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VIA ELECTRONIC MAIL

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

**Re: In the Matter of the Petition of Public Service Electric and Gas Company
For Approval of its Clean Energy Future-Energy Cloud (“CEF-EC”)
Program On a Regulated Basis
BPU Docket No. EO18101115**

Dear Secretary Camacho-Welch:

In accordance with N.J.A.C. 1:1-12.2(c), Direct Energy Business, LLC, *et al.*, NRG Energy, Inc., and Just Energy Group Inc. (collectively, the “Market Participants”) hereby submit this letter in response to the letter of opposition (“Opposition Letter”) filed by Public Service Electric and Gas Company (“PSE&G”) on April 21, 2020. These filings concern the Market Participants’ Motion for Reconsideration of the April 1, 2020 Prehearing Order denying them full intervenor status in PSE&G’s Clean Energy Future-Energy Cloud (“CEF-EC”) proceeding.

I. Introduction.

By this letter, the Market Participants fully incorporate by reference their Motion for Reconsideration and prior intervention filings, which comprehensively lay out the reasons supporting the intervention. **For ease of reference, the single most compelling factor warranting the Market Participants’ intervention in this proceeding relates to access by third party suppliers and other entities to the customer usage data that will be made available through the deployment of advanced metering infrastructure (“AMI”).** It is critical that access issues are adequately resolved prior to deployment of smart meters. Only through full intervention status will the Market Participants have a meaningful opportunity to advocate for a proper set of rules addressing access to smart meter data so that PSE&G does not position itself to gain an unfair advantage over third parties through its access to this data. During this proceeding, it needs to be made clear that the data belongs to the consumer.

In filing the Motion for Reconsideration, the Market Participants sought to efficiently address an obvious inconsistency in rulings by the Board of Public Utilities (“BPU” or “Board”) in related proceedings, namely PSE&G’s Clean Energy Future-Energy Efficiency (“CEF-EE”) proceeding¹ and the present CEF-EC proceeding. While the Board, nearly a year after the Market Participants sought to intervene in the CEF-EE proceeding, ultimately granted such intervention on November 13, 2019, the Prehearing Order in this CEF-EC proceeding – without any reference to or consideration given to the Board’s reversal in the CEF-EE proceeding – denied the Market Participants’ intervention. Due to the nature of these proceedings that address similar and intertwined issues relating to PSE&G’s energy efficiency and related programs, the Market Participants filed the Motion for Reconsideration to make the presiding officer and Board aware of the inconsistent rulings in hopes of achieving a prompt modification of the April 1, 2020 Prehearing Order to grant them full intervenor status. Since the regulations permit but do not mandate interlocutory review, the Market Participants were free to directly seek relief through a more expedited process that allows them to fully and meaningfully participate in this proceeding.

II. PSE&G’s Clean Energy Future Programs Are Interrelated.

In its Opposition Letter, PSE&G argues that the “two cases are vastly different in scope” and “there is no obvious need for uniformity in types of intervenors between the two distinct proceedings.”² The Board should flatly reject this argument, particularly given PSE&G’s own efforts on September 26, 2018 to file these two programs, along with its proposed Clean Energy Future-Electric Vehicle and Energy Storage (“CEF-EVES”) program,³ as part of one mega-filing. PSE&G entitled all three programs as “Clean Energy Future” and described them “in the aggregate” as making New Jersey a “national leader in energy efficiency,” “seed a market to support electric vehicle adoption,” “begin exploring the potential of energy storage applications,” and enable “smart energy capabilities,” including AMI.⁴

Although PSE&G ultimately separated the three proceedings at the Board’s request, it is disingenuous for PSE&G to now use the fact that three different proceedings exist under its CEF umbrella to attempt to keep the Market Participants out of one while they have been permitted to intervene in another proceeding. Indeed, since the filing of the Market Participants’ Motion for Reconsideration, the Board has issued a Prehearing Order in the CEF-EVES proceeding, granting

¹ *In the Matter of the Petition of Public Service Electric & Gas Company for Approval of its Clean Energy Future-Energy Efficiency (“CEF-EE”) Program on a Regulated Basis*, Docket Nos. GO18101112 and EO18101113.

² PSE&G Opposition Letter at 3.

³ *In the Matter of the Petition of Public Service Electric & Gas Company for Approval of its Clean Energy Future-Electric Vehicle and Energy Storage (“CEF-EVES”) Program on a Regulated Basis*, Docket No. EO18101111.

⁴ PSE&G’s CEF-EE filing made on October 11, 2018, Cover Letter.

