an "exclusive" provider armed with all the regulatory bells and whistles it seeks, including accelerated cost recovery and rate decoupling. Such a preferred position would provide seemingly insurmountable advantages to PSE&G that would enable it to "crowd out" third parties seeking to sell competitive energy efficiency products in the company's service territory, thereby reducing the offerings available to customers and opportunities to conserve energy.

While PSE&G may argue that the CEA's imposition of mandated load reduction targets provides authority for the "exclusive" arrangement it seeks, in fact the CEA contains no such requirement either explicitly or implicitly. Rather, the CEA is clear that the reduction targets, as well as the quantitative performance indicators that will measure utility performance, include

assumed contributions from non-utility sources, including other state-sponsored energy efficiency programs, building and appliance codes, and third party providers.*

While the company touts its customer relationships as further support for its requested exclusivity, Ms. Reif confirmed that the company did not solicit the views of its customers in connection with the development of the CEF-EE program. This failure even extended to the company's largest customers, whose views were not solicited regarding the OCE's popular Large Energy Users ("LEU") Program—a program not known to Ms. Reif. (5/1/19 Tr. at 114-116). Had the company solicited these views, the company would have learned that the LEU program, for which PSE&G has not proposed a comparable alternative, is quite popular with large energy users who would like to see it continued. Indeed, if the LEU program were discontinued without a comparable replacement program, large energy users would largely be left to merely subsidize programs in which other rate classes participate—precisely the situation that led to the establishment of the LEU program in the first place.

Rather than creating exclusive arrangements, the State would more readily accomplish its energy reduction goals through an "all hands on deck" approach in which the OCE, the utilities and all qualified stakeholders coordinate their efforts. If all the utilities emulated the PSE&G approach, a "balkanized" energy efficiency effort would result, with each of the seven utilities offering its own programs, requirements and rules, resulting in significant customer confusion and regulatory headaches for the Board.

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* PSE&G offers a bizarre rule of statutory construction that on the one hand would purport to authorize the GEM because no language is included in the CEA that specifically *precludes* it (P-9 at 6), while on the other hand would justify the "exclusive" provider arrangement even though this would require the Board to completely *ignore* language specifically *included* in the CEA that requires the contributions of non-utilities to be taken into account in the reduction targets and quantitative performance indicators to be established. Clearly, PSE&G cannot have it both ways and, in fact, neither argument has merit under the rules of statutory construction.

In truth, PSE&G cannot blithely ignore the CEA, the Board, OCE, Rate Counsel and other stakeholders and blaze its own regulatory trail, dictating how billions of ratepayer dollars will be invested in energy efficiency programs. One searches in vain through the CEA for any suggestion that the Legislature intended for PSE&G (or any other entity) to displace the OCE or the energy efficiency programs it has long sponsored with new and untested programs. Given PSE&G's limited experience in delivering large-scale energy efficiency programs, the company has no credible basis for pronouncing itself capable of displacing the more-experienced OCE staff and advisors and abandoning its programs.

Nor has the company advanced a substantive proposal regarding the future of the Societal Benefits Charge that currently funds the OCE program. We see merit in the company's assertion that the funds it collects from ratepayers would be safe from diversion to other uses. That said, PSE&G's failure to advance a proposal to timely phase out the SBC raises the specter of PSE&G's customers paying twice for the same energy efficiency programs, a situation that would be singularly unacceptable to ratepayers.

The CEA authorizes the Board to implement the CEA and to resolve the many policy and implementation issues that arise under the law. Such issues include establishing appropriate energy savings targets, developing quantitative performance indicators to facilitate informed decisions regarding which program alternatives will be offered, and the party best suited to deliver those programs. None of these decisions have been made at this point, rendering the CEF-EE program premature at best.

Dr. Hausman testified at length regarding the problems inherent in PSE&G's "we know best" approach:

> The CEA provides a roadmap for both assessing the potential for gas and electric energy efficiency and peak load reduction, and for

> utilities like PSE&G to work collaboratively with the Board, OCE, Rate Counsel, and other stakeholders to achieve much higher levels of cost-effective savings. It does not support utilities ignoring that roadmap, and deciding for themselves, without consultation with other parties, what the roles of various entities in the state should be.

