



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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DIVISIONS OF CLEAN ENERGY
AND ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	PREHEARING ORDER SETTING
<u>P.L.</u> 2018, <u>C.</u> 17 REGARDING THE)	PROCEDURAL SCHEDULE AND
ESTABLISHMENT OF ENERGY EFFICIENCY AND)	RULING ON MOTIONS TO
PEAK DEMAND REDUCTION PROGRAMS)	PARTICIPATE AND INTERVENE
))
IN THE MATTER OF THE PETITION OF NEW)	
JERSEY NATURAL GAS COMPANY FOR)	
APPROVAL OF ENERGY EFFICIENCY PROGRAMS)	
AND THE ASSOCIATED COST RECOVERY)	
MECHANISM PURSUANT TO THE CLEAN)	
ENERGY ACT, N.J.S.A. 48:3-87.8 ET SEQ. AND)	DOCKET NOS. QO19010040
48:3-98.1 ET SEQ.)	AND GO20090622

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Andrew K. Dembia, Esq., New Jersey Natural Gas Company
Erin Cosgrove, Esq., Counsel for EEANJ
Eric Miller, Esq., Counsel for NRDC

BY COMMISSIONER UPENDRA J. CHIVUKULA:

Background and Procedural History

On January 13, 2008, L. 2007, c. 340 ("RGGI Act") was signed into law based on the New Jersey Legislature's findings that energy efficiency ("EE") and conservation measures must be essential elements of the state's energy future and that greater reliance on EE and conservation will provide significant benefits to the citizens of New Jersey. The Legislature also found that public utility involvement and competition in the conservation and EE industries are essential to maximize efficiencies.

Pursuant to Section 13 of the RGGI Act, codified as N.J.S.A. 48:3-98.1(a)(1), an electric or gas public utility ("Utility" or collectively "Utilities") may provide and invest in EE and conservation programs in its service territory on a regulated basis. Upon petition, such investment in EE and conservation programs may be eligible for rate treatment approval by the Board, including a return

on equity, or other incentives or rate mechanisms that decouple Utility revenue from sales of electricity and gas. Ratemaking treatment may include placing appropriate technology and program costs investments in the Utility’s rate base or recovering the Utility’s technology and program costs through another ratemaking methodology approved by the Board.

By Order dated June 10, 2020, the Board approved an EE transition framework for EE programs implemented pursuant to the Clean Energy Act, L. 2018, c. 17, including requirements for the Utilities to establish programs that reduce the use of electricity and natural gas within their territories.¹ In the June 2020 Order, the Board directed New Jersey’s electric and gas companies to file three-year program petitions by September 25, 2020 for approval by the Board by May 1, 2021 and implementation beginning July 1, 2021.

NJNG SEPTEMBER 2020 FILING

On September 25, 2020, New Jersey Natural Gas Company (“NJNG” or “Company”) filed the requisite petition with the Board (“September 2020 Petition” or “Petition”). In the Petition, the Company proposed to invest approximately \$258.2 million (investment and expenses) in its EE Program (“SAVEGREEN Program”) over a three (3) year period (July 1, 2021 through June 30, 2024). The proposed programs and associated costs are summarized in the table below:

Program	Proposed Budget (for 3 Year Program)
Behavioral	\$5,275,086
EE Products	\$56,768,985
Existing Homes Education and Management	\$41,993,503
Multi-family	\$25,542,959
Direct Install	\$48,911,127
Energy Solutions for Business	\$70,699,388
Portfolio	\$5,573,851
TOTAL	\$258,233,566

In addition to approval of the plan to implement the SAVEGREEN Program, the Company requested approval of a cost recovery mechanism. Specifically, NJNG requested authority to recover the revenue requirement associated with the costs to implement the SAVEGREEN Program, including incentives, outside services, inspections and quality control, information technology costs, and operations and maintenance (“O&M”) costs. The Company proposed to recover program costs through a separate surcharge clause of its tariff, Rider F. The revenue requirement recovered through Rider F would be designed to recover the annual costs of the SAVEGREEN Program, as well as true-up for any prior period over/under recovery. The

¹ 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, and QO17091004, Order dated June 10, 2020 (“June 2020 Order”).

Company proposed to recover lost revenues from reduced electricity sales associated with the SAVEGREEN Program by way of its current Conservation Incentive Program mechanism.

NJNG estimated that the initial annual bill impact for a typical residential customer using 1,000 therms annually would be an increase of \$21.00 or 1.8% for the first year of the SAVEGREEN Program.

By an Order dated September 23, 2020, the Board determined that NJNG's Petition should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated myself as the presiding commissioner authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.² Further, the September 23, 2020 Order directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by October 2, 2020 and that entities file with the Board any responses to those motions by October 9, 2020.

THE MOTIONS

Motions to Intervene

On October 2, 2020, Public Service Electric and Gas Company ("PSE&G"), the Energy Efficiency Alliance of New Jersey ("EEANJ"), and the Natural Resources Defense Council ("NRDC") filed motions to intervene in this matter.

PSE&G

In its motion, PSE&G stated that, as the state's largest electric and gas distribution company and the only combined electric and gas distribution utility, it has a significant interest in the outcome of the case. PSE&G stated that it is imperative, as noted in the June 2020 Order directing the Utilities to establish EE and peak demand reduction programs, that in areas where gas and electric services territories overlap, the Utilities 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. Additionally, PSE&G argued that coordination among the Utilities is necessary to avoid redundant or competing offerings and to ensure that customers do not face confusion as a result of overlapping territories and can access both electric and gas measures simultaneously. Since PSE&G's electric territory overlaps with NJNG's gas territory, PSE&G asserted that any decision by the Board with respect to NJNG's filing could have precedential effect and other impacts on PSE&G that could directly impact the Company's EE programs. More specifically, PSE&G maintained that any Board decision in the NJNG matter could directly impact the cost sharing and investment split associated with EE sub-program structure in overlapping territories. PSE&G asserted 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 EE programs in the state, most recently completing its Clean Energy Future - Energy Efficiency proceeding. Accordingly, PSE&G stated its belief that its intervention in this proceeding is likely to add constructively to the proceeding.

² In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket No. QO19010040, Order dated September 23, 2020 ("September 23, 2020 Order").

EEANJ

EEANJ is a 501(c)(6) trade association that, together with its sister organization, the Keystone Energy Efficiency Alliance, represents 75 business members. These members manufacture, design, and implement EE improvements in buildings across Pennsylvania and New Jersey on behalf of regulated utilities, the State, and ratepayers. EEANJ asserted that the proposed programs would directly