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May 29, 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. EO18101112 and GO18101113

VIA ELECTRONIC AND OVERNIGHT DELIVERY

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 the reply brief of Public Service Electric and Gas Company ("PSE&G") in the above-referenced matter.

Thank you for your consideration and review.

Respectfully submitted,

Matthew Weissman

By: ______________________________

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STATE OF NEW JERSEY
NEW JERSEY BOARD OF PUBLIC UTILITIES
BEFORE HONORABLE DIANNE SOLOMON, COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF ITS CLEAN ENERGY FUTURE-ENERGY EFFICIENCY ("CEF-EE") PROGRAM ON A REGULATED BASIS	: : : :	Administrative BPU DOCKET NOS. GO18101112 and EO18101113

REPLY BRIEF ON BEHALF OF PETITIONER
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

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PRELIMINARY STATEMENT

Petitioner Public Service Electric and Gas Company ("PSE&G" or the "Company") has presented the New Jersey Board of Public Utilities ("BPU" or "Board") with a carefully researched and comprehensive suite of energy efficiency programs that will help achieve significant energy savings in accordance with the Clean Energy Act ("CEA" or the "Act"), and elevate New Jersey to a position of national leadership in energy efficiency. This Clean Energy Future – Energy Efficiency Program ("CEF-EE Program" or "Program") will, without dispute, reduce participating customers' bills, improve the environment, and create green jobs in New Jersey. Every single customer class can participate in the Program, including low and moderate income customers, multi-family residences, small businesses, municipalities, hospitals, universities, and more. The Program was designed based on a review of the leading energy efficiency programs in the country. It is supported by analyses conducted by the Company's expert witness demonstrating that it is cost effective. The Division of Rate Counsel's ("Rate Counsel") witness concludes that Program benefits will exceed costs by 50%. Nearly 60 stakeholders appeared at public hearings to support the filing, ranging from elected and other government officials, public-interest customers, environmental advocates, and the business community. Stakeholder support was demonstrated at the evidentiary hearings as well.

In response to all of this, BPU Staff and Rate Counsel have asked the Board to . . . delay. Delay realization of material energy savings. Delay elevating New Jersey to first in class in energy efficiency. Delay reducing customers' bills, including for low income customers. Delay in reducing harmful emissions and mitigating the existential threat that is climate change. Delay in creating green jobs in the State and stimulating the energy efficiency business sector.

Delaying approval of the CEF-EE Program would be antithetical to the State and its residents' best interests. New Jersey recognized that undue delay was not acceptable when it passed the CEA, as it mandated that utilities be directed to reduce customers' energy usage by May 23, 2019. PSE&G responded to the CEA's call to action with the CEF-EE Program. It is now ripe for approval consistent with the CEA's timetable for energy use reductions. Program approval in a timely manner is consistent with the CEA's language and will further its objectives.

Rate Counsel and Staff offer various reasons for why the BPU should delay approving the Program, but, as is made evident below, none are availing. For example, Rate Counsel suggests that the Board not review the CE-EE Program until after the Energy Master Plan ("EMP") is finalized in December 2019. However, delay of that length all but guarantees that the State will not meet its energy reduction goals. The final steps the BPU must take to implement the CEA, on which Staff and Rate Counsel also rely, only will confirm what the plain language of the Act already makes clear: utilities must significantly reduce customers' energy usage, and do so in the near term. Given the undisputed benefits of the CEF-EE Program, waiting for those final steps to be complete before approving the Program would not be sensible.

A key component of the CEF-EE Program is the Green Enabling Mechanism, which will remove PSE&G's disincentive to promote energy efficiency and thus will directly support the goals of the CEA. Notwithstanding arguments to the contrary, this disincentive is still very real even after the passage of the CEA. In fact, the GEM is authorized by the CEA and the energy efficiency/renewables provision of the Global Warming Response Act, N.J.S.A. 48:3-98.1. The arguments against the GEM, refuted below, indicate fundamental misunderstanding of the mechanism itself, the reasons it is necessary, the behaviors it will incent (and those it will not incent), and the New Jersey law, public policy, and precedent that support it. New Jersey should follow the leading energy efficiency states in the country and adopt the GEM.

The Board should approve the CEF-EE Program in its entirety.

ARGUMENT

I. THE CEF-EE PROGRAM SHOULD BE APPROVED WITHOUT DELAY BECAUSE IT IS CONSISTENT WITH STATE LAW AND POLICY, WILL GENERATE SIGNIFICANT BENEFITS FOR NEW JERSEY AND ITS RESIDENTS, AND IS COST EFFECTIVE.

A. Staff's And Rate Counsel's Recommendation That The BPU Delay Realization Of The CEF-EE Program's Undisputed Benefits Is Not In The Best Interests Of The State Or Its Residents.

Staff and Rate Counsel argue that the CEF-EE Program is premature in light of the BPU's ongoing initiatives under the CEA and the 2019 EMP. Rate Counsel suggests that the BPU extend PSE&G's current energy efficiency programs and hold the remainder of the CEF-EE programs "in abeyance until further policy guidance and regulations are issued by the BPU."[1] Staff also argues that approval of the CEF-EE "proposals" at this time would "frustrate the State's success in achieving its goals."[2]

PSE&G respectfully disagrees. The record evidence shows that:

- PSE&G has taken seriously the plainly stated energy efficiency goals expressed in the CEA; the energy efficiency and renewables section (N.J.S.A. 48:3-98.1) and other provisions of the Global Warming Response Act ("GWRA"); Governor Murphy's Executive Orders;[3] and the 2018-2019 EMP process;

- the Company proposed a program that would satisfy those goals, and that has received strong and diverse stakeholder support; and

[1] Rate Counsel's brief, p. 3.
[2] Staff's brief, p. 26.
[3] *See* Executive Order 7, directing New Jersey to reenter the RGGI program; Executive Order 8, promoting offshore wind energy; Executive Order 23, addressing environmental justice issues in New Jersey's urban communities; and Executive Order 28, launching the development of a new EMP that will convert the State's energy production profile to 100% clean energy by January 1, 2050.

- strong stakeholder support also exists for utilities running energy efficiency programs in New Jersey.[4]

Given this record, PSE&G's proposal to start implementing a meaningful energy efficiency program is clearly consistent with State policy. The time is now for New Jersey to begin achieving significant energy savings and combating climate change. In fact, the CEA established May 23, 2019 as the date for the Board to direct utilities to begin reducing energy consumption.[5] Delay is not a solution if the State is to reach its energy goals. The CEF-EE Program is timely and should be approved.

To support its ripeness argument, Rate Counsel relies heavily on the EMP development process that will not finish until December 2019. As noted in PSE&G's initial brief, this is a new concern on Rate Counsel's part, and its tardiness is inexcusable.[6] Even putting this delay aside, Rate Counsel's argument is meritless. Rate Counsel suggests that it is "speculative" at this juncture for PSE&G to rely on the EMP goals of "growing New Jersey's clean energy economy" and "reducing the state's carbon footprint". Again, we disagree. The Company's reference to these goals as evidence that the CEF-EE Program is consistent with the new EMP is hardly a leap of faith on its part, given that: (1) the BPU long ago announced the 2019 EMP goals; (2) the BPU long ago disclosed the various EMP working groups delineated by topic (including "Reducing Energy Consumption"); and (3) PSE&G has been actively engaged in the EMP development process.[7] Moreover, these EMP goals are already embodied in the CEA, N.J.S.A.

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[4] For example, participants Enel X, Tendril, and Lime Energy support this model. Additional support for utility-led programs can be found in the stakeholder comments on the Optimal Energy market potential study and the February 2019 public comments submitted to the BPU *In the Matter of the Implementation of P.L. 2018, C. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs*, BPU Docket No. QO19010040.

[5] N.J.S.A. 48:3-87.9a.-c.

[6] *See* PSE&G's initial brief, pp. 30-31.

[7] Rate Counsel brief, p. 11.

48:3-98.1, and the GWRA. These goals are far from "speculative" at this point, and certainly not controversial.

Rate Counsel also notes that the EMP will address the following issues, all of which are addressed in some manner in the CEF-EE Program: the role of the utility in administering energy efficiency programs, program design and focus, funding, affordability for all customer classes (including low-income customers), evaluation of cost effectiveness, educational outreach, technology advances, data analytics, and workforce training.[8] Rate Counsel's brief is devoid of any valid explanation for why PSE&G proposing solutions for these issues now -- based on best practices gleaned from leading energy efficiency programs around the country -- is harmful to the State or its residents. PSE&G proposing potential solutions to these issues in the form of a comprehensive program is reason to advance the filing, not delay it. As noted in Ms. Reif's rebuttal testimony: "Approval and implementation of the CEF-EE Program can provide the Board with the information and data it needs to set practical, cost-effective policy directives, as opposed to the BPU making those decisions in a vacuum."[9] Staff actually recognizes this, and suggests in its brief that the BPU may "refer to the CEF-EE proposal as useful information about best practices around the country . . . [that] may benefit not only PSE&G's service territory but the entire state."[10] PSE&G agrees, and moving forward with the CEF-EE Program can only benefit the state and its residents, as well as jump-start the Board's implementation of the CEA in earnest.

Delaying until the new EMP is complete in December 2019 would also be inconsistent with the Board's timelines for completing energy efficiency initiatives under the CEA.

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[8] *Id.* at p. 12-15.

[9] PS-4, Reif rebuttal testimony, p. 7, l. 2-5.

[10] Staff's brief, p. 27.

According to a May 15, 2019 e-mail from BPU Staff to a broadly representative stakeholder group, the Board will convene stakeholder meetings in July and August 2019 to discuss "utility-specific energy usage and peak demand reduction targets, the program structure, cost recovery, utility filing requirements, and timeframe and evaluation and reporting requirements."[11] These are some of the same issues that Rate Counsel claims must first be resolved by the December 2019 EMP before the BPU can assess the CEF-EE Program. After the stakeholder process is complete, the BPU is then expected to "consider changes to a new energy efficiency and peak demand reduction program in the Fall of 2019." Board Staff expects that utility programs will, after the BPU filing process is complete, begin on July 1, 2020. With the RGGI law's 180-day adjudication period applying to those filings,[12] utilities will need to make their submissions to the Board in late 2019 to ensure a program start date of July 1, 2020. Utilities will, of course, need time to prepare those filings in advance of a late 2019 filing date.

This is all to say that prior to the EMP being released in December 2019: (1) Staff plans to address many of the issues that Rate Counsel claims must be addressed in the EMP through the stakeholder process (summer 2019); (2) the Board will consider "changes" to energy efficiency programs (fall 2019); and (3) the utilities will prepare and make energy efficiency program filings (late 2019). Clearly, the release of the EMP is not a prerequisite to the Board approving the CEF-EE Program.

Similarly, there is no conceivable way that utility programs will commence on July 1, 2020 if the utilities cannot file for approval of those programs until after the EMP is released in December 2019. In addition, the May 23, 2019 deadline in the CEA would be rendered

[11] Staff's May 15, 2019 e-mail is summarized on pages 18-20 of its brief.

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

meaningless, and the Optimal Energy draft market potential study's 2020 energy reduction targets would be unattainable (with potential penalties for non-compliance). Approval of the CEF-EE Program will allow the Board and PSE&G to begin the process of helping the State achieve its energy efficiency goals.

With respect to the CEA, Rate Counsel claims that "PSE&G presupposes what its specific energy savings and demand reduction targets will be under the CEA, without any deference to the Board's anticipated determinations regarding individual utility targets, incentives, and penalties under the CEA."[13] Staff makes a similar argument.[14] The fact that the BPU has not finalized these issues is not a reason to delay the realization of the CEF-EE Program's undisputed benefits. The CEA requires that the utilities reduce electric usage by at least 2% and gas usage by at least 0.75%.[15] Given that mandate, and the emphasis the State has put on energy efficiency, it would be reckless for the State and PSE&G to wait around until the exact, final targets are determined months (or more) from now. Whether the final targets are 2% and 0.75%, as set forth in the CEA, or 2.15% and 1.1% as proposed in the Optimal Energy draft study,[16] or some other figures, action must be taken in order for the State to meet its energy efficiency objectives. Fortunately for the State and its residents, PSE&G has presented a comprehensive, cost-effective program that can be implemented now.