<https://nj.pseg.com/aboutpseg/regulatorypage/-/media/E1246FFFDC554404A5D0E84310D8BE84.ashx>

the Market Participants full intervenor status.⁵ Simply, no valid basis exists for treating the Market Participants' interests differently in these proceedings.

III. PSE&G's Energy Cloud Proceeding Proposes Programs That Go Well Beyond Core Utility Functions.

PSE&G's Opposition Letter further relies on the language in the April 1, 2020 Prehearing Order about this proceeding involving "core utility functions" to urge the Board to dismiss the Motion for Reconsideration.⁶ As the Market Participants have previously explained, many of the Use Cases at issue in this proceeding are exactly the types of offerings that are being made to consumers in the private market. Examples include data analytics, interactive energy demand and bill management, customer segmentation and behavioral analysis, customer efficiency programs and customer distributed energy resources.

Almost every function identified by PSE&G's CEF-EC filing is being performed by suppliers in other states where AMI data access rules are already in place. While the Market Participants do not take issue with PSE&G's request regarding accounting treatment, deployment or cost estimates, they do take issue with allowing PSE&G to obtain the data and use it to create products that the competitive market should be developing in New Jersey and, in fact, is in other states. As emphasized at the outset of this letter, it is critical to get appropriate data access rules in place before AMI is deployed. This is the exact proceeding in which that needs to occur.

IV. Because The Market Participants Were Not Required To Seek Interlocutory Review, They Elected To Use A More Efficient Approach For Seeking Modification Of The April 1, 2020 Prehearing Order.

PSE&G also contends that the Market Participants were required to file a motion for interlocutory review within five days of the Prehearing Order. In response, the Market Participants note that the regulation merely authorizes parties to proceedings to seek interlocutory review of orders issued during the pendency of proceedings. Specifically, it provides that "an order or ruling may be reviewed interlocutorily by an agency head at the request of a party."⁷ It does not mandate that parties exclusively use that process or in lieu of seeking reconsideration by the presiding officer. Moreover, the regulation authorizing the filing of motions by parties does not place any restrictions on the nature of those motions.⁸ The Market Participants could have entitled their filing as a "Motion for Modification of Prehearing Order to be Consistent with Board's Order in Related Proceeding." Simply styling it as a "Motion for Reconsideration" does not render it invalid. Regardless of how the filing was styled or how the Board treats it, the Market Participants

⁵ CEF-EVES proceeding, Prehearing Order issued April 22, 2020.

⁶ PSE&G Opposition Letter at 2.

⁷ N.J.A.C. 1:1-14.10(a).

⁸ N.J.A.C. 1:1-12.1.

urge the presiding officer or the Board to modify the April 1, 2020 Prehearing Order to grant them full intervenor status, consistent with the Board's actions in PSE&G's CEF-EE and CEF-EVES proceedings.

While the Board could alternatively treat the Motion for Reconsideration as a Motion for Interlocutory Review or require the Market Participants to make such a filing,⁹ that approach would not promote judicial economy and would potentially deprive the Market Participants of the fundamental rights of due process to which they are entitled. A repeat of the track followed in the CEF-EE proceeding does not effectively remedy the harm done to the Market Participants if the April 1, 2020 Prehearing Order is not promptly modified.

In the CEF-EE proceeding, the Market Participants originally sought intervenor status in November 2018. The Prehearing Order issued on January 22, 2019 denied the Market Participants' request for intervention. The Market Participants sought interlocutory review on January 29, 2019, which the Board denied on February 27, 2019. The Market Participants sought reconsideration on March 8, 2019, which the Board ultimately granted on November 13, 2019.

In the intervening eight months, the Market Participants were denied the opportunity to serve discovery, submit written testimony, participate in settlement discussions and conduct cross-examination or produce evidence during the evidentiary hearings. By the time the Board granted the Market Participants intervenor status, it was too late to take any of these steps that are a crucial part of effective litigation.¹⁰

To avoid months of motions practices and the need for further Board action, the Board should – on its own or through the actions of the presiding officer – promptly modify the April 1, 2020 Prehearing Order to grant the Market Participants full intervenor status. Not only would this approach promote administrative efficiencies, it would result in consistent treatment of the Market Participants across PSE&G's umbrella of CEF filings.

Respectfully Submitted,

Christopher E. Torkelson

Christopher E. Torkelson

cc: Attached Service List

⁹ The Board would also need to exercise its discretion to accept the motion as having been filed ten days after it would have otherwise been due under the regulations authorizing parties to request interlocutory review. Ten days is a very short period of time given the anticipated length of this proceeding.

¹⁰ The only change that resulted was that the Market Participants were able to participate in settlement discussions. However, intervention status being granted a year later did not cure the due process violations already sustained by the Market Participants as a result of their limited rights during the proceeding.