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**VIA EMAIL**

Joseph L. Fiordaliso  
President and Presiding Officer  
New Jersey Board of Public Utilities 44 South Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Re: In the Matter of the Petition of Rockland Electric Company for Approval of Its Energy Efficiency and Peak Demand Reduction Programs  
Docket No. EO20090623

Dear President Fiordaliso:

Rockland Electric Company (“RECO” or “the Company”) submits this letter in lieu of a more formal response to the motions RECO received in the above matter. RECO received the following motions:

- Motion to Participate of Atlantic City Electric Company (“ACE”)
- Motion to Participate of Jersey Central Power & Light Company (“JCP&L”)
- Motion to Participate of Elizabethtown Gas Company (“ETG”), and
- Motion to participate of South Jersey Gas Company (“SJG”)
- Motion to Participate of Building Performance Association (“BFA”)
- Motion to Intervene of Energy Efficiency Alliance of New Jersey (“EEA-NJ”)
- Motion to Intervene of New Jersey Natural Gas Company (“NJNG”)
- Motion to Intervene of Public Service Electric and Gas Company (“PSE&G”)

RECO does not oppose the Motions to Participate of ACE, JCP&L, ETG, and SJG. With regard to the BFA Motion to Participate, it is not clear that the BFA Motion to Participate was filed by

an attorney authorized to practice in New Jersey. RECO does not oppose participant status for BFA with the limited participation rights set forth in N.J.A.C. 1:1-16.6(c), but reserves the right to object to future motions to intervene or participate filed by, or on behalf of, BFA.

RECO does not oppose the Motion to Intervene of EEA-NJ.

As explained further below, RECO opposes the Motions to Intervene of NJNG and PSE&G. The NJNG and PSE&G Motions should be denied. Instead, NJNG and PSE&G should be granted participant status in lieu of intervenor status.<sup>1</sup>

### **Background**

On September 25, 2020, as required by the Order of the Board of Public Utilities (“Board”) of June 10, 2020 in Docket Nos. BPU Docket Nos. QO19010040, QO19060748, and QO17091004 (“June 10 Order”),<sup>2</sup> RECO filed its Petition for Approval of Its Energy Efficiency and Peak Demand Reduction Programs (“Petition”) with the Board. In the Petition, RECO proposed energy efficiency (“EE”) and Peak Demand Response (“PDR”) programs that achieve energy savings as required by the June Order and the New Jersey Clean Energy Act (“CEA”).<sup>3</sup> Specifically, RECO is proposing to implement in its service territory five core programs and two pilot programs to support New Jersey’s ambitious energy efficiency goals and to support the 2019 New Jersey Energy Master Plan. RECO proposes to begin implementation of these programs in July 2021.

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<sup>1</sup> However, as requested in RECO’s Motion to Participate in NJNG’s EE proceeding in BPU Docket No. GO20090622, to the extent NJNG is granted intervention in RECO’s EE proceeding, RECO respectfully requests that it be granted intervenor status in NJNG’s EE proceeding.

<sup>2</sup> *In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs*, BPU Docket Nos. QO19010040, QO19060748, QO17091004, Order dated June 10, 2020. RECO’s Petition subsequently was docketed as BPU Docket NO. EO20090623.

<sup>3</sup> P.L. 2018, c. 17, § 3(a) and (e)(1). Codified at N.J.S.A. 48:3-87.9.

On September 23, 2020, the Board issued an Order designating President Fiordaliso as the Presiding Officer for the electric distribution companies' EE filings, including RECO's.<sup>4</sup> On October 2, 2020, both NJNG and PSE&G filed Motions to Intervene in RECO's EE proceeding.

## **ARGUMENT**

### **1. NJNG Has Not Demonstrated Its Entitlement to Become an Intervenor**

*N.J.A.C.* 1:1-16.1 sets forth the standards for intervention in an administrative proceeding such as this. Specifically, this regulation provides that "[a]ny person or entity not initially a party ... who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene." *N.J.A.C.* 1:1-16.3 provides the following additional standards to consider in addressing a request for intervention:

- (i) the nature and extent of the movant's interest in the outcome of the case;
- (ii) whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case;
- (iii) the prospect of confusion or undue delay arising from the movant's inclusion; and
- (iv) other appropriate matters.