(RC-1 at 21).

Dr. Housman was also justifiably critical of PSE&G's "go it alone" approach:

> ... it does not seem that PSE&G relied on the expertise of OCE staff in the development of its plan for overhauling the roles of the OCE and the utility in the provision of energy efficiency services to PSE&G customers. Nor did it wait for guidance from the Board on its role and responsibilities in this area under the CEA. My conclusion is that the plan is poorly defined and premature, and suffers from lack of collaboration with other stakeholders.

(RC-1 at 22).

NJLEUC agrees. For the foregoing reasons, the CEF-EE proposal leaves much to be desired in terms of the company's blatant non-compliance with the CEA, how the program was developed, what the program offers, and its method of delivery. Accordingly, NJLEUC urges rejection of the CEF-EE program.

POINT II

PSE&G'S PROPOSED GREEN ENABLING MECHANISM ("GEM") IS A BROAD REGULATORY OVERREACH THAT IS INCONSISTENT WITH THE CLEAN ENERGY ACT AND SHOULD BE REJECTED

The CEA imposes on all electric and natural gas utilities, and stakeholders generally, the obligation to reduce electric and natural gas usage and peak demands within each utility service territory. The mandated 2% electric and 0.75% natural gas reduction goals are significant, and will require the cooperation of the Board, utilities, customers, third party energy service companies and government programs to achieve.

As it relates to the utilities, the CEA devised a system of utility incentives and penalties that were designed to incentivize the utilities for contributing to these goals, or to penalize the utilities should they fail to do so. The inclusion of incentives recognizes that compliance with the CEA would require the utilities to make significant investments in energy efficiency measures and customer incentives that had the potential to reduce the utility's energy sales and the revenues associated with those reduced sales. The CEA therefore provides relief to the utilities through fair cost recovery for these investments and a mechanism that would offset the reduced revenues associated with them. Section 3(e)(1) of the CEA therefore provided:

> Each electric public utility and gas public utility shall file an annual petition with the board to determine compliance with the energy efficiency and peak demand reduction programs, compliance with the targets established pursuant to the quantitative performance indicators, and for cost recovery of the programs, including any performance incentives or penalties, pursuant to section 13 of P.L. 2007, c. 340 (C. 48:3-98.1). Each electric public utility and gas public utility shall file annually with the board a petition to *recover on a full and current basis through a surcharge all reasonable and prudent costs incurred as a result of energy efficiency programs and peak demand reduction required pursuant to this section, including but not limited to recovery of and on capital investment, and the revenue impact of sales losses resulting from implementation of the energy*

> *efficiency and peak demand reduction schedules, which shall be determined by the board pursuant to section 13 of P.L. 2007, c.340 (C. 48:3-98.1).* (Emphasis supplied).

N.J.S.A. 48:3-87.9 (3)(e)(1).

Thus, the CEA not only affords the utilities an ability to recover a return of and on their reasonable and prudent capital investments incurred in connection with their energy efficiency programs, it also permits the utilities to seek recovery of lost revenues associated with reduced sales resulting from implementation of the energy efficiency and peak reduction programs mandated by the Act.

The CEA also creates a system of incentives and penalties, as established by the Board through an accounting mechanism established under RGGI Section 13, to reward or penalize the utilities depending upon their performance in achieving the energy and peak reduction targets set for them by the Board. The CEA gives the Board discretion to reward or penalize the utilities through adjustments to their return on equity *related to the energy efficiency or peak demand reduction programs only*, or a specific dollar amount. Section 3(e)(2)(3) and (4). (Emphasis supplied).

