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Please reply to Trenton

**Re: BPU Docket No. EO18101111
IN THE MATTER OF THE PETITION OF PUBLIC
SERVICE ELECTRIC AND GAS COMPANY FOR
APPROVAL OF ITS CLEAN ENERGY FUTURE-
ELECTRIC VEHICLE AND ENERGY STORAGE (“CEF-
EVES”) PROGRAM ON A REGULATED BASIS**

May 8, 2020

VIA E-MAIL ONLY

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

Dear Secretary Camacho-Welch:

On behalf of the EVgo Services LLC, enclosed please the **RESPONSE OF EVgo TO RATE
COUNSEL MOTION TO DISMISS.**

Sincerely,



Martin C. Rothfelder

Cc: Service list (e-mail)

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

IN THE MATTER OF THE PETITION OF PUBLIC :
SERVICE ELECTRIC GAS COMPANY FOR :
APPROVAL OF ITS CLEAN ENERGY FUTURE- : BPU Docket No. EO18101111
ELECTRIC VEHICLE AND ENERGY STORAGE :
("CEF-EVES") PROGRAM ON A REGULAR :
BASIS :

RESPONSE OF EVgo TO RATE COUNSEL MOTION TO DISMISS

EVgo Services LLC ("EVgo") hereby responds to the April 17, 2020 Motion to Dismiss filed by the New Jersey Division of Rate Counsel ("Rate Counsel"). The PSE&G petition raises factual issues which have not yet been subject to discovery or reviewed, and also raises important rate, incentive, and policy issues under the Board's jurisdiction, which the Board should address. The case involves issues imperative to the states policy plans for electrification of the transportation network in the territory of state's largest utility. Thus, the proceeding should continue and not be dismissed.

I. AT THIS EARLY STAGE OF THE PROCEEDING THE MOTION DOES NOT MEET THE STANDARD REQUIRED FOR A MOTION TO DISMISS

A motion for summary decision is governed by N.J.A.C. 1:1-12.5. The motion may be granted where "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

In this case intervening parties such as EVgo have not even started to engage in discovery and substantial issues of relevant facts are yet to be developed. The Board granted EVgo intervention via an order dated April 9, 2020 and released via e-mail dated April 22, 2020. EVgo

and other parties admitted to this proceeding by that order have had no opportunity to do discovery. Thus, basic factual development has not yet occurred. Thus, EVgo respectfully submits that this proceeding should proceed.

II. RATE AND INCENTIVE MATTERS ADDRESSED BY THE PETITION ARE WITHIN THE BOARD’S JURISDICTION

As shown above, PSE&G’s petition raises issues that are directly related to the State’s successful electrification of transportation and infrastructure buildout. *Id.* The details of the rate and incentive proposals and support for them have yet to be developed and should be subject to deliberation. Parties such as EVgo may have alternative proposals. These proposals raise utility rate issues which are clearly under the BPU’s jurisdiction pursuant to N.J.S.A. 48:2-13 and other BPU statutes. Thus, this proceeding should continue.

III. THE ENERGY MASTER PLAN AND PLUG-IN VEHICLE ACT FURTHER DICTATE THAT THE BPU ADDRESS THE MATTERS IN THIS DOCKET

The recently enacted Plug-in Vehicle Act (“PIV Act”)¹ establishes clear goals for transportation electrification, including a statutory requirement for at least 400 DC fast chargers (“DCFC”) to be made publicly available in the state by December 31, 2025. In addition, the State’s Energy Master Plan (EMP) lays out ambitious goals for transportation electrification and 100% carbon-neutral electricity generation by 2050.² To achieve decarbonization of the transportation sector, the EMP specifically tasks the Board to “work with the state’s electric public utilities to implement innovative EV-specific rates that encourage charging at times of the day...as well as to modify the utilities’ demand charges for EVs...”³ Addressing relevant rate

¹ P.L. 2019, c. 362 (Jan. 17, 2020), N.J.S.A. 48:25-1, *et seq.*

² 2019 New Jersey Energy Master Plan: Pathway to 2050, p. 16, 20. Available at https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf

³ *Id.* pp. 67, 68.

issues is a critical component for scaling EV charging infrastructure in New Jersey and as such, intervenors, including EVgo should be granted the opportunity to engage on these matters

The EMP also states that there should be a “clear role for regulated utilities and the private sector in building out the infrastructure” to meet state goals in transportation electrification, including a “shared responsibility model.”⁴

This proceeding addresses these EMP goals specific to PSE&G’s territory. Rate Counsel’s motion to dismiss the EV aspects of this proceeding would result in the Board’s failure to address these critical issues on a utility-specific basis, which runs counter to the EMP’s call to action to implement a robust EV buildout in New Jersey.

Of additional interest to EVgo is PSE&G’s proposed make-ready approach for the buildout of EV DCFC charging facilities. The results of this docket should result in buildout of DCFC consistent with the policy goals and requirements of the PIV Act and the EMP. Addressing those and relevant utility rate issues through this proceeding provides the Board, with the input and assistance of EVgo and other stakeholders, the opportunity to shape PSE&G’s proposed buildout model and bring it in alignment with the state’s transportation electrification objectives as set forth in the PIV Act and the EMP.

Funding from the VW Settlement⁵ and additional programs from the Department of Environmental Protection (DEP) will help the State meet its ambitious goals for transportation electrification. The issues raised by PSE&G in its petition regarding appropriate rates and

⁴ Id. pp. 68.

⁵ The Volkswagen Settlement is short for the funds in trust made available to state governments due to a series of three complaints alleging violations of the Clean Air Act against Volkswagen AG, Audi AG, Dr. Ing. h.c. F. Porsche AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Porsche Cars North America, Inc. (collectively “Volkswagen”), and consent decrees related thereto. The relevant trust for the New Jersey state matters is the trust known as “Environmental Mitigation Trust for State Beneficiaries.” More information on the Volkswagen Settlement, including the complaints and consent decrees, is available at : <https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement> .

incentives and make-ready infrastructure investment for DCFC are critical and complementary components to those and other State initiatives for transportation electrification and should be addressed in this proceeding.


CONCLUSION

For the foregoing reasons, this proceeding should continue and not be dismissed.

Respectfully submitted,

Rothfelder Stern, L.L.C.
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Date: May 8, 2020

By: 
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