### **2. NJNG Has Failed to Demonstrate Interests to Support Its Intervention**

In NJNG's Motion to Intervene (p. 2), NJNG asserts that RECO is seeking approval of EE programs "that will directly affect NJNG." According to NJNG, "the utilities will need to

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<sup>4</sup> *In the Matter of the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs*, Order Designating Commissioner, Setting Manner of Service and Bar Dates, BPU Docket No. QO19010040, dated September 23, 2020.

collaborate efforts to ensure consistency of their respective EE programs.” To date there has been collaboration among the New Jersey electric and gas utilities through various working groups on issues where the June 10 Order requires collaboration. That collaboration is on-going and will continue among the utility working groups.

NJNG asserts in its Motion that it will be “substantially, specifically and directly affected” by the outcome of the RECO EE proceeding because of overlap of gas and electric service territories and states (p. 2):

In areas where gas and electric services territories overlap, in addition to establishing programs that include agreed-upon program design requirements, the utilities shall design a program structure that results in coordinated, consistent delivery of programs among all of the utilities and allocates costs and energy savings appropriately based on the fuel type(s) treated by EE measures. The utilities shall ensure that the customers do not face confusion as a result of overlapping territories and can access both electric and gas measures simultaneously, where appropriate.

The service territories of RECO and NJNG, however, do not overlap. RECO will not be coordinating its EE and PDR program roll-out with NJNG. In fact, given the electric-centric nature of RECO’s programs, NJNG’s self-professed “experience in the gas industries” is not relevant to the roll-out of RECO’s EE and PDR programs. Consequently, NJNG’s intervention will not “add measurably and constructively” to RECO’s proceeding, which NJNG must show to justify its intervention pursuant *N.J.A.C.* 1:1-16.3

Despite NJNG’s assertions, RECO’s programs will not affect the programs offered by NJNG. Given this disassociation, the intervention of NJNG into this proceeding risks

causing customer confusion. Moreover, in light of RECO's size, location, and customer makeup, this proceeding is likely to have minimal precedential impact on NJNG.

It is worth noting that in a proceeding involving PSE&G<sup>5</sup>, Commissioner Solomon explicitly rejected NJNG's argument that the precedential impact of the PSE&G proceeding on NJNG justified intervenor status. Commissioner Solomon stated:

I am not persuaded, however, that its [NJNG's] interest is sufficiently distinct from that of the other parties that it merits intervenor status or that NJNG will be affected by the alleged precedential effect of this case. All of the proposed programs will be reviewed based on their specific components, just as the programs proposed or to be proposed by NJNG will be reviewed and analyzed based upon their own merits. After weighing the issues, I FIND that NJNG has not made a showing that its interest warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings.<sup>5</sup>

Commissioner Solomon's reasoning applies equally to the NJNG's motion to intervene in this proceeding.

## **2. PSE&G Has Failed to Demonstrate Interests to Support Its Intervention**

In its Motion to Participate (p. 4), PSE&G argues that the Board should grant its motion for intervention given PSE&G's significant interest in the outcome of the case. PSE&G notes that it has invested over \$450 million in Board-approved energy efficiency programs since 2009 and just recently received Board approval on September 23, 2020 to invest an additional

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<sup>5</sup> *I/M/O the Petition of Public Service Electric & Gas Company for Approval of Its Clean Energy-Future Energy Efficiency ("CEF-EE") Program on a Regulated Basis*, BPU Docket Nos. GO18101112 & EO18101113, Prehearing Order Setting Procedural Schedule and Ruling on Motions to participate and Intervene (dated January 22, 2019) (p. 14) ("January 2019 Order").

\$1 billion in energy efficiency programs through the Clean Energy Future—Energy Efficiency (“CEF-EE Program”).<sup>6</sup> PSE&G then states that RECO’s Petition could have precedential effect and other impacts on PSE&G that could directly impact the Company’s energy efficiency programs. More specifically, according to PSE&G, any Board decision in this proceeding could directly impact the cost sharing and investment split associated with EE sub-program structure in overlapping territories.