As contrasted with the CEA's very specific lost revenue recovery mechanism, which specifically limits the recovery of lost revenues to those that are directly attributable to the utility's energy efficiency and peak demand reduction programs, PSE&G's GEM proposal knows no boundaries. Rather, the GEM would permit the company to recover all revenue losses associated with any change in sales between rate cases, regardless of the reason for the change in sales and whether the company's CEA-related activities directly caused the change. Thus, for example, in addition to sales losses directly associated with the utility's CEA compliance, the GEM would permit PSE&G to recover all losses associated with economic downturns, extreme weather, independent customer and third-party energy efficiency activities; changes to building codes and

appliance standards, changes in the price of electric and natural gas, expansion of distributed energy resources, and any other exogenous factors that impact sales. (P-8 at 8-9)

According to PSE&G, the GEM would remove the company's disincentive to promote energy efficiency caused by its current retail distribution rate design, which ties revenues to the level of sales. When the utility's customers reduce their energy use or demand, a reduction in revenues occurs, but not a corresponding reduction in distribution costs, so the company has a disincentive to encourage energy efficiency. (P-8 at 2).

The company asserts that the GEM would remove this disincentive by creating a deferral tracking account in which the difference between "allowed" revenues, as established in a base rate case, and the distribution revenues actually collected is recorded. The GEM would establish the monthly amount of total allowed revenue by multiplying a per-customer allowed revenue amount by the actual number of customers served in the current month. The difference between the allowed and actual distribution revenues would be booked to the GEM deferral account. Over-recovery of allowed revenues would result in a rate decrease in a future period while under-recovery of allowed revenues would result in a rate increase in a future period. The company asserts that these rate adjustments would make PSE&G indifferent to its customers' consumption decisions. (P-8 at 2-3).

According to the company, adoption of the GEM is a "prerequisite" for PSE&G to commit to the CEF-EE program and to meet the mandatory reduction requirements of the CEA. (P-1 at 13). The company argues that the GEM is an appropriate mechanism under the CEA because there is "nothing in the CEA that precludes the Board from approving the GEM", and the GEM is authorized by Section 13 of the RGGI Law. (P-9 at 6, 7). Neither assertion has merit.

The language the Legislature included in the CEA is clear as crystal. The CEA (i) mandates that all electric and natural gas utilities participate in the CEA energy efficiency and peak reduction program and (ii) provides a robust system of financial incentives (and penalties) to fully compensate the utilities for their investments and lost sales revenues directly attributable to those efforts, which should effectively eliminate PSE&G's purported "disincentive" to participate in the energy efficiency and peak demand reduction programs and obviate the need for the GEM. (RC-7 at 29). *In a word, the CEA does not afford utilities a choice whether to participate in the energy efficiency program. Rather, their participation is mandated and appropriately compensated in accordance with the express terms of the CEA.*

Given the CEA's unambiguous language, PSE&G's claim that its GEM proposal is somehow "consistent" with the CEA has no merit. Rather than providing PSE&G with the guaranteed annual revenues it would recoup through the GEM, the CEA employs a more limited lost sales revenue recovery provision which is commonly known as a Lost Revenue Adjustment Mechanism ("LRAM"). The CEA's LRAM is much more focused than the company's open-ended GEM proposal and properly limits recovery of lost sales revenues to only those losses that directly result from the utility's energy efficiency programs implemented to achieve the CEA's mandated peak demand reduction targets. (RC-7 at 30).

By way of contrast with the CEA's LRAM mechanism, the form of "general" rate decoupling that PSE&G "requires" for its cooperation would, for the first time, provide the utility with guaranteed annual revenues at an allowed rate determined by the Board in a base rate case. Rather than recovering only lost revenues directly attributable to the company's energy efficiency and peak reduction programs, the GEM would make the company whole for <u>all</u> revenue losses associated with *any* change in sales sustained by the company between rate cases, regardless of

what caused the losses and whether they had anything to do with the company's energy efficiency and peak reduction efforts. As noted, these causes would include, but not be limited to, changes in economic conditions, changes in commodity prices, extreme weather, expansion of distributed energy resources and exogenous shocks. This expansive approach to lost revenue protection stands in stark contrast to the limited, specifically calibrated relief provided by the CEA and is by no stretch of the imagination "consistent" with it. (RC-7 at 30).