Rate Counsel also suggests that any Board determination at this time of whether the CEF-EE Program will result in just and reasonable rates would be "problematic" because the BPU's

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[13] Rate Counsel brief, p. 16.

[14] Staff's brief, pp. 17-20.

[15] N.J.S.A. 48:3-87.9a.

[16] *Energy Efficiency in New Jersey*, drafted dated May 9, 2019, p. 79, Tables 35-36, accessible at https://files.constantcontact.com/6e1453b9001/0bb2649a-b13d-4e06-a964-3b2f07983750.pdf

CEA initiatives are not complete.[17] To support this argument, Rate Counsel states that it is "impossible for the Board to determine whether [the CEF-EE Program] is consistent with yet-to-be determined policies and goals."[18] Rate Counsel's position is illogical. The BPU has more than ample experience assessing utilities' energy efficiency programs. Thus, the Board does not require the final determinations under the CEA to be complete before it can opine on whether the CEF-EE would result in just and reasonable rates, or whether the Program would be beneficial to the State. Furthermore, the RGGI law remains viable and, in fact, it is buttressed by the CEA's multiple references to it. The BPU therefore remains statutorily authorized to approve the CEF-EE Program, as has been the case for utility energy efficiency filings for over a decade. CEF-EE Program expenditures will be reviewed for prudency in annual cost recovery filings, consistent with PSE&G's other green programs. Lastly, the "policies and goals" to which Rate Counsel refers are well known just from a cursory review of the CEA; *i.e.,* utilities must reduce customers' energy usage to help combat the growing climate change crisis. The CEF-EE Program will satisfy those plainly evident policies and goals. It should be approved.

Rate Counsel goes as far as to assert that the CEF-EE Program should have "addressed the possibility of target adjustments in the future, since the CEA also requires Board Staff to review the savings targets for each utility every three years."[19] To suggest, as Rate Counsel does, that the CEF-EE Program is not ripe for adjudication because Board Staff may, <u>in three years</u> from some uncertain date, change the initial reduction targets that are spelled out in the CEA, is nonsensical.

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[17] Rate Counsel's brief, p. 23.

[18] *Id.*

[19] *Id.* at pp. 17-18.

Staff notes that the "the Board, utility companies, and stakeholders not only should but can also afford to take the time they need to develop a comprehensive, cost-effective clean energy transition plan for New Jersey to achieve the goals outlined in the CEA."[20] The CEF-EE Program and its transition plan squarely match this description. Moreover, it is the Company's understanding based on the Board's Office of Clean Energy's ("OCE") webinar on May 24, 2019 addressing its Fiscal Year 2020 budget that the OCE intends to pursue new energy efficiency initiatives, launch new energy efficiency programs, and make significant changes to incentive levels and program design for existing programs, beginning as soon as July 1, 2019. The enhancement of the OCE energy efficiency programs at this time is not consistent with Staff's position that the CEF-EE Program is premature.

Finally, a 30-day meeting was held to discuss the CEF-EE filing on May 3, 2018, just three weeks before the CEA was passed and Governor Murphy directed the BPU in Executive Order 28 to begin development of the new EMP. Staff ultimately deemed the CEF-EE filing administratively complete by letter dated January 9, 2019. If the CEF-EE Program really is premature, the appropriate course of action was not to permit it to proceed through significant discovery (PSE&G alone answered about 235 questions); six public hearings at which approximately 60 people came to speak; three rounds of written testimony; four discovery/settlement conferences; two days of evidentiary hearings; and now, complete post-hearing briefing. The Program was deemed administratively complete in January 2019, and its benefits and cost-effectiveness have been thoroughly established.

[20] Staff's brief, p. 27.

B. Neither Rate Counsel Nor Staff Substantively Objects to PSE&G's Proposal To Become The Exclusive Provider Of Regulated Energy Efficiency Programs In Its Service Territory, And That Structure Would Stimulate The Energy Efficiency Marketplace In New Jersey.

PSE&G proposes to become the exclusive provider of BPU-regulated energy efficiency services in its service territory. The Company proposes this structure because the CEA places the obligation on utilities to reduce customers' energy consumption, with penalties for non-compliance.[21] PSE&G's success, and the achievement of the State's energy goals, cannot be dependent upon entities that do not bear responsibility for achieving those goals.

Neither Staff nor Rate Counsel provides substantive opposition to PSE&G's proposal. They also do not contest the evidence confirming that PSE&G is best suited to achieve the energy savings set forth in the CEA and the CEF-EE Program, including the objective studies cited in Ms. Reif's rebuttal testimony and the Company's initial brief demonstrating that government-led energy efficiency programs are plagued by inherent inefficiencies inapplicable to PSE&G.

Staff and Rate Counsel simply believe that PSE&G's proposal is premature in light of the BPU's ongoing CEA and EMP initiatives.[22] This argument can be rejected for the reasons set forth above and in Section I(c) of PSE&G's initial brief. In support of its timeliness argument, Staff notes that Ms. Reif testified at the evidentiary hearing that the Company "'did not do a detailed analysis of the OCE programs' or consider whether any have been successful and therefore merit continuing."[23] However, Ms. Reif later in her testimony clarified that the

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[21] N.J.S.A. 48:3-87.9a. and e.(3).

[22] *See, e.g.,* Rate Counsel's brief, pp. 12-13; Staff's brief, pp. 28-34.

[23] Staff's brief, p. 28.

Company reviewed OCE programs when it was developing the CEF-EE Program.[24] The CEF-EE Program Plan confirms that PSE&G benchmarked OCE programs when it developed its filing.[25] In fact, Appendix C to the Program Plan contains 58 pages of detailed analysis of OCE programs.[26] To put that level of analysis in perspective, one quarter of the 224-page plan document is devoted to OCE programs. PSE&G adequately analyzed the OCE programs when developing the CEF-EE filing.

Staff further notes that the transfer of OCE programs to PSE&G "should be taken deliberately and following a more detailed analysis of current program offerings."[27] PSE&G agrees with Staff that the transition should be deliberate and entail extensive stakeholder input. To that end, the Company's detailed transition plan includes a one-year transition period with various interim steps.[28]

Staff also argues that approving PSE&G to be the exclusive provider of regulated energy efficiency programs in its service territory "would run directly counter to the Board's long-standing policy of moving the clean energy sector towards a competitive market."[29] It bears repeating that PSE&G is proposing that it become the exclusive provider of <u>regulated</u> energy

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[24] 1T, p. 118, l. 15 to p. 119, l. 12. Given that NJLEUC's counsel asked the question that elicited this clarification, its assertion that "[l]iterally no attention was paid to the OCE programs", is particularly puzzling. NJLEUC's brief, p. 4. What is worse, NJLEUC makes this same misleading assertion again in its brief, followed by a citation in the very next paragraph to the table in the CEF-EE Program Plan that confirms the Company benchmarked the OCE programs. *Id.* at p. 16; Schedule KR-CEF-EE-2 Program Plan, Table 44, p. 106 (attached to P-2, Reif direct testimony).

[25] Schedule KR-CEF-EE-2 Program Plan, Table 44, p. 106 (attached to P-2, Reif direct testimony).

[26] *Id.* at pp. 157-215.

[27] Staff's brief, p. 31.

[28] PS-3, Reif supplemental testimony, Exhibit 1.

[29] Staff's brief, p. 32.

efficiency programs in its service territory.[30] The Company is not seeking to supplant the private energy efficiency marketplace.

A key component of the CEF-EE Program is the leveraging of PSE&G's trade allies. The Company's trade allies will consist of private market, non-utility installation contractors, developers, plumbers, electricians, builders, retailers, and other distributors of energy efficiency businesses.[31] The CEF-EE Program is expected to create 30,000 job years and facilitate associated economic activity. Far from harming the competitive market, PSE&G is seeking to stimulate it as the Company endeavors to reach the energy savings targets in the CEA and improve upon the State's energy efficiency rankings (*i.e.*, 29th overall for electric and 25th overall for gas savings achieved annually, according to the American Council for an Energy-Efficient Economy's ("ACEEE") 2018 State Energy Efficiency Scorecard).[32]

The CEF-EE Program's ability to stimulate the private energy efficiency market explains in part why it enjoys broad support from the competitive marketplace. For example, the Keystone Energy Efficiency Alliance ("KEEA") consists of more than 60 energy efficiency businesses working in New Jersey and Pennsylvania. KEEA supports the CEF-EE Program "in its entirety" and believes it is based on "best practices taken from across the country of those states who are leaders [in] energy efficiency[.]"[33] Private, non-utility companies like Google, Tendril, MaGrann Associates, Enel X, Lime Energy, Philips Lighting/Signify, EVCO Mechanical, Ecobee, Greenlife Energy, CMC Energy Services, Simple Energy, Franklin Energy, Nexant, and more all unequivocally support the filing because it is beneficial to the competitive

[30] This warrants repeating to clarify statements such as the one in Staff's brief that non-utility companies have concerns about PSE&G becoming "the 'sole provider' of EE services in its service territory." Staff's brief, p. 33. This statement does not accurately describe the Company's position.

[31] Schedule KR-CEF-EE-2 Program Plan, attached to Reif's direct testimony (PS-2), p. 103.

[32] Pages 28 and 31, accessible at https://aceee.org/sites/default/files/publications/researchreports/u1808.pdf

[33] 1T, p. 30, l. 1-11.

market. The same holds true for business advocate groups such as the Newark Regional Business Partnership, the Somerset County Business Partnership, and the Meadowlands Chamber of Commerce, all of which gave statements at the public hearings endorsing the CEF-EE Program. James Tedesco, the Bergen County Executive, touted the CEF-EE Program's ability to create jobs at a public hearing.[34] The CEF-EE Program is good for the green economy, and it should be approved for its proposed six-year duration so that it can create jobs in the State and give the marketplace confidence to invest in New Jersey. As Lime Energy noted in its brief, PSE&G through the CEF-EE Program would be a "market maker", and it would create "more stability for the customer-facing contractor community and the workers they employ by providing extended time horizons that allows more accurate hiring decisions and reduced turnover."[35]

Enel X, another member of the private marketplace, also strongly advocates for utility-led energy efficiency programs. It comments in its brief:

> Enel X believes it is preferable for utilities to operate/administer EE, based on Enel's experience in other states and finds that utility-driven programs consistently achieve greater results for customers, compared to state-agency driven programs. Enel X's position is that utility administered and operated EE programs are more cost effective, efficient, and save more energy.[36]

Staff's position supporting "moving the clean energy sector towards a competitive market" is also squarely at odds with the CEA, to the extent it suggests that utilities should be restricted in any manner within the energy efficiency market. The CEA mandates that utilities

[34] 3/21/19, 5:30 p.m. public hearing transcript, p. 21, l. 14-22.
[35] Lime Energy's brief, p. 9, paras. 19-20.
[36] Enel X's brief, p. 5.

reduce customers' energy consumption, with penalties for non-compliance.[37] No other entity, public or private, has this obligation and these repercussions. While utilities were expressly permitted by the RGGI law beginning in 2008 to invest in and earn regulated returns on energy efficiency programs, the CEA now mandates those programs.[38] Utilities cannot on one hand be mandated to reduce customers' energy usage and face penalties for non-compliance, and on the other hand be told that they cannot operate in the energy efficiency marketplace because private sector businesses already do so. This would be an incongruous result to say the least, and contrary to the State's energy goals.

In passing the CEA, the Legislature and Governor Murphy recognized that more must be done to promote energy efficiency in New Jersey -- over and above what is currently provided in the private marketplace -- in order for the State to meet its energy goals. The CEF-EE Program should be approved, along with PSE&G's proposal to be the exclusive provider of regulated energy efficiency programs in its service territory, so that the Company can stimulate the energy efficiency marketplace in New Jersey and help the State meet its energy objectives.