Given the fact that the Board has already approved PSE&G’s CEF-EE Program, any precedential impact of this proceeding on PSE&G will be negligible. Also, given the overwhelming size imbalance of the two companies, along with the marked differing characteristics of their service territories (*e.g.*, RECO’s service territory is suburban; PSE&G serves Newark, Trenton and Camden) the potential impact of this proceeding on the two companies’ cost sharing and investment split seems dubious in the extreme.

PSE&G asserts that it is in a unique position as the only energy utility whose service territories overlap with the service territories of the other major utilities, and as the utility with the most extensive experience administering energy efficiency programs in the state.<sup>7</sup> While RECO appreciates PSE&G’s generosity. However, RECO is an affiliate of Consolidated Edison Company of New York, Inc., a utility that has operated EE and PDR programs for decades. RECO is not in need of PSE&G’s expertise.

Despite PSE&G’s protestations to the contrary, RECO’s programs will not affect the programs offered by PSE&G. As noted, the Board already has approved the CEF-EE Program.

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<sup>6</sup> *I/M/O 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*, Docket Nos. GO18101112 and EO18101113, Order Adopting Stipulation (dated September 23, 2020) (“PSE&G CEF-EE Order”).

<sup>7</sup> Motion, pp. 4-5.

Given this disassociation, the intervention of PSE&G into this proceeding risks causing customer confusion

PSE&G's assertions in its Motion conflict with PSE&G's frequent opposition to interventions by both utility and non-utility parties in its own proceedings.<sup>8</sup> For example, PSE&G actively opposed the motion of NJNG to intervene in the CEF-EE proceeding. Commissioner Solomon's rejection of NJNG's argument, as noted above in this filing, is applicable here as well: PSE&G's interests are not sufficiently distinct from that of the other parties that it merits intervenor status, nor will PSE&G be affected by the alleged precedential effect of RECO's EE case.<sup>9</sup>

Commissioner Solomon's reasoning applies even more forcefully to the Motion in this proceeding, as the Board already has approved PSE&G's EE and PDR programs. Ruling on the Motion involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognize the need for prompt and expeditious administrative proceedings. Accordingly, a would-be intervenor such as PSE&G must establish that it would be substantially, specifically, and directly affected by the outcome of the proceeding and that its interest is sufficiently different from that of the other parties so as to add measurably and constructively to the scope of the

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<sup>8</sup> See, for example, *In re the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future – Energy Efficiency (“CEF-EE”) Program on a Regulated Basis*, BPU Docket Nos. GO18101112 and EO18101113, Prehearing Order Setting Procedural Schedule and Ruling on Motions to Participate and Intervene (dated January 22, 2019) (p.14).

<sup>9</sup> *I/M/O the Petition of Public Service Electric & Gas Company for Approval of Its Clean Energy-Future Energy Efficiency (“CEF-EE”) Program on a Regulated Basis*, BPU Docket Nos. GO18101112 & EO18101113, Prehearing Order Setting Procedural Schedule and Ruling on Motions to participate and Intervene (dated January 22, 2019) (p. 14)(“January 2019 Order”).

case.<sup>10</sup> As discussed above, given the PSE&G CEF-EE Order, PSE&G will not be “substantially, specifically, and directly affected by the outcome of the proceeding.” Moreover, PSE&G has failed to demonstrate that its interests are sufficiently different from those of other parties to this proceeding, specifically Rate Counsel and Board Staff. In the Motion (p. 4), PSE&G expresses a concern regarding the consistency of RECO’s and NJNG’s EE programs. Such consistency, to the extent an issue, plainly can be addressed by Rate Counsel and Board Staff, who are both parties to all the ongoing EE and PDR proceedings. Rate Counsel and Board Staff are quite familiar with PSE&G’s CEF-EE Program.

#### CONCLUSION

For the reasons discussed above, NJNG and PSE&G have failed to meet the basic standards for intervention in this proceeding. Accordingly, the Board should deny their requests for intervention. Historically, the Board and its Commissioners have been reluctant to allow utilities to intervene in other utilities’ proceedings. Neither NJNG or PSE&G has offered a compelling rationale for the Board straying from this practice. Their involvement in this proceeding, should be limited to participant status.

Respectfully submitted,



Margaret Comes

cc: service list

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<sup>10</sup> *In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control*, Docket No. EM05020106 (June 8, 2005).