The breathtaking nature and scope of PSE&G's attempted over-reach explains why, for the past decade, each of PSE&G's several attempts to obtain approval for rate decoupling have been resoundingly rejected by the Legislature, the Board and a majority of stakeholders. While PSE&G argues that decoupling will "align" the utility with the State's energy efficiency goals and the interests of ratepayers, decoupling can best be described as a form of utility price supports or guaranteed rate recovery that is bad policy, foreign to the business community, and contrary to century-old utility ratemaking principles designed to balance the interests of utility shareholders and ratepayers.

<u>The Case Against Rate Decoupling</u>

<u>Legislative Interpretation</u>

PSE&G's decoupling witness, Mr. Hansen, purported to testify, "on the advice of counsel" that "there is nothing in the Act that precludes the Board's approval of the GEM", that "the GEM is also authorized under pre-existing New Jersey statutory law [RGGI Section 13] and that there is nothing in the CEA stating or even suggesting that the prior provision has been repealed or modified in any way by the CEA". (P-9 at 6-7).

However, counsel's creative interpretation of the CEA contradicts the most fundamental tenet of statutory construction that a court will not rewrite a plainly written enactment or engraft

additional qualifications that the Legislature omitted. Donelson v. DuPont Chambers Works, 206 N.J. 243, 246 (2011). Rather, a court's (and the Board's) duty is to construe and apply a statute as it was enacted and written and not in accordance with some unexpressed Legislative intention. Fitzgerald v. Tom Coddington Stables, 186 N.J. 21, 31-32 (2006); Dacunzo v. Edgye, 19 N.J. 443, 451 (1955), and Wnuck v. N.J. Division of Motor Vehicles, 337 N.J. Super 52, 57-58 (App. Div. 2001). When a statute is silent as to a particular issue, the court's interpretation must be consistent with the Legislative intent as expressed. Watts v. Camaligan, 344 N.J. Super 453, 464 (App. Div. 2001).

Nor is a court permitted to presume that legislation intended anything other than what was expressed in its plain language. Jersey Central Power and Light Co. v. Melcar Utility Co. 212 N.J. 576, 586-87 (2013). For a court to presume that the Legislature intended something other than that which it clearly and plainly expressed in plain language would be tantamount to rewriting the Legislature's written enactment by judicial fiat. Hardwicke v. Am Boychoir, 368 N.J. Super 71-96-97 (App. Div. 2004).

PSE&G's interpretation of the CEA stands in stark contrast to the clear, expressed language set forth in the Act. While the CEA obviously contains no reference to the GEM, the statute sets forth unambiguous and specific mechanisms for utility rate recovery under the Act that negate any notion of guaranteed annual revenues and protection against sales losses from causes completely unrelated to a utility's energy efficiency/peak reduction efforts. Therefore, in light of the Legislature's clearly and unambiguously expressed intent, neither the Board nor a reviewing court may deviate from the CEA's directives.

Interpretations concerning the scope and meaning of otherwise clear statutes based on what legislation "doesn't preclude", would open the door to all manner of unintended mischief. For

example, Mr. Hansen demurred when asked whether, if the company's interpretation were to be generally applied, it could similarly be argued that because there is nothing in the Act that specifically precludes another utility like Jersey Central Power and Light from providing energy efficiency products and services in the PSE&G service territory that this would be permitted by the CEA. (5/2/19 Tr. at 75-76). Potential scenarios made possible by PSE&G's creative "if it's not specifically excluded, it's included" approach to statutory construction are endless and underscore the mischief that could result from such a tortured interpretation of the CEA.

Nor is there anything in Section 13 of the RGGI Law that even hints at, let alone supports adoption of the GEM. Section 13 provides merely that as part of a utility energy efficiency program the Board "may" approve "rate mechanisms that decouple utility revenue from sales of electricity and gas". N.J.S.A. 48:3-98.1(b). Section 13 clearly does not "authorize" or mandate the use of a GEM-type mechanism, particularly one that provides a utility with guaranteed annual revenues. The fact of the matter is that PSE&G has consistently been denied its attempts to obtain rate decoupling for its programs authorized under Section 13, beginning with its failed Legislative attempt to make rate decoupling mandatory under the RGGI Law. At most, Section 13 affords the Board a rate option that it has consistently refused to exercise.