C. Staff's Belated Concerns Regarding The Pilot Programs Are Not A Basis To Reject Them.

Without notice, seven months after PSE&G made its CEF-EE filing, Staff requests for the first time that the BPU outright reject the Program's pilot programs on the basis that the Company's filing sought an exemption from certain minimum filing requirements ("MFR") for

[37] *See* N.J.S.A. 48:3-87.9a. and e.(3).

[38] In light of the 2008 RGGI law and 2018 CEA, which expressly authorized (RGGI) and then mandated (CEA) utility energy efficiency programs, participant Direct Energy's and its brethren's (collectively, "Direct Energy") heavy reliance in their brief on the Energy Discount and Electric Competition Act ("EDECA") from 1999 -- tellingly without a single reference to the RGGI law or the CEA -- is entirely misplaced. In fact, Direct Energy acknowledges that the cited provisions of EDECA on which they rely "are silent on the provision of energy efficiency programs." Direct Energy's brief, p. 16. The RGGI law and the CEA are not silent, and those provisions are the controlling authority.

those programs.[39] PSE&G made clear in its petition and supporting documents that, as specifically contemplated by the Board in the governing BPU order, it was seeking a waiver of the cost-benefit analysis ("CBA") MFRs for the pilot programs.[40] Staff reviewed the filing, initially deemed it administrative incomplete for reasons unrelated to PSE&G's MFR waiver request, and then ultimately deemed the filing administratively complete by letter dated January 9, 2019.

The time for Staff to raise any concerns with PSE&G's filing detail regarding the pilots was prior to it deeming the filing administratively complete. As the Board's October 20, 2017 Order approving revised MFRs states: "[I]t is important to ensure that the utility filings satisfy a minimum level of completeness <u>prior</u> to the Board <u>initiating</u> its review."[41] Instead, the filing was deemed administratively complete, the matter proceeded through significant discovery (including many Staff questions on the pilot programs[42]), two settlement conferences, two discovery conferences, and two days of evidentiary hearings without Staff raising its concerns regarding the filing's level of detail for the pilot programs. If the BPU were to hold now that the filing should have contained more detail regarding the pilot programs, such a ruling would be unduly prejudicial to PSE&G, which did not have the opportunity to even attempt to cure the alleged deficiencies because Staff neglected to mention them at any of the various stages of the case.

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[39] Staff's brief, pp. 35-37.

[40] PS-1, Petition, p. 9, para. 18; Schedule KR-CEF-EE-2, Section 3.3 (attached to PS-2, Reif direct testimony). PSE&G's intention to request a waiver of the CBA MFRs for the pilot programs was also discussed at the parties' May 3, 2018 30-day meeting for the CEF-EE filing, and it received no objection at that time.

[41] *In the Matter of Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources, and Offering Class I Renewable Energy Programs in their Respective Service Territories on a Regulated Basis Pursuant to <u>N.J.S.A.</u> 48:3-98.1 – Minimum Filing Requirements*, Order Pursuant to <u>N.J.S.A.</u> 48:3-98.1c, BPU Docket No. QO17091004, p. 5 (emphasis added).

[42] *See, e.g.*, S-PSEG-EE 4-7, 21-26, and 31-37.

The CEF-EE Program Plan contains ample detail supporting PSE&G's request for a waiver:

> These pilot subprograms are designed to test new technologies and methods of attaining energy savings. Therefore, the quantifiable savings of the pilot subprograms cannot be ascertained. In fact, the purpose of conducting these pilots is to gain knowledge of the operation and savings capabilities of many of these measures and platforms, information that in the future will underlie the savings estimates of subprograms in subsequent EE Program Plans. Because of the novelty of these pilot subprograms, compliance with the requirements of MFR Part V [*i.e.,* CBA MFRs] would not be feasible. The pilot subprograms are cutting-edge and lack easily-produced documentation supporting estimated costs/benefits. In addition, some of these pilot subprograms have an educational rather than equipment-based focus. Because of this, the pilot subprograms described below should be exempt from the requirements set forth in MFR Part V.[43]

This rationale squarely aligns with the BPU's October 2017 Order, which states:

> If compliance with Part V of these requirements would not be feasible for a particular program or sub-program, the utility may request an exemption but must demonstrate why such exemption should be granted. Examples of historical situations that have qualified for exemption include programs that have an educational rather than equipment-based focus and programs that introduced novel ideas where documentation supporting estimated costs/benefits may not be easily produced.[44]

While Staff notes that PSE&G also did not provide estimates in its filing for most of the pilots' customer participation and energy savings levels, the Board's October 20, 2017 Order is clear that this information need only be included "if applicable."[45] As stated in PSE&G's CEF-EE Program Plan, this information is not applicable for a majority of the pilots because of the uncertainty regarding the pilot measures to be developed and deployed, the variability of the

[43] Schedule KR-CEF-EE-2, Section 3.3, p. 64 (attached to PS-2, Reif direct testimony).

[44] October 20, 2017 Order, *supra*, Appendix B, para. Ie.

[45] *Id.* at p. 17, para. IIa.

potential approaches under the pilots, and/or the need to further study the innovative offerings in a pilot setting.[46] Any concern on Staff's part regarding this approach should have been raised long before the filing of its brief.

While Staff suggests that the pilot programs are not eligible for a MFR waiver because of their aggregate investment level, this argument is also meritless.[47] Neither the Board's October 2017 Order nor any other legal authority stands for the proposition that a pilot program above a certain investment threshold is *per se* ineligible for a MFR waiver. In fact, when the BPU revised the MFRs in its October 2017 Order, it expressly removed the language from its predecessor May 2008 Order that permitted a waiver of the CBA MFRs only for a "small scale or pilot program," and not a "particularly large or complex" program.[48] The October 2017 Order states: "Amendments remove references to small scale and pilot programs. As proposed, the requirements state more generally that if compliance with the upfront cost/benefit analysis requirement would not be feasible for a particular program or sub-program, the utility may request an exemption but must demonstrate why such exemption should be granted."[49] PSE&G made such a demonstration, as evidenced by the fact that the CEF-EE filing was deemed administratively complete. The Board should approve the innovative CEF-EE Program pilots.

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[46] *See, e.g.,* Schedule KR-CEF-EE-2, Section 3.3, p. 76 (attached to PS-2, Reif direct testimony).

[47] Staff's brief, pp. 36-37.

[48] *In the Matter of Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources, and Offering Class I Renewable Energy Programs in their Respective Service Territories on a Regulated Basis Pursuant to* *N.J.S.A. 48:3-98.1*, BPU Docket No. EO08030164, Order Pursuant to N.J.S.A. 48:3-98.1c (May 8, 2008), Appendix A, General Filing Requirements, para. e.

[49] October 20, 2017 Order, *supra*, p. 4.

D. The Record Demonstrates That A 15-Year Amortization Period Is Appropriate Because It Best Matches Program Benefits To Costs, And It Will Lower Customers' Bills During The Initial Years Of The Program.

PSE&G proposed a 15-year amortization period for its CEF-EE Program energy efficiency investments based on those measures' average useful life. Neither Staff nor Rate Counsel disputes that the measures' useful lives average 15 years.[50] Furthermore, neither Staff nor Rate Counsel disputes that program costs should match benefits. In fact, Rate Counsel acknowledges in its brief: "The matching of cost recovery and benefits may be required under Generally Accepted Accounting Principles ('GAAP'), and is applied as a general principle in the context of ratemaking."[51]

Nevertheless, Staff and Rate Counsel recommend that the BPU adopt a seven-year amortization period for PSE&G's energy efficiency investments. They make this recommendation while fully acknowledging that a seven-year amortization period will result in higher upfront bills for customers, including low-income customers.[52] PSE&G on pages 33-37 of its initial brief explained why a 15-year amortization period is more appropriate than a seven-year period. PSE&G's proposal should be accepted.

Staff makes three arguments in support of a seven-year amortization period, none of which are persuasive. First, Staff notes that the Company has settled in the past for seven-year amortization periods for its energy efficiency investments, and other New Jersey utilities have settled for a seven (or fewer) year amortization.[53] However, the settlements of PSE&G's prior energy efficiency filings were part of comprehensive agreements that are expressly not binding

[50] Staff's brief, p. 48; 1T, p. 317, l. 8-13.
[51] Rate Counsel's brief, p. 53.
[52] Staff's brief, p. 49; 1T, p. 329, l. 12-23.
[53] Staff's brief, p. 48.

on the parties in a future proceeding, such as this one.[54] They also do not contain any analysis explaining why a seven-year amortization period is the most appropriate length for the energy efficiency investments. Moreover, the Board has approved a longer amortization period for PSE&G's energy efficiency investments; specifically, the 10-year amortization period approved as part of the Company's 2008 Carbon Abatement Program.[55] The fact that PSE&G in the past settled for an arbitrary seven-year amortization period for its energy efficiency investments is not instructive here.[56]

Staff's second argument in favor of a seven-year amortization period is that it believes a 15-year period will only benefit the Company's shareholders. This is clearly erroneous. Again, Staff and Rate Counsel do not dispute that a 15-year amortization period better matches program benefits to costs, resulting in intergenerational equity, and that it will result in lower customer bills during the initial period of the Program. Those are real benefits to customers. While Staff and Rate Counsel use the comparison to a mortgage to demonstrate that overall program costs would be higher on a nominal basis using a 15-year amortization period versus a seven-year period, there is a reason that homeowners typically select a 30-year mortgage over a 15-year mortgage. That reason, of course, is lower monthly mortgage payments. That same rationale supports the Company's proposed 15-year amortization period.

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[54] *See* pp. 35-36 of PSE&G's initial brief. Clearly, if the Company's own settlements are not binding on it, or any other party, in a future proceeding, other utilities' settlements are not binding on PSE&G either.

[55] *Id.* at p. 36.

[56] PSE&G submits that there should be no set amortization period for energy efficiency investments. The amortization period for these investments should, as is the case with the Company's proposal, be based on the measures' useful lives. While in this case that figure is 15 years, in future filings it could be less. Moreover, the approach of setting amortization periods for energy efficiency measures based on their useful lives will encourage utilities to offer longer-life assets that will provide benefits to customers further into the future.

Third, Staff shares Rate Counsel's concern about the "pancaking of rates related to EE programs."[57] Staff notes that customers "are still paying" for five PSE&G energy efficiency programs.[58] However, like Rate Counsel, Staff ignores that customers are still receiving benefits from the energy efficiency measures implemented as part of those programs. The efficiencies gained from those measures do not disappear the moment the applicable program closes. Participating customers are still receiving the benefit of lower bills -- in addition to other benefits set forth in the Company's CBAs -- and will continue to do so over the life of the measures.

Rate Counsel, which like Staff did not provide any analysis of the impact that pancaking of programs would have on customer bills, takes issue with the analysis the Company provided in Mr. Swetz's rebuttal testimony. More specifically, Rate Counsel criticizes PSE&G's analysis for: (1) "only" assuming 11 years' worth of investment; and (2) assuming CEF-EE expenditures would be continued at 2024 levels through September 2030, because 2024 is five years after the Program's proposed commencement.[59] Neither critique has merit. Eleven years is a significant amount of time using any objective standard. Moreover, the CEA calls for the Board to reevaluate the energy savings targets every three years; thus, there may be significant changes in the energy efficiency landscape in future years.[60] Even the Optimal Energy draft study ceases analyzing the maximum and economic potential in 2029.[61]

The Company's assumption that CEF-EE expenditures would be continued at 2024 levels through September 2030 was also appropriate. The significant energy savings that the CEF-EE

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[57] Staff's brief, p. 49.
[58] *Id.*
[59] Rate Counsel's brief, p. 54-55.
[60] N.J.S.A. 48:3-87.9b.
[61] *Energy Efficiency Potential in New Jersey*, May 9, 2019 draft, accessible at https://files.constantcontact.com/6e1453b9001/0bb2649a-b13d-4e06-a964-3b2f07983750.pdf.

Program will generate cannot be realized overnight; rather, there is an escalation period needed to achieve these savings. This is why the CEA affords utilities five years to reach the 2% and 0.75% reduction targets set forth therein.[62] It is also why the Optimal Energy draft study proposes gradual, annual increases in reduction targets until 2024.[63] PSE&G's pancaking analysis, the only one that has been presented to the BPU, should be credited.

Rate Counsel, which like Staff did not present any comparison of a 15-year versus seven-year amortization period using net present value, also takes issue with Mr. Swetz's comparison of the revenue requirements for these amortization periods. Specifically, Mr. Swetz appropriately accounted for the time value of money. Rate Counsel argues that the discount rate Mr. Swetz used for that analysis, the Company's weighted average cost of capital ("WACC"), was inappropriate because that is PSE&G's cost of capital, not that of customers.[64] Rate Counsel's complaint is misguided. As Mr. Swetz explained, "every customer is different and they have all different discount rates."[65] Indeed, a customer's discount rate can be as high as a credit card interest rate if a credit card is used to fund the investment. The Company's cost of capital was therefore appropriately used as a proxy.[66] Notably, Rate Counsel witness Dismukes used PSE&G's WACC in his "alternative CBA."[67] Company witness Gabel-Frank also used PSE&G's WACC in his calculations under the Ratepayer Impact Test ("RIM"), and Rate Counsel did not oppose him doing so.[68]

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[62] N.J.S.A. 48:3-87.9a.
[63] *Energy Efficiency in New Jersey, supra*, at p. 79, Tables 35-36.
[64] Rate Counsel's brief, p. 55.
[65] 2T, p. 92, l. 8-14.
[66] *Id.* at p. 92, l. 14-19.
[67] RC-7, Dismukes' direct testimony, p. 23, l. 6-11.
[68] *See* Schedule KR-CEF-EE-2 Program Plan (attached to PS-1, Reif direct testimony), p. 111.

Rate Counsel suggests that a more appropriate discount rate would be the BPU-established interest rate on customer deposits, which is currently set at 1.87%.[69] Rate Counsel is incorrect. PSE&G may require a customer to pay a deposit based on their credit history.[70] PSE&G holds the deposit until the customer achieves satisfactory credit, and will pay simple interest on the deposit in accordance with N.J.A.C. 14:3-3.5(d) at the six-month treasury bills for the 12-month period ending each September 30th. This rate is certainly not the average borrowing cost for a customer, nor is it the average return customers would seek on investments. In fact, if customers only sought a 1.87% return, energy efficiency investments would be significantly higher than they are today. Rate Counsel's proposed discount rate of 1.87% is improper and should be rejected.[71]

It is undisputed that a 15-year amortization period represents the best matching of program costs to benefits; ratemaking (and accounting) principles seek to best match benefits to costs; and a 15-year amortization period would result in lower customer bills at the outset of the Program, and similar rates over time on a present value basis, including for low-income customers. For all of these reasons, the BPU should approve a 15-year amortization period for PSE&G's CEF-EE energy efficiency investments.

E. The Proposed IT Costs To Implement A Transformative Program Like CEF-EE Are Prudent And Should Be Approved.

PSE&G sufficiently rebutted Rate Counsel's opposition to the CEF-EE Program IT budget on pages 37-41 of its initial brief. In their respective briefs, Staff and Rate Counsel

[69] Rate Counsel's brief, p. 55.

[70] *See* N.J.A.C. 14:3-3.4.

[71] Rate Counsel estimates that, if the discount rate used is 1.87%, customers "would pay over $450 million more on a present value basis using a 15-year amortization period versus the 7-year amortization period." Rate Counsel's brief, pp. 55-56. This statement should be summarily rejected because Rate Counsel's calculation is not contained in the record, subject to review by PSE&G. In fact, Rate Counsel witness Mugrace acknowledged at the evidentiary hearing that he did not present any calculations or analysis taking into account net present value. 1T, p. 328, l. 2-6.

reference the 2009 implementation of PSE&G's customer billing system, and imply that this system should warrant a lower IT budget for the CEF-EE Program. However, this billing system has no relevance to the CEF-EE Program or its proposed IT budget. Ms. Reif, who was the IT lead for that project, stated in her direct testimony that the billing system "was designed to support utility revenue billing and not on-bill repayment solutions of the magnitude proposed in [CEF-EE]."[72] In other words, the customer billing system ensures that PSE&G's electric and gas customers are billed on a monthly basis for utility service in a timely and accurate manner. It was not designed for the far more complex task of creating and managing all aspects of customer contact with respect to PSE&G's energy efficiency programs, especially a program the size and scope of CEF-EE. Moreover, the billing system that Rate Counsel references went into service 10 years ago, a significant amount of time in the IT world.[73] As Rate Counsel witness Mugrace acknowledges, IT investments "depreciate rapidly" and we are living in a "rapidly changing technology environment" where "new technologies are being developed at a much quicker pace[.]"[74]

Staff notes that the Company "to date, has been able to implement and run its current energy efficiency programs using the previously approved IT expenditures."[75] This statement is true, because the IT costs approved for those smaller-scale energy efficiency programs matched those programs' needs and capabilities. However, as set forth in Ms. Reif's direct testimony, the IT expenditures described in this filing are necessary given that the scale and scope of the CEF-EE Program are significantly larger and more complex than any program previously considered.

[72] 1T, p. 92, l. 24 to p. 93, l. 7; PS-2, Reif direct testimony, p. 15, l. 19-21.
[73] 1T, p. 274, l. 8-20.
[74] 1T, p. 294, l. 23-24; RC-4, Mugrace direct testimony, p. 13, l. 6-9.
[75] Staff's brief, p. 45.

As a result, the technology required to enable the CEF-EE Program exceeds the capabilities of PSE&G's current technology systems and platforms.[76]

Further relying on PSE&G's prior IT investments, Staff claims that "of the $4.0 million approved in previous filings, PSE&G has only spent $2.3 million."[77] This is incorrect. In its $4.0 million figure, Staff erroneously included $1.6 million in IT costs that were approved as part of the Company's Energy Efficiency 2017 Program ($1.3 million for the new smart thermostats pilot and $300K for the new data analytics pilot).[78] However, the Company ultimately did not capitalize the IT expenditures for its smart thermostat pilot program, and the parties agreed in the stipulation for the Energy Efficiency 2017 Program that the $300K in IT to support the data analytics pilot program would be expensed and not capitalized.[79] Of the $2.4 million in capital IT expenditures that the BPU has approved for energy efficiency programs and which PSE&G has capitalized, the Company has spent $2.32 million (97%).[80]

Rate Counsel and Staff critique the level of detail PSE&G has provided to support its IT expenses; however, as set forth in PSE&G's initial brief, the Company has provided more than enough information for the Board to adequately assess its IT proposal. Notably, while arguing that PSE&G has provided insufficient detail to support its proposed IT budget, Rate Counsel devotes 1-1/2 pages of its brief summarizing the information PSE&G has provided.[81]

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[76] PS-2, Reif direct testimony, p. 14, l. 20 to p. 16, l. 6.

[77] Staff's brief, p. 45.

[78] *Id.* at p. 43.

[79] PSE&G's response to S-PSEG-EE-ENE-0012; *In the Matter of the Petition of Public Service Gas and Electric Company for Approval of its Energy Efficiency 2017 Program and Recovery of Associated Costs*, BPU Docket No. EO17030196, Order Adopting Stipulation, pp. 5-6 (Aug. 23, 2017) (citing para. 22 of the stipulation).

[80] PSE&G's response to S-PSEG-EE-ENE-0012.

[81] Rate Counsel's brief, pp. 47-49.

Finally, Rate Counsel asserts that the "Company has not properly documented that the proposed IT budget would be used solely to support the proposed program."[82] PSE&G can confirm that the proposed IT budget would be used solely to support the CEF-EE Program and other BPU-approved energy efficiency programs PSE&G implements. PSE&G's proposed IT budget should be approved so that it can successfully implement the CEF-EE Program.

F. The Board Should Reject Rate Counsel's Undefined Cap On Administrative Expenses.

Rate Counsel's brief repeats its recommendation that the BPU should cap CEF-EE Program administrative costs at some undefined figure. PSE&G sufficiently rebutted the need for such a cap on pages 42-43 of its initial brief. The Company states further here that Rate Counsel's claim in its brief that PSE&G is seeking "unlimited authority to expend funds on administration and program development" is false.[83] The Company has proposed a detailed budget for administrative expenses, and those costs will be reviewed for prudency as part of PSE&G's annual cost recovery filings, as they currently are in connection with its annual Green Programs Recovery Charge filing.[84] PSE&G is by no means seeking "unlimited access to ratepayer money", as Rate Counsel claims.[85]

Rate Counsel also argues that PSE&G's administrative costs "increase over the course of the program" as a percentage of total cost when, in its view, they should decrease.[86] However,

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[82] *Id.* at p. 51.

[83] Rate Counsel's brief, p. 57.

[84] Staff does not take a position on capping program administrative expenses. Staff does assert that "all administrative costs should be reviewed for prudency in annual filings consistent with traditional ratemaking practice." Staff's brief, p. 38. PSE&G agrees with Staff's position.

[85] Rate Counsel's brief, p. 58.

[86] *Id.* at p. 58.

as the table below demonstrates, estimated expenses as a percentage of estimated investments decreases from 14% in 2019 to 9% in 2024:[87]

Year	Investment	Expenses	Expenses %
2019	$121,666,088	$17,622,984	14%
2020	$352,923,012	$37,567,737	11%
2021	$396,638,998	$44,263,407	11%
2022	$447,089,980	$46,493,979	10%
2023	$495,141,708	$48,622,680	10%
2024	$538,054,463	$50,690,953	9%

As this table demonstrates, the Company is realizing the economies of scale Rate Counsel references in its brief; specifically, as CEF-EE Program investments ramp up at a faster pace than expenses, PSE&G spends less per dollar of investment or "unit of work" as the Program progresses.[88] While Rate Counsel also claims that costs "should be declining as the Company gains experience with the program", its argument ignores that PSE&G will need to significantly ramp up its energy efficiency efforts to achieve the CEA's and the CEF-EE Program's substantial energy savings.[89] The increase in CEF-EE Program expense dollars between 2019 and 2024 is primarily due to a rise in labor costs, consistent with inflation and Gross Domestic Product ("GDP") growth. CEF-EE Program expense dollars decline after 2024, demonstrating additional efficiencies.

Finally, Rate Counsel's refusal to provide a specific cap figure makes it difficult to assess and respond to its recommendation. Notwithstanding this ambiguity, for the reasons set forth above and in PSE&G's initial brief, Rate Counsel's recommendation should be denied. An arbitrary cap on administrative expenses, when those costs are reviewed for prudency on an

[87] Schedule KR-CEF-EE-2 Program Plan (attached to PS-2, Reif direct testimony), pp. 155-156, Tables 72 and 73.

[88] Rate Counsel's brief, p. 59.

[89] *Id.*

annual basis, could have the deleterious effect of PSE&G foregoing cost-effective energy efficiency opportunities. Such a cap would also interfere with proper cost-benefit screening. PSE&G's proposed administrative expenses should be approved.

II. THE CEF-EE PROGRAM SHOULD BE APPROVED BECAUSE IT IS UNDISPUTED THAT IT IS COST EFFECTIVE.

Rate Counsel devotes significant attention in its brief critiquing the Company's CBAs for the CEF-EE Program. While, for the reasons set forth below, Rate Counsel's arguments are misguided, PSE&G submits that the BPU should view its criticism of the Company's CBAs through the proper lens. Specifically, it is undisputed, even taking into consideration Rate Counsel's arguments, that the CEF-EE Program is cost effective. In fact, Rate Counsel's primary witness on cost-benefit, Dr. Dismukes, finds that CEF-EE benefits outweigh costs by 50 percent.[90] The CEF-EE Program should be approved because it is undisputed that it is cost effective.