Departure from Traditional Ratemaking Principles

As a regulatory matter, as distinguished from the LRAM approach established in the CEA, the type of general revenue decoupling espoused by PSE&G would represent an unprecedented departure from the traditional ratemaking principles that have been honored by the Board for more than a century. These traditional ratemaking principles afford a utility an *opportunity* to recover its reasonable and prudently incurred costs, and certainly do not contemplate that a utility could receive a *guaranteed* level of allowed annual revenues. These bedrock ratemaking principles were

designed to protect ratepayers and to encourage utilities to operate efficiently, because once rates are established in a base rate case, a utility has a strong incentive to operate efficiently to keep its costs low and thereby earn more than its approved rate of return. If a utility's earnings are separated from the cost of providing service, the incentives to operate efficiently can be lost.

Far from simplifying the utility ratemaking process, revenue decoupling introduces a number of difficult implementation and policy issues. First and foremost, revenue decoupling is the ultimate example of single issue ratemaking, which has long been frowned upon. Rather than considering all of the utility's costs and expenses that increase or decrease between rate cases, or the company's overall economic profile when setting its rates, as applied here the GEM would only focus on the level of revenues the utility receives during a given time period, while ignoring all other aspects of PSE&G's financial operations. The general prohibition against single issue ratemaking mandates that such revenues not be considered in isolation, but taken as a whole when rates are set.

Single issue ratemaking violates the important regulatory principle that all components of a utility's financial performance must be taken into account to establish just and reasonable rates, including potential offsetting changes in revenues or costs. *See*, N.J.S.A. 48:2-21. While traditional rate cases may be viewed by PSE&G as burdensome and time consuming, they afford a more complete and balanced picture of the utility's total financial performance and economic well-being and protect the interests of ratepayers and shareholders alike by producing just and reasonable rates and preventing a utility from over-earning.

Traditional ratemaking also assures that if usage declines due to exogenous factors unrelated to utility energy efficiency activities, the utility is not credited with these revenues and therefore unfairly rewarded. Consumers should be permitted to use less energy as a result of their

own conservation efforts or economy-related cut-backs without being forced to incur an obligation to keep utility shareholders "whole" for these lost revenues. In a sense, decoupling is the ratemaking equivalent of having a gas station attendant tell a driver who buys a new fuel-efficient car that even though she now needs only 15 gallons to fill up the tank, to keep the station "whole" she still has to buy the 20 gallons it used to take to fill up the old car.

Thus viewed, PSE&G seeks to receive guaranteed money for services it no longer provides. As discussed below, it is a far better outcome for consumers, rather than utility shareholders, to benefit from their reduced energy consumption or customers will lack the necessary incentive to be energy efficient.

In the same vein, the return on equity that a utility earns on its rates is designed to reward the utility for assuming the risk of differences in revenues and sales from the underlying test year. PSE&G's proposed form of rate decoupling would effectively *guarantee* the company that it would annually recoup its allowed level of revenues between base rate cases, thereby insulating the company from the risks associated with providing service. The reduction in risk should be accompanied by a reduction in the company's return on equity, as it would be unfair to ratepayers to continue to reward the company for risks that would now be assumed by ratepayers. Any consideration of a risk-adjusted equity return, however, is conspicuously absent from PSE&G's proposal.

Decoupling could also incent utility management to cut costs in order to increase the utility's profit margins under its allowed revenues. Consequently, a utility could elect to forego or delay significant system maintenance or other capital expenditures that would otherwise decrease the profits realized by shareholders. Similarly, a utility could be less inclined to promote economic

development and load growth if these efforts would lead to an over-recovery of allowed revenues and therefore require the utility to flow back the excess revenues to ratepayers.

In this regard, Dr. Dismukes testified:

> Revenue decoupling can eliminate the positive incentives typically afforded through regulatory lag. Rational utility management will have little incentive to enhance the efficiencies (operational and capital) if it has no effect on the utility's profits. This is precisely the situation that can arise when a utility is guaranteed a certain level of revenues and is allowed to pass along any revenue deficiencies to ratepayers with minimal consequences on sales and profits. Such an approach is completely at odds with traditional regulatory principles and ratemaking practices.

(RC-8 at 7).

While PSE&G asserts that rate decoupling is a "prerequisite" to remove the disincentive to participate actively under the CEA, in fact decoupling in itself does nothing to positively incent utilities to support these programs, leaving the company indifferent to the success or failure of those programs, a fact acknowledged by Mr. Hansen. (5/2/19 Tr. at 18-19). This explains why the CEA includes affirmative incentives (and penalties) such as performance targets and financial incentives, including cost recovery and potential ROE adjustments, which provide actual encouragement to the utilities to affirmatively promote energy efficiency.

Further, while the company suggests that rate decoupling "aligns" the interests of utilities and ratepayers, in fact the converse could be equally true, as decoupling may also send distorted market signals to both. From a consumer's perspective, a "successful" energy efficiency program that reduces consumption on a utility's system in year one would lead to a rate increase in year two, while an "unsuccessful" program in which an overall increase in consumption occurs would produce a rate decrease in year two. Thus, if a significant number of customers in a rate class reduce their usage, the reward for their efforts would be an erosion of the savings they would otherwise accrue because the utility's rates would increase in the next year to offset the reduced

usage and sales revenues. In contrast, if a significant number of customers in a rate class were to increase their usage, the utility's rates would decrease in the next year, as the utility would over-earn its allowed revenues. Thus, rate decoupling has the potential to create perverse pricing signals that could frustrate, rather than facilitate energy conservation efforts. (5/2/19 Tr. at 32-34).

The GEM proposal properly recognizes that decoupling is not appropriate for, and would not benefit, large energy consumers like NJLEUC members. Many large energy customers do not pay volumetric service rates, but instead receive service under tariffs that contain monthly demand charges through which utilities recover the vast majority of their cost of service regardless of the customer's actual usage. In effect, such rates already are decoupled from usage, and thus there is little if anything to be gained from these customer classes through further rate decoupling.

This conclusion is further underscored by the fact that large energy users in restructured energy markets like New Jersey commonly purchase their electric and natural gas supply from third party suppliers and take transmission-only service from their local distribution utility. As a practical matter, large customers already have substantial cost-related competitive concerns that provide incentives for the customers to reduce their costs by engaging in energy efficiency projects.

Competitive Concerns

Finally, the Board should be reluctant to provide decoupled rates to PSE&G, particularly when added to the other robust financial relief and incentives afforded to utilities by the CEA. When RGGI Section 13 was authorized, concerns were raised by stakeholders about permitting PSE&G and other utilities to re-enter the competitive energy efficiency business, an opportunity that had been denied them by the Electric Discount and Energy Competition Act. These concerns included the fact that RGGI would afford the utilities regulatory advantages that would not be

available to third party competitors, thereby denying these companies a level competitive playing field and creating the potential for increased costs to ratepayers. This was a significant consideration that weighed heavily on the Legislature's decision to reject PSE&G's request that Section 13 mandate rate decoupling.

The Board should be equally concerned here. Given the significant energy usage and peak reduction goals set forth in the CEA, it goes without saying that an "all hands on deck" approach to energy efficiency will be needed, involving the active involvement of all energy efficiency stakeholders if the State's aggressive goals are to be achieved. If PSE&G were armed with rate decoupling as well as all of the other regulatory bells and whistles made available to it under RGGI Section 13 and the CEA, it would possess an enormous competitive advantage over third party energy efficiency companies, who would enjoy none of these significant perks and face the unenviable task of having to compete with a super-advantaged utility. In such a scenario, a de facto utility monopoly over energy efficiency could jeopardize the State's ability to achieve its energy reduction goals (particularly if the utility's programs fail to perform as advertised) and potentially saddle ratepayers with higher energy costs caused by the lack of competition for energy efficiency services.

The GEM Is Not Consistent With The Board's Conservation Incentive Program

While the company argues that the GEM is consistent with past Board revenue adjustment policies, such as the adoption of the Conservation Incentive Program ("CIP") for New Jersey Natural Gas Company ("NJN") and South Jersey Gas Company ("SJG"), (P-8 at 7), even a cursory comparison of the respective programs readily demonstrates that the two have nothing in common.

Under the CIP program, the shareholders of NJN and SJG utilize their own resources to fund part of the companies' energy efficiency programs that are designed to reduce the amount of

gas the companies require to serve their customers. The CIP program affords NJN and SJG an opportunity to demonstrate to the Board that as a direct result of the implementation of their energy efficiency programs, the companies have reduced their gas supply costs, such as through avoidance of transportation and storage capacity costs by restructuring their contracts with the interstate pipeline companies. If the companies make an adequate demonstration that they have reduced these costs, the companies are permitted to impose a surcharge on their customers to recover the companies' lost revenues, up to the amount of BGSS savings.

Dr. Dismukes testified that it is the "tying" aspect of the CIP that represents a critical difference that sets the CIP apart from general revenue decoupling mechanisms like the GEM. Unlike the GEM, which would permit lost revenues recovery for any reason that causes a reduction in the company's sales revenues:

> The CIP, in contrast, only allows for the recovery of revenue losses when a verifiable loss of capacity requirements has occurred, as reflected in the reduction of a utility's need for pipeline transportation and storage capacity. The CIP directly ties the potential "stranding" of downstream distribution capacity (mains, regulators, etc.) to upstream capacity savings (transport, storage). If a utility does not create true efficiencies, through reductions in contracted capacity, there will be no opportunities to recover lost base revenues since, by definition, no capacity has been stranded: a utility cannot strand capacity downstream without freeing up a comparable amount of capacity upstream for its transmission and storage requirements. (RC-7 at 34).

Thus, unlike the proposed GEM proposal, the CIP programs are performance-based, modest in scope, require shareholder investment in the companies' energy efficiency programs, and only reward the companies for actual cost-avoidance benefits that derive directly from the energy efficiency programs and not from any other source. In contrast, the GEM would be more one-sided, enabling the company to obtain guaranteed base revenue cost recovery with no risk, while ratepayers lose by receiving no corresponding benefit. Unlike the GEM, the CIP also

includes a strict earnings cap that restricts revenue recoveries if the utility is already earning its approved ROE. (RC-7-33-34).

Not only is there no comparison between the GEM and the CIP programs, the broad differences between the two explain why PSE&G appears to have little interest in a CIP-type approach to lost sales revenues. Mr. Hansen appeared to acknowledge as much when asked on cross-examination whether an LRAM-type arrangement would be acceptable to the company. (5/2/19 Tr. at 45)

PSE&G Does Not Require Or Deserve Additional Lost Revenue Protection

It is no secret that for several years, the business strategy of the Public Service Enterprise Group has focused on low-risk, high return capital investments in the utility's distribution and transmission infrastructure. The capital investment program, which has included considerable investments in utility distribution and transmission infrastructure, as well as a series of energy efficiency and solar programs having a value in the many billions of dollars, have provided significant financial benefit to the company. PSE&G's recent February 27, 2019 earnings conference call with investors regarding its fourth quarter financial results clearly underscored that as a result of investment programs like the one at issue, PSE&G the utility is now for the first time responsible for nearly 75% of the operating earnings of the Public Service Enterprise Group. (NJLEUC-1 at 33).

In the investor conference, PSE&G touted its CEF-EE and Energy Strong II filings as part of an $11 to $16 billion investment program, which is providing an opportunity for the company to achieve an impressive 7-9% compound annual rate base growth rate (NJLEUC-1 at 18-21). PSE&G also provided a guidance that it would achieve a 14% increase over 2018 net income and that its rate base grew by 13% to about $19 billion at year end 2018. (NJLEUC-1 at 22). The

company projected a five-year capital spending forecast of $12-$17 billion, primarily directed at PSE&G, contributing to the projected 7-9% annual growth in rate base during the period 2019 to 2023. Concluding that the company's "financial position remains strong", for the fifteenth year in a row the company increased in its common dividend to shareholders, made possible by increasing cash flow from operations at PSE&G. (NJLEUC-1 at 33).

Ms. Reif acknowledged that many of PSE&G's spending programs over the past decade have addressed energy efficiency, including the Carbon Abatement, EEE Stimulus, EE Extension, EE Extension II and EE 2017 programs, as well as solar programs that include the Solar Loan I, II and III programs as well as Solar for All and the Solar for All Extensions. (RCR-POL-0014). Ms. Reif also acknowledged that each of these programs, which came with price tags in the billions of dollars, had the effect of reducing energy usage (5/1/19 Tr. at 159-161).

PSE&G's massive spending programs have certainly been successful, doubling the company's stock price from $30 when Energy Strong was introduced in 2013 to the current $60, and steadily increasing its dividends to shareholders. In a word, the holding company and utility are doing quite well, and their strong financial position will only improve with the addition of ZECs, recent distribution and transmission rate increases, and the infrastructure filings in the pipeline.

There is therefore no credible argument that the company is losing money on these programs or that it needs additional incentives to continue to offer them. There is simply too much readily available information to the contrary. Indeed, it is the company's business plan to continue to offer these programs (and to obtain the regulatory perks that come with them).

While the company suggests that reduced sales may exert downward pressure on its return on equity, this argument underscores the problem with devices like rate decoupling that represent

single issue ratemaking. As Dr. Dismukes testified, to properly address PSE&G's request for rate decoupling based on an anticipated reduction in its ROE, it is necessary to take a broader view of the company's finances and not merely focus on reductions in sales revenues. Rather, Dr. Dismukes testified that "there are a lot of mitigating factors that will offset these ... they haven't been taken into account in these analyses, and I don't think it's been comprehensive enough to think about the benefits that will arise to the company as well from their return on investments for these programs, through the incentives, as well as the lost revenue mechanism. The Clean Energy Act affords lost revenue recovery." (5/2/19 Tr. at 132).

In fact, Dr. Dismukes demonstrated that during the period in which PSE&G implemented its many energy efficiency and solar programs, the company's earnings in each year were close to, and in several instances exceeded, the 10.3% return allowed by the Board:

> In fact, the company has earned, on average, 10.4 percent over the past five years returning as much as $73.8 million to shareholders which is over and above what the Board found as fair and reasonable in the Company's last rate case. Thus, the Company's earnings performance shows that it, and its shareholders, have been treated well under the regulatory compact in New Jersey and, in many instances, have been able to take advantage of the additional efficiency and earnings generated by regulatory lag.

(RC-7 at 37-38).

Similarly, when the company's financial position is viewed from the perspective that it presents to its shareholders, it is evident that PSE&G has been quite adept at cashing in on its many programs that track the State's energy goals. PSE&G's business plan to make large investments in the utility's distribution and transmission infrastructure has been a huge success, and has fueled the company's robust operating earnings. There is, therefore, no reason to shed tears for PSE&G over the possibility that a multi-billion dollar investment program that it has volunteered and aggressively marketed might not be as profitable as PSE&G would prefer. Nor does the record justify PSE&G's unprecedented request for guaranteed annual revenues.

This is not a new situation, we have been here before, and despite the company's ongoing protestations that they receive insufficient compensation in programs like these, by its own admission, the company is doing quite well and does not deserve yet another wealth transfer from the business community and ratepayers generally. In a word, PSE&G's ratepayers can no longer tolerate these breathtaking displays of regulatory over-reach. PSE&G's request for rate decoupling must (again) be denied.

CONCLUSION

For the foregoing reasons, the New Jersey Large Energy Users Coalition respectfully requests the Board to deny the company's Clean Energy Future-Energy Efficiency petition.

Respectfully submitted,

By:________________________

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