A. The SCT Is The Appropriate Cost-Benefit Test Pursuant To The CEA

While Rate Counsel does not object to PSE&G's use of the Societal Cost Test ("SCT"), it claims to "take issue with the Company's primary reliance" on it because of the purportedly subjective determinations that make up its inputs.[91] Rate Counsel acknowledges that the CEA requires utilities' CBAs to "consider both economic and environmental factors", which are factored into the SCT, but then makes recommendations that completely ignore that mandate.[92] Unlike Rate Counsel, PSE&G does not disregard the CEA's requirements. The Company recommends that the SCT be the primary test used to evaluate the cost-effectiveness of the CEF-

[90] DED-4, Alternative Cost-Benefit Analysis.xlsx, provided in response to PS-RC-1.

[91] Rate Counsel's brief, p. 24.

[92] *Id. See also* N.J.S.A. 48:3-87.9d.(2).

EE Program because it is the only test that includes economic and environmental factors, as the CEA requires.[93]

The SCT is also the test Optimal Energy used in developing for the BPU its draft market potential study pursuant to the CEA.[94] The draft study notes that Optimal Energy "expect[s] that the societal cost test (SCT) will be the primary cost-effectiveness driver of what programs utilities or other program administrators pursue."[95]

Rate Counsel cites Dr. Dismukes' testimony that, in his experience, utilities in the midwestern and southern parts of the country "tend" to use the Total Resource Cost Test ("TRC").[96] This anecdote ignores that New Jersey statutorily requires CBAs to consider economic and environmental factors, a requirement that, again, only the SCT satisfies, and that the TRC ignores. Furthermore, Rate Counsel provides no data indicating the primary CBA test utilities in other parts of the country primarily use, including here in the northeast or mid-Atlantic region. According to the ACEEE, almost all states use the SCT in some fashion, and at least five states and the District of Columbia use this test as the primary means of determining cost effectiveness.[97] Significant energy efficiency data for these five states (Vermont, Arizona, Minnesota, New York, and Iowa) and D.C. includes the following:

- All five of these states and D.C. achieved higher electric savings in 2017 (ranging from 3.33% to 0.75%) than New Jersey (0.55%);
- Four of the five states achieved at least twice the electric savings as New Jersey;

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[93] *See* PS-2, Reif direct testimony, pp. 11-13 for additional support for the Company's recommendation that the Board primarily rely on the SCT.

[94] *Energy Efficiency in New Jersey*, draft dated May 9, 2019, accessible at https://files.constantcontact.com/6e1453b9001/0bb2649a-b13d-4e06-a964-3b2f07983750.pdf

[95] *Id.* at p. 90.

[96] Rate Counsel's brief, p. 25.

[97] https://database.aceee.org/

- Four of the five states achieved at least 1.17% electric savings, placing them in the top 13 in the country;
- One of the states, Vermont, achieved the most electric savings in the country (3.33%), and six times the amount that New Jersey realized;
- All five states appear in the top 18 in the country in terms of electric savings, and D.C., the lowest ranked of the six comparators, is 22nd highest.[98]

Consistent with the CEA and best practices from around the country, the SCT is the primary test that the BPU should use when assessing the cost effectiveness of the CEF-EE Program.

B. PSE&G's CBAs Were Conducted According To Established Principles And The State's Energy Goals.

Rate Counsel claims that the Company's CBAs are not credible because PSE&G updated them in response to Rate Counsel's direct testimony.[99] Rate Counsel describes the Company's changes to the CBA as "significant", "substantive", and "lacking explanation."[100] These descriptions are inaccurate. The truth is that Company witness Isaac Gabel-Frank made minor adjustments to his initial CBA, based in part on the suggestions from Rate Counsel's witnesses. Mr. Gabel-Frank made other changes because of the time that elapsed between the Company's initial filing (October 2018) and his rebuttal testimony (April 2019). Mr. Gabel-Frank adequately explained each adjustment in his rebuttal testimony (PS-7), and Rate Counsel does not take substantive issue with them (just the fact that they were made). The adjustments did not have a material impact on the CBA results. In fact, the TRC test, which Rate Counsel seems to

[98] PS-9, Hansen rebuttal testimony, Schedule DGH-1.

[99] *See, e.g.,* Rate Counsel's brief, p. 27.

[100] *Id.* at pp. 27 and 30.

endorse over any other, remained at 1.0 at the CEF-EE portfolio level after Mr. Gabel-Frank made his minor adjustments.[101]

PSE&G's adjustments to the CBA provide the BPU with the best, most up-to-date information for it to assess the cost-effectiveness of the CEF-EE Program. They also incorporate feedback from Rate Counsel that the Company considered and accepted. Ultimately, Rate Counsel witness Dismukes agrees that the Program is cost effective, with benefits exceeding costs by 50% in his estimation.[102] This means that even if the Board were to accept Dr. Dismukes' flawed analysis that severely undercounts benefits, over $1.3 billion in net present value benefits would be lost for New Jersey if the CEF-EE Program is not approved. Using the Company's analysis, the State would lose $6.7 billion in net present value benefits if the Program is not approved. The BPU should approve the cost-effective CEF-EE Program.

Rate Counsel notes that the CEA requires energy efficiency programs to have a "benefit-to-cost ratio greater than or equal to 1.0."[103] Rate Counsel misleadingly omits key language from this provision of the CEA; more specifically, that the CEA requires energy efficiency programs to "have a benefit-to-cost ratio greater than or equal to 1.0 <u>at the portfolio level</u>, considering both economic and environmental factors. . . ."[104] On a portfolio basis, both Mr. Gabel-Frank and Dr. Dismukes conclude that the CEF-EE Program is cost beneficial.

Rate Counsel urges the BPU to consider other factors besides CBA results greater than 1.0 when evaluating the CEF-EE Program, because those positive results do "not necessarily

[101] Rate Counsel's brief, p. 25; PS-7, p. 31, Tables 2 and 3.
[102] DED-4, Alternative Cost-Benefit Analysis.xlsx, provided in response to PS-RC-1.
[103] Rate Counsel's brief, p. 25, citing <u>N.J.S.A.</u> 48:3-87.9d.(2).
[104] <u>N.J.S.A.</u> 48:3-87.9d.(2) (emphasis added).

translate into a program which is cost beneficial to ratepayers."[105] To support this argument, Rate Counsel notes that CBAs "reflect numerous subjective judgements."[106] However, while subjective determinations must necessarily be made in these evaluations, they are made equally by Company and Rate Counsel witnesses. After these subjective determinations were made by both parties, the ultimate result for the CEF-EE Program is that the Company and Rate Counsel agree that it is cost beneficial. The BPU should approve the Program because of its uncontested value to the State and its resident.

On a micro level, none of Rate Counsel's specific concerns with the Company's CBA have merit. The following summarizes those issues, along with PSE&G's response:

Value of Emissions: Rate Counsel claims that the Company should have used market-based costs of emissions, such as RGGI allowance prices, to value avoided emissions, citing a 2013 BPU decision to support its argument.[107] However, as articulated on pages 16-17 of Mr. Gabel-Frank's rebuttal testimony (PS-7), the markets cited as examples by Dr. Dismukes are not free markets able to capture all benefits related to avoided emissions, as Dr. Dismukes acknowledged in his response to PS-RC-DED-23.[108] Moreover, market allowance prices are an administratively created policy instrument intended to change market participants' behavior. They are not intended to capture all negative externalities of specific pollutants.

By only including market allowance prices, the CBA would vastly underestimate the benefit of avoiding an incremental unit of pollution, which would lead to a less efficient outcome for the State. To highlight the flaws in Rate Counsel's and Dr. Dismukes' position, the

[105] Rate Counsel brief, p. 25.

[106] *Id.*

[107] *Id.* at pp. 25-26.

[108] Dr. Dismukes states in this discovery response: "An example of externality costs not captured in the RGGI market could include reductions in operating costs, fuel savings, and GHG emissions to name a few." (emphasis added).

installation of a more efficient gas boiler would have no environmental benefits because none of the market prices to which Dr. Dismukes refers are applicable to gas. Furthermore, the value of energy efficiency, renewable energy, and clean energy initiatives and programs overseen by the BPU, which are a pivotal component of Governor's Murphy's energy policy, will be seriously diluted if valued against market-based costs such as RGGI allowances. If this were not enough, the Board should be persuaded by the fact that five of the leading environmental advocacy groups in the country/state "wholly support" Mr. Gabel's Frank's position, and they "strenuously urge the Board to reject the use of market-based costs for emissions benefits . . . and adopt the Company's proposed methodology for valuing avoided emissions[.]"[109]

Furthermore, in January 8, 2015 comments on the Rutgers Center for Energy, Economic & Environmental Policy's ("CEEP") draft Energy Efficiency Cost-Benefit Avoided Cost Assumptions dated December 8, 2014, Rate Counsel opined that the Interagency Working Group's ("IWG") values for the social cost of carbon are "not an unreasonable assumption (or a starting point) as a proxy for future carbon reduction compliance at this time."[110] The values proposed in the CEF-EE Program are sourced from the IWG.[111] Rate Counsel's comments also note that its "consultant, Synapse, has stated that the long-term marginal abatement cost of carbon dioxide emissions is $100 (2013$)/short ton."[112] This cost is significantly higher than the Company's figure of slightly below $60/ton in the CEF-EE filing.[113]

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[109] EELC's brief, pp. 11-12.

[110] https://www.state.nj.us/rpa/docs/CEEEP_Comments.pdf, at p 3.

[111] PS-7, Gabel-Frank rebuttal testimony, p. 18, l. 16.

[112] https://www.state.nj.us/rpa/docs/CEEEP_Comments.pdf, at p 3.

[113] *See* IGF-4, Updated Emissions Damages Calculations, provided in response to RCR-POL-36.

Lastly, the 2013 BPU decision to which Rate Counsel cites in support of market-based costs is not reliable. Since that Order was issued, New Jersey has taken steps to become a national leader in clean and emission free energy under Governor Murphy, the Legislature, and the BPU. This includes the CEA, the Zero Emissions Certificate Law, the NJ Territorial Waters Offshore Wind Law, Executive Order 7 directing New Jersey to reenter the RGGI program, Executive Order 8 promoting offshore wind energy, Executive Order 23 addressing environmental justice issues in New Jersey's urban communities, and Executive Order 28 launching the development of a new EMP that will convert the State's energy production profile to 100% clean energy by January 1, 2050.

On May 1, 2019, the Board released the *Energy Efficiency Cost-Benefit Analysis Avoided Cost Assumptions* Technical Memo produced by The Rutgers Center for Green Building.[114] This report contains the underlying avoided costs assumptions used to evaluate the Board's energy efficiency programs. It provides a societal cost for CO_2, SO_2, and NOx. The avoided cost report has been provided by Rutgers to the BPU periodically since 2003, and since 2013 has always contained a social cost of carbon.[115] It would be incongruous for the BPU to accept the social cost of carbon as part of its monitoring and evaluation of OCE programs, but reject it for the CEF-EE Program. The 2013 BPU decision reflects outdated BPU policy that is not aligned with current State priorities. The Board should decline to follow it in this proceeding.

Discount Rate in the SCT: Rate Counsel also takes issue with Mr. Gabel-Frank originally using a 2.77% discount rate in the SCT, and then increasing it to 3.0% in his updated analysis.[116] This critique is particularly misguided, given that Mr. Gabel-Frank used a 3.0% discount rate in

[114] http://www.njcleanenergy.com/files/file/BPU/Avoided%20Cost%20Memo.pdf

[115] http://www.njcleanenergy.com/files/file/Library/Market%20Research/AvoidedCost20131.pdf

[116] Rate Counsel brief, p. 28.

his update because Dr. Dismukes described the original discount rate of 2.77% as "lower than most 'rules of thumb' that are commonly employed for societal discount rates of around three to four percent."[117] Dr. Dismukes doubled down on his 3-4% discount rate in discovery, wherein he provided and summarized a statement from the White House Office of Management and Budget ("OMB"), Circular No. A-4, as follows:

> [W]hen examining the effects of regulation that do not fall exclusively or primarily on the allocation of capital, such as the effect on private consumption due to higher consumer prices for goods or services, the OMB may use a three percent "societal" discount rate. As the Company is aware, the EPA also uses a 3 percent discount in estimating future costs and benefits.[118]

While Rate Counsel claims that Dr. Dismukes recommends a discount rate equal to the Company's WACC, its citation to his testimony does not support that assertion; rather, it notes the "rules of thumb" referenced above and Dr. Dismukes' observation that PSE&G's original discount rate of 2.77% is "a fraction of the Company's cost of capital[.]"[119] The 3.0% discount factor used by Mr. Gabel-Frank in his updated CBA is appropriate and consistent with Dr. Dismukes' recommendation.

The GDP Deflator Forecast: Mr. Gabel-Frank updated the forecasted GDP deflator used to adjust emissions damages provided in real dollars into nominal dollars. This update simply consisted of Mr. Gabel-Frank replacing the GDP deflator forecast from the 2018 Energy Information Administration ("EIA") Annual Energy Outlook ("AEO") with the 2019 EIA AEO forecast.[120] Rate Counsel takes issue with this mundane update from 2018 data, when the Company filed for approval of the Program, to 2019 data, when Mr. Gabel-Frank submitted his

[117] RC-7, p. 8, l. 17 to p. 9, l. 3.
[118] Dr. Dismukes' response to PS-RC-DED-18 (emphasis added).
[119] Rate Counsel's brief, pp. 28-29.
[120] PS-7, p. 29, l. 11-17.

rebuttal testimony. Notably, Rate Counsel makes no substantive argument against this update, merely noting instead that it was made. Rate Counsel's "accusation" that the Company updated its CBA with 2019 data that was not available when it made the CEF-EE filing is not instructive.

Merit Order Benefits: Rate Counsel asserts that PSE&G's calculation of merit order benefits is incorrect, because they were derived from the AURORA model and "cannot be substantiated or validated."[121] Rate Counsel does not contest that merit order benefits exist; rather, the Company's method to calculate them (AURORA) is just not acceptable to Dr. Dismukes. However, as recently as June 2018, the BPU has expressed confidence and support for the AURORA model, describing it in a bid solicitation as "the most comprehensive and reliable electricity forecasting and analysis tool available."[122] The BPU required the use of AURORA in that bid solicitation.[123]

Volatility Hedge Benefits: Rate Counsel again does not dispute that these benefits should be included in the CBA. Rather, Rate Counsel claims that the Company incorrectly calculated them.[124] As explained in Mr. Gabel-Frank's rebuttal testimony, the 10% hedge volatility factor he used is at the conservative end of the spectrum, and the Board should accept that figure.[125]

Market Value of Energy Efficiency Equipment: Rate Counsel claims that the Company counts twice "the cost of energy efficiency measures in addition to the value of associated savings as a benefit in the PCT [Participant Cost Test] test".[126] This critique is baseless. The California Standard Practice Manual ("CSPM"), which Rate Counsel expressly recognized as the

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[121] Rate Counsel's brief, p. 29.

[122] Bid Solicitation for T# 2000 Energy Consulting Services -- BPU, Bid #18DPP00237, June 4, 2018, page 15.

[123] Bid Addendum #1 to Bid Solicitation # 18DPP00237, T2000 – Energy Consulting Services – BPU, July 23, 2018, page 3.

[124] Rate Counsel's brief, pp. 29-30.

[125] PS-7, p. 25, l. 7 to p. 26, l. 8.

[126] Rate Counsel's brief, p. 30.

industry standard, specifically includes incentives and bill reductions as a benefit to the participant.[127] Thus, including both is consistent with accepted practices for CBAs. Moreover, as Mr. Gabel-Frank explained in his rebuttal testimony, free measures are incentives in the same way a rebate is an incentive; therefore, they were properly included in in the PCT. All incentives, including both rebates and free measures, are designed to entice PSE&G customers to reduce energy consumption, and both have intrinsic value for participants because the measures have an incremental value to them, regardless of whether they are fully or partially subsidized.[128]

Foregone wholesale purchases of gas and electricity: Rate Counsel argues that the Company "continues to undercount the loss of revenue from the avoided sales of gas and electricity to distribution customers in the RIM test."[129] This argument is erroneous. As explained by Mr. Gabel-Frank in his rebuttal testimony, because New Jersey's electric and natural gas wholesale supply is deregulated and separate from utility distribution, the reduction of wholesale supply is not redistributed to customers by the utility and is therefore not a cost that should be considered in the RIM test. All electric and natural gas supply costs, even after embedding wholesale costs into retail prices, are either a pass-through cost from the utility, or are billed separately by a third-party supplier.[130]

The CEF-EE Program is cost effective as measured by the appropriate methodologies for evaluating energy efficiency programs and State policy. The BPU should approve the Program.

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[127] CSPM, page 8. Dr. Hausman acknowledges that the CSPM is the source "[p]ractitioners generally rely on . . . for standard definitions" of the five most common CBA tests. RC-1, Hausman direct testimony, p. 29, l. 10-11; 1T, p. 262, l. 7-17.

[128] PS-7, Gabel-Frank rebuttal testimony, p. 9, l. 19 to p. 10, l. 8.

[129] Rate Counsel's brief, p. 30.

[130] PS-7, Gabel-Frank rebuttal testimony, p. 10, l. 9 to p. 11, l. 4.

C. The CEF-EE Program Fairly Allocates Benefits and Costs.

Rate Counsel inaccurately claims that the CEF-EE Program disproportionately benefits participating customers.[131] The truth is that the Program is designed to serve all customer classes, including those that are currently underserved. This includes low and moderate income customers, multi-family building residents, and small businesses. All customers will be able to visit the online marketplace and purchase energy efficient equipment and appliances. There is not a single customer class that is shut out of the CEF-EE Program. As Lime Energy comments:

> As for the CEF-EE programs that would promote equitable outcomes [for] disadvantaged, low-income, and minority customers, Lime Energy recognizes the importance of ensuring these communities are served, and are able to participate in program benefits. . . .Lime Energy also speaks from experience in voicing its approval for CEF-EE, which will create opportunities for deep market penetration that greatly expands services targeted to these underserved and often struggling small commercial enterprises that are the backbone to the New Jersey economy.[132]

Rate Counsel's critique of PSE&G's CBAs also fails to recognize that non-participants in the Program will benefit from the energy efficiency measures. As Rate Counsel witness Hausman acknowledged at the evidentiary hearing, all customers, whether they participate in the CEF-EE Program or not, will benefit from the emissions reductions and reduced wholesale electricity prices that the Program will generate.[133]

Neither Rate Counsel nor any other party to this proceeding has proposed any adjustments to the CEF-EE repayment or incentive levels. Moreover, it is prudent for the Company to offer incentives that will encourage customer participation. PSE&G's need to

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[131] Rate Counsel's brief, pp. 30-35.

[132] Lime Energy's brief, p. 10, para. 22.

[133] 1T, p. 216, l. 18 to p. 217, l. 3.

promote CEF-EE Program participation is particularly sensible given the CEA's significant energy reduction targets and its penalties for non-compliance.

Rate Counsel compares the results of the PCT and RIM tests and concludes that the Program disproportionately benefits participants.[134] This comparison is unavailing. The PCT illustrates the perspective of program participants. The RIM test takes the perspective of all customers, with limited benefits considered. These tests are not comparable.

To better understand the value of the CEF-EE Program to the entire PSE&G customer base and service territory, the BPU should look to the Program's strong SCT results (4.3 at the portfolio level). The SCT takes into account the benefits and costs to all customers and includes, as noted above, environmental and economic benefits as mandated by the CEA. Environmental and economic benefits are enjoyed by non-participants in the program. Similarly, the TRC test is from the perspective of all customers, and the CEF-EE Program has a 1.0 TRC score at the portfolio level, demonstrating that it would be beneficial to the State and its residents.[135]

While Rate Counsel claims that the CEF-EE Program would "allow participating ratepayers to pay only a small fraction of their anticipated bill savings," the PCT ratio for the CEF-EE Program is consistent with other programs in the marketplace. For example, in May 2019, the BPU released a study by the Rutgers Center for Green Building that provides CBA results for the OCE's programs.[136] This report shows that the OCE programs have PCT ratios of

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[134] Rate Counsel's brief, p. 32.

[135] Mr. Gabel-Frank concludes that the RIM test has a 0.9 score at the portfolio level, which is acceptable value from a customer perspective. PS-7, p. 31, l. 18 to p. 32, l. 4. Dr. Hausman testified in the Company's Energy Efficiency 2017 filing that it "is not unusual, nor cause for great concern, for energy efficiency programs to have a benefit-to-cost ratio below one on [the RIM test], because the retail value of the lost sales is naturally greater than the wholesale value of avoided procurement." *See* page 5, l. 21 to p. 6, l. 3 of that testimony, accessible here https://www.state.nj.us/rpa/docs/Direct_Testimony_of_Ezra_D_Hausman_PhD.pdf

[136] *Cost-Benefit Analysis of the NJCEP Energy Efficiency Programs: FY2017 Retrospective and FY2019 Summary Reports* , pp. 5-7, accessible at http://www.njcleanenergy.com/files/file/BPU/FY17%20CBA%20Report%20Update%20Final.pdf

between 1.4 and 15.5, with a straight average across of 6.1.[137] The CEF-EE Program PCT result at the portfolio level is 6.7.[138]

The CBA results for the CEF-EE Program demonstrate that the Program generates benefits that exceed costs, and is beneficial to the State and all PSE&G customers. Rate Counsel's criticisms of PSE&G's methods and results are all unavailing. The Program should be approved.

III. THE BOARD SHOULD APPROVE THE GEM TO REMOVE THE UTILITY'S DISINCENTIVE TO PROMOTE ENERGY EFFICIENCY, AND HELP NEW JERSEY MEET ITS ENERGY GOALS.

A. The GEM Is Consistent With New Jersey Law, Public Policy, and Precedent.

Rate Counsel and Staff argue that the GEM would constitute single-issue ratemaking and dilute the base rate case process. Their argument is baseless. Rate Counsel's brief is the first time in this proceeding that it is raising this argument, even though its witness Dr. Dismukes submitted lengthy direct, rebuttal, and evidentiary hearing testimony opposing the GEM. Even putting aside the tardiness of this argument, approval of a decoupling mechanism like the GEM is consistent with New Jersey law, public policy, and precedent. It should be approved to support achievement of the State's energy goals.

The RGGI law states: "All electric public utility and gas public utility investments in energy efficiency . . . programs . . . may be eligible for rate treatment approved by the board, including a return on equity, <u>or other incentives or rate mechanisms that decouple utility revenue</u>

[137] This excludes the ratio for the Large Energy User Program of 63.8, which the authors note "is likely substantially less than the values reported . . . due to [the] usage of the minimum project cost as an incremental cost." *Id.* at p. 7.

[138] PS-7, Gabel-Frank rebuttal testimony, p. 5, l.9-10.

from sales of electricity and gas. . . ."[139] It further defines "program costs", which are plainly recoverable under the statute, as "all reasonable and prudent costs incurred in developing and implementing energy efficiency . . . programs approved by the board", which "costs shall include a full return on invested capital and foregone electric and gas distribution fixed cost contributions associated with the implementation of the energy efficiency [programs]."[140] Consistent with this statutory language, the GEM is a rate mechanism that would "decouple utility revenue from sales of electricity and gas", and it would provide for recovery of PSE&G's "foregone electric and gas distribution fixed cost contributions" resulting from its energy efficiency efforts.

The CEA similarly permits utilities to recover "all reasonable and prudent costs incurred as a result of energy efficiency programs and peak demand reduction programs required pursuant to [the Act], 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 [the RGGI law]."[141] The GEM would provide recovery of "sales losses resulting from implementation" of PSE&G's energy efficiency programs.[142]

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[139] N.J.S.A. 48:3-98.1b (emphasis added).

[140] N.J.S.A. 48:3-98.1d (emphasis added).

[141] N.J.S.A. 48:3-87.9e.(1) (emphasis added). NJLEUC argues that the CEA would not permit the GEM because, in its view, the statutory language only permits a lost revenue adjustment mechanism ("LRAM"). NJLEUC's brief, pp. 28-30. PSE&G has rebutted this argument: (1) on pages 61-62 of its initial brief; (2) on page 6 of Mr. Hansen's rebuttal testimony; and (3) in Mr. Hansen's evidentiary hearing testimony (1T, p. 37, l. 11 to p. 41, l. 15). Furthermore, both Mr. Hansen and Ms. Levin have persuasively explained why the GEM is preferred to an LRAM. *See* pp. 59-60 of PSE&G's initial brief.

[142] NJLEUC's narrow assertion that "PSE&G interprets the CEA as nonetheless permitting [decoupling mechanisms] because it did not categorically exclude them" is entirely misleading. NJLEUC's brief, pp. 18-19. As PSE&G has repeatedly asserted, the CEA (and RGGI law) specifically authorizes the BPU to approve the GEM because it would recover "sales losses resulting from implementation" of PSE&G's energy efficiency programs consistent with the Act. To the extent this language is an exclusive reference to LRAM methods, as PSE&G has pointed out, the statute is clear that ratemaking can "includ[e], but [is] not limited to," those methods.

Given the public policy supporting energy efficiency, and utility energy efficiency programs in general, the Board is statutorily authorized to rule on utilities' energy efficiency programs and cost recovery petitions outside the confines of a base rate case. The RGGI law permits utilities "seeking cost recovery for any [energy efficiency] program" to "file a petition with the board to request cost recovery."[143] These petitions must be approved within 180 days or they are deemed approved. PSE&G submits annual Green Program Recovery Charge filings to the BPU seeking cost recovery associated with its energy efficiency and solar energy programs that the Board approved pursuant to the RGGI law. The CEA mandates that utilities file annual petitions seeking cost recovery of, *inter alia*, lost revenues, and such recovery shall be on a "full and current basis."[144] Given its nexus to energy efficiency, approval of the GEM would not contravene New Jersey ratemaking principles.

Moreover, approval of a revenue decoupling mechanism has precedent in New Jersey. In order to promote utility energy efficiency and conservation efforts, the BPU approved the Conservation Incentive Program ("CIP") for New Jersey Natural Gas ("NJNG") and South Jersey Gas ("SJG") in 2006, and it remains in place today.

Rate Counsel cites to an Office of Administrative Law decision in Jersey Central Power and Light's ("JCP&L") 2015 base rate case wherein the administrative law judge ("ALJ") noted that the BPU "has adopted various adjustment clauses as exceptions to the traditional approach [to ratemaking] but only for specific reasons under clearly defined circumstances."[145] Here, with its GEM proposal, PSE&G is seeking an adjustment clause which, as the ALJ notes, the Board

[143] N.J.S.A. 48:3-98.1b.

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

[145] Rate Counsel's brief, pp. 37-38 (citing I/M/O *JCP&L for Review and Approval of Increases In and Other Adjustment to its Rate and Charges for Electric Service, And for Approval of Other Proposed Tariff Revisions In Connection Therewith; and for Approval of an Accelerated Reliability Enhancement Program*, PUC 16310-12 and BPU Docket No. ER12111052, Initial Decision (Jan. 8, 2015), p. 88).

has adopted in various forms. A "specific" reason "under clearly defined circumstances" is also present with respect to the GEM, given the CEA's mandate that utilities significantly reduce customer usage and its authorization of the recovery of lost revenues.

Rate Counsel also notes that the BPU ultimately rejected JCP&L's request for accelerated recovery of an infrastructure improvement project in its 2015 base rate case, agreeing with the ALJ that it was "ill-defined."[146] Clearly, the GEM is not "ill-defined". It was the subject of extensive discovery and testimony, both in PSE&G's 2018 base rate case and in this proceeding. The 2015 JCP&L base rate case decision is clearly inapposite.

By seeking approval of the GEM, PSE&G is not requesting a change in base rates nor would the GEM alter the base rate case process. The Board, with input from Staff, Rate Counsel, and other stakeholders would have the same opportunity in future base rate cases as it does presently to review the prudency of PSE&G's costs and set distribution rates to recover those costs. The GEM simply sets revenues at a fixed revenue-per-customer amount, as approved by the Board. New Jersey already follows this "fixed revenue-per-customer" approach, and has followed it for some time, under the NJNG and SJG CIP mechanism. Rate Counsel's and Staff's concerns regarding the traditional regulatory framework and diminishment of base rate cases are unfounded.

Staff also claims that the GEM would deter PSE&G from operating in a cost-effective manner between rate cases.[147] This perception of the GEM is misguided. As PSE&G expert witness Daniel Hansen testified, no such disincentive exists because the GEM affects only the

[146] Rate Counsel's brief, p. 38 (citing p. 79 of the BPU's March 18, 2015 Order Adopting the Initial Decision with Modifications and Clarifications).

[147] Staff's brief, p. 56.

distribution revenue collected from applicable customers.[148] It does not affect cost levels or guarantee a rate of return. The benefits PSE&G can expect to realize from operating efficiently are not changed by implementing the GEM. Put simply, each dollar saved between rate cases would continue to impact the Company's bottom line to the same extent with or without GEM in place. When asked in discovery to provide any analysis or studies to support his claim that a decoupled utility has a disincentive to operate efficiently, Rate Counsel witness Dismukes could not provide any supporting materials.[149] Staff provides no support for its assertion either.[150]

Staff and Rate Counsel also assert that the GEM would shift risk from the Company to customers. However, unlike an LRAM, which can only lead to rate increases, the GEM can lead to rate increases or decreases. For example, the GEM would produce a rate decrease following a summer with higher sales-per-customer than normal due to unusually hot weather.[151] The increased use of electric vehicles, a priority of Governor Murphy's Administration, as well as economic growth that increases use-per-customer are additional scenarios under which the GEM would result in a rate decrease for customers, and prevent utility over-earning when usage increases in these manners.[152] In a recent example, Staff notes that PSE&G's weather-normalized gas sales increased during 2018.[153] If the higher sales were due to increased use-per-customer, with the GEM in place, customers would have received a rate reduction in those circumstances as well. These customer credits would not occur with an LRAM in place.

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[148] PS-8, Hansen direct testimony, p. 5, l. 7-11.

[149] *See* Dr. Dismukes' response to PS-RC-DD-43.

[150] NJLEUC claims that the GEM could deter PSE&G to "promote economic development and load growth. . . ." NJLEUC's brief, pp. 32-33. This argument is false, as noted on p. 53 of PSE&G's initial brief and in Mr. Hansen's evidentiary hearing testimony (2T, p. 28, l. 25 to p. 29, l. 10). In fact, the GEM is specifically designed to ensure the utility retains its incentive to promote economic development and load growth.

[151] PS-8, Hansen direct testimony, p. 14, l. 2-10 and p. 27, l. 6-10.

[152] 2T, pp. 34-35, 46-47.

[153] Staff's brief, p. 55.

The GEM is consistent with New Jersey law, public policy, and precedent. It should be approved to support the State's and PSE&G's achievement of meaningful energy reductions.

B. The GEM Should Be Approved To Remove PSE&G's Disincentive To Promote Energy Efficiency That Still Exists Even With The CEA.

Rate Counsel argues that the GEM is unnecessary because the CEA removes the utility's disincentive to promote energy efficiency by mandating that it implement energy efficiency programs.[154] This argument is short sighted and takes an unduly narrow view of how different incentives impact a utility's behavior. As explained in Mr. Hansen's rebuttal testimony, the utility disincentive to promote energy efficiency remains even after passage of the CEA.[155] In the absence of the GEM, the Company must weigh the incentives and penalties contemplated by the CEA against the expected revenue losses from reduced sales. If PSE&G determines that meeting the CEA savings goals and receiving an incentive ROE for its CEF-EE program will result in a lower ROE for the entire company, PSE&G's disincentive to promote energy efficiency remains notwithstanding the CEA's mandate to reduce consumption. In contrast, the GEM eliminates this disincentive as PSE&G would recover the impact of the lost sales revenue separately from the incentives and penalties envisioned in the CEA. Indeed, the GEM is an effective way to eliminate the disincentive to promote energy efficiency, and it allows the incentives envisioned in the CEA to work effectively.

As Mr. Hansen noted in his rebuttal testimony, there are a number of ways a utility could respond to savings targets and a penalty structure when its disincentive to reduce sales remains. Specifically, a utility could:

[154] Rate Counsel's brief, pp. 37-39.

[155] PS-9, Hansen rebuttal testimony, pp. 2-4.

- seek out programs it believes underperform relative to their measurement and valuation, which would be a way of superficially meeting requirements without incurring the full loss of sales;
- look for ways to grow load to offset the losses from energy efficiency or conservation programs; and
- resist programs that may reduce sales but do not have readily verifiable energy savings.[156]

The GEM would eliminate a utility's incentive to engage in any of these activities, all of which would frustrate the objectives of the CEA. Contrarily, the absence of a decoupling mechanism potentially puts the utility in an adversarial position with respect to the CEA's goals.

Rate Counsel also claims that PSE&G's public statements supporting energy efficiency "contradict any claim that the Company has a disincentive to promote energy efficiency."[157] This is a complete non-sequitur. While PSE&G remains an ardent supporter of energy efficiency and the objectives of the CEA, it has consistently taken the position that any large-scale energy efficiency initiative, such as that contemplated by the CEA and the CEF-EE Program, should include a mechanism to decouple sales from revenue.[158]

The GEM is necessary to remove PSE&G's disincentive to engage in meaningful energy efficiency expansion. The Board should approve the GEM so that the CEA's objectives can be realized.[159]

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[156] *Id.* at p. 4.

[157] Rate Counsel's brief, p. 40.

[158] *See, e.g.,* PSEG CEO Ralph Izzo's June 21, 2017 interview, accessible at https://www.njtvonline.org/news/video/pseg-ceo-discusses-vision-future-energy-nj/

[159] Statistics provided by Lime Energy are instructive: Lime Energy operates in eight states with electric decoupling, where they implement 14 programs with investor-owned utilities ("IOU"), serving 104,000 small commercial customers yielding 1,700 GWh in annual energy savings. By contrast, in the five states in which Lime Energy operates that do not have electric decoupling, it works with six IOUs to provide services to only 24,000 customers yielding 700 GWh in annual energy savings. That is a stark difference. Lime Energy's brief, pp. 12-13, para. 29.

C. The GEM Should Be Approved To Offset The Lost Revenues Associated With The CEF-EE Program's And The CEA's Energy Savings.

Staff and Rate Counsel both argue that the GEM is not necessary because the financial impacts to PSE&G of achieving the energy reductions set forth in the CEF-EE Program and CEA are not significant. For example, Staff does not believe that PSE&G "has provided sufficient support for its claim that the proposed CEF-EE Program will result in meaningful reduction in PSE&G's overall revenues, earnings, and sales."[160] Rate Counsel notes that the Company's ability to earn a return on its investment under the CEA and RGGI law, as well as the performance incentives under the CEA, offset the lost revenues associated with the CEF-EE Program's energy reductions.[161] Neither argument has merit.

As set forth on pages 55-56 of PSE&G's initial brief, the Company has demonstrated the axiomatic, *i.e.,* given its volumetric rate structure, the Company's revenues will decline if sales are reduced in the manner contemplated by the CEF-EE Program and the CEA. The lost revenue impact from the Program just through 2024, which Staff and Rate Counsel completely ignore, is $166 million.[162] If lost revenues from the Program are deducted from the Company's revenue requirement, the realized ROE for its CEF-EE Program investment is approximately 4% in 2024, well below its proposed allowed return of 9.60%.[163] The lost revenues from the Program will also have a significant impact on PSE&G's overall electric and gas distribution ROE, dropping it upwards of 71 basis points by 2024.[164] While Staff and Rate Counsel inexplicably ignore the

[160] Staff's brief, p. 55.

[161] Rate Counsel's brief, pp. 41-43.

[162] PSE&G response to RCR-POL-12; PS-6, Swetz rebuttal testimony, p. 9, l. 8 to p. 10, l. 2.

[163] PSE&G response to RCR-POL-12; PS-6, Swetz rebuttal testimony, p. 10, l. 13-15.

[164] PSE&G response to RCR-POL 36 and RCR-POL-38.

unrebutted evidence, those lost earnings are significant; Rate Counsel, for example, would surely not be so cavalier regarding a proposal providing for a similar increase in the Company's ROE.

No party to this proceeding has provided any data or analysis to rebut these figures, nor could they do so. In fact, Rate Counsel witness Dismukes acknowledges that the lost revenues associated with the CEF-EE Program will cause PSE&G to earn less than its allowed ROE.[165]

Rate Counsel's argument that the CEA incentives and the utility's ability to earn a return on its energy efficiency investments offset lost revenue impacts is plainly wrong. As the portions of the RGGI law and the CEA quoted above make clear, both statutes permit a utility to earn a return on its energy efficiency investments and have a decoupled rate structure. Furthermore, the CEA's performance incentive structure is contained in a separate paragraph from its lost revenue recovery provision.[166] The Company's ability to earn a return on its energy efficiency investments under the RGGI law and the CEA, and to earn performance incentives under the CEA, is clearly not a bar to the Board approving the GEM.

In this regard, the three-legged stool to which Amanda Levin -- representing the environmental advocacy organizations -- testifies is instructive. In order for states to implement meaningful energy efficiency standards with strong results, as New Jersey seeks to do, three elements must be present for utilities: (1) recovery of program and administrative costs; (2) recovery of lost revenues; and (3) incentive payments. All three should be addressed in order to establish an impactful energy efficiency program. As the Eastern Environmental Law Center's brief persuasively states:

> Each of these legs solves a separate and distinct obstacle to utility energy efficiency achievement. To reach the State's savings goals

[165] 2T, p. 152, l. 19 to p. 153, l. 19.
[166] N.J.S.A. 48:3-87.9e.(2).

> most cost-effectively, mechanisms related to each of these three legs should be implemented. Therefore, addressing lost revenues due to lost sales is an essential part of developing a strong, utility-led energy efficiency portfolio.[167]

Neither the first nor third leg of the stool addresses the utility's incentive to sell more energy. Only the GEM can remove that incentive.

The ACEEE study that Google, a GEM advocate, cites further demonstrates that decoupling is necessary even if performance incentives are attainable. ACEEE observed that:

> [S]tates achieving the highest energy savings are those with a comprehensive strategy based on the right business model and long-term energy efficiency targets aligned with that model . . . .Complementary performance incentives and decoupling policies play a critical role in elevating a utilities' interest in achieving [energy savings] targets . . . [and] are likely essential for sustaining utility interest in capturing energy efficiency resources over time.[168]

Rate Counsel notes that New Jersey is one of four states that permit a utility to earn a full return on energy efficiency investments, citing a 2018 ACEEE study.[169] A closer look at the study demonstrates that the BPU should approve the GEM. Illinois, Utah, and Maryland are the three states other than New Jersey that permit a ROE for utility energy efficiency investments.[170] According to the study, New York also permits one of its utilities to earn a return on its energy efficiency investments.[171] Of the four states other than New Jersey that permit an ROE for energy efficiency investments, three also have electric decoupling.[172] All four of these states achieved greater electric savings in 2017 than New Jersey per Mr. Hansen's analysis in his

[167] EELC's brief, p. 12.

[168] Google's brief, p. 15, quoting Molina, M. and Kushler, M. (2015). *Policies Matter: Creating a Foundation for an Energy Efficient Utility of the Future,* American Council for an Energy Efficient Economy.

[169] Rate Counsel's brief, p. 42.

[170] ACEEE, *Snapshot of Energy Efficiency Performance Incentives for Electric Utilities*, December 2018, p. 11, accessible at https://aceee.org/sites/default/files/pims-121118.pdf.

[171] *Id.*

[172] PS-9, Hansen rebuttal testimony, Schedule DGH-1.

rebuttal testimony, with two of these states (Illinois and New York) obtaining at least double New Jersey's electric savings.[173] Utah, the one state without decoupling, achieved the lowest electric savings of the four comparator states.[174]

Rate Counsel and Staff also reference the Company's overall financial position and the lack of impact its prior energy efficiency programs have had on its earnings to support their argument that PSE&G does not need the GEM.[175] Neither the Company's financial position nor its prior energy efficiency programs is informative. PSE&G's financial performance has not, to date, been affected by a widespread expansion of its energy efficiency efforts such as that contemplated by the CEA and the CEF-EE Program.[176] PSE&G's existing energy efficiency programs are relatively small in scope, paling in comparison to the CEF-EE Program. Furthermore, the more recently approved programs, as Staff notes, also contain certain features that provide the Company with the opportunity to earn its allowed return even when taking into account the lost revenues caused by those programs, if PSE&G successfully manages its expenses.[177] The fact that these smaller scale programs resulted in "less than a one-tenth (1/10) of one (1) percent impact on [PSE&G's] overall return on equity", as Rate Counsel notes, is irrelevant given the size of those programs and their cost recovery features.[178] In reality, the absence of the GEM is not a sustainable methodology for the larger energy efficiency investment programs that the CEA mandates, such as the CEF-EE Program.

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[173] *Id.*

[174] *Id.*

[175] *See, e.g.,* Rate Counsel's brief, pp. 43-44; Staff's brief, pp. 53-55.

[176] The Company's historical ROE figures to which Dr. Dismukes cites and Staff includes in its brief should be put into perspective. The source of that information is PSE&G's FERC Form 1 reports. See Exhibit DED-7 from Dr. Dismukes' discovery responses, provided in response to PS-RC-1. These figures lack the nuances of the *pro forma* adjustments that comprise a base rate case ROE calculation and, more importantly, they include transmission data.

[177] Staff's brief, p. 56.

[178] Rate Counsel's brief, p. 54.

Rate Counsel also claims that the GEM is unnecessary because the Company can seek recovery of sales losses in a base rate case.[179] This argument misses the statutory intent of both the RGGI law and the CEA articulated above. Given the public policy supporting energy efficiency, and utility energy efficiency programs in particular, the Board is expressly authorized to rule on utilities' energy efficiency cost recovery petitions outside the confines of a base rate case. Indeed, the CEA mandates that utilities file annual petitions seeking cost recovery of, *inter alia*, lost revenues, and recovery shall be on a "full and current basis."[180] Requiring the Company to seek recovery of lost revenues in a base rate case would frustrate the statutory intent of the RGGI law and the CEA, and contravene public policy in favor of energy efficiency.

The GEM is necessary to offset the lost sales impact of the CEF-EE Program. The BPU should approve the GEM so that the State can begin to achieve meaningful energy savings.

D. The GEM Should Be Authorized Because It Is Substantially Similar To The Board-Approved Conservation Incentive Program.

The GEM is consistent with the New Jersey and BPU precedent, *i.e.,* the CIP in place for NJNG and SJG since 2006. Rate Counsel attempts to distinguish the CIP from the GEM by flagrantly ignoring Mr. Hansen's testimony demonstrating that the two rate mechanisms are fundamentally similar.[181] The Board should credit Mr. Hansen's comprehensive and unrebutted testimony on this subject.

One needs to look no further than the BPU Orders approving the CIP to ascertain just how similar it is to the GEM. In the BPU's 2006 Order approving the CIP (originally referred to

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[179] *Id.* at p. 41.

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

[181] PS-8, Hansen direct testimony, pp. 22-25; PS-9, Hansen rebuttal testimony, pp. 7-12. While Rate Counsel ignores the similarities between the GEM and the CIP, Mr. Hansen squarely acknowledges and addresses the differences between them, including the presence of shareholder contributions in the former. *See, e.g.*, PS-8, Hansen direct testimony, p. 23, l. 9 to p. 24, l. 2; PS-9, Hansen rebuttal testimony, p. 9, l. 7-10. Nevertheless, Mr. Hansen ultimately concludes that the two mechanisms are fundamentally similar.

as the "Conservation and Usage Adjustment" or "CUA" clause), the Board noted: "As described by the petitions, the CUA's primary purpose was to separate the Companies' margin recoveries from throughput and to adjust margin recoveries for variances in customer usage, enabling the Companies to aggressively promote conservation and energy efficiency by their customers."[182] The Board echoes this description in its 2010 Order extending the clause, finding: "The CIP is designed to align the interest of the customer and company, eliminating the disincentive for NJNG and SJG . . . to promote conservation and energy efficiency, as the Companies' opportunities to earn margin is not directly linked to customer usage."[183] This is precisely the intent of the GEM.

Rate Counsel attempts to distinguish the CIP from the GEM by noting the former's BGSS-savings test.[184] This is a distinction without a meaningful difference. As Mr. Hansen noted in his direct and rebuttal testimony, the BGSS savings test does not apply to the recovery of weather-related CIP deferrals, and it applies to only 75 percent of non-weather related deferrals. Thus, the vast majority of CIP deferrals are not subject to the BGSS savings test. To illustrate this point: it is unrebutted that on average during the past three years at SJG and NJNG, the annual CIP filings indicate that the BGSS Savings Test applied to only 18.7 percent and 15.7 percent of total CIP deferrals, respectively.[185] The BGSS savings test does not fundamentally alter the nature of the CIP mechanism.

Moreover, Rate Counsel's support in its brief for the BGSS savings test is contrary to its prior position on this CIP feature. Specifically, Mr. Hansen conducted an independent

[182] BPU Docket Nos. GR05121019 and GR05121020, D&O Approving Stipulation (Dec. 12, 2006), p. 1.
[183] BPU Docket Nos. GR05121019 and GR05121020, D&O Approving Stipulation (Jan. 21, 2010), p. 1.
[184] Rate Counsel's brief, p. 36.
[185] PS-8, Hansen direct testimony, p. 24, l. 12 to p. 25, l. 13; PS-9, Hansen rebuttal testimony, p. 8, l. 4 to p. 9, l. 6. No party so much as remarked on this fact in its briefs or elsewhere on the record.

evaluation of the CIP per the Board Order approving the mechanism, which included input from Rate Counsel. In his March 2009 report entitled "An Evaluation of the Conservation Incentive Program Implemented for New Jersey Natural Gas and South Jersey Gas", Mr. Hansen notes that Rate Counsel believes the BGSS savings test "is not effective."[186] Mr. Hansen cites the following example that Rate Counsel provided to support its belief that the BGSS savings test is ineffectual: "SJG's reported capacity cost savings were made possible by the presence of stockpiled capacity that should not have been allowed in the first place."[187]

Rate Counsel further notes that, "[u]nlike the GEM, the CIP also includes a strict earnings cap that restricts revenue recoveries if the utility is already earning its approved ROE."[188] However, the GEM also features a "strict earnings test" that ensures customers will not be charged when PSE&G is earning more than 50 basis points above its allowed ROE levels, consistent with the Board's Infrastructure Improvement Program regulations.[189]

The record demonstrates that the similarities between the CIP and the GEM far outweigh the minor differences between them. The GEM is therefore consistent with New Jersey precedent, and the BPU should approve it to help the State meet its energy goals.

[186] Page 40.

[187] *Id.*

[188] Rate Counsel's brief, pp. 36-37.

[189] PSE&G's initial brief, p. 55; P-9, Hansen rebuttal testimony, p. 9, l. 7-20; *See* N.J.A.C. 14:3-2A.6.

CONCLUSION

For the foregoing reasons and those set forth in the Company's initial brief, the Board should issue an Order approving the CEF-EE Program, in its entirety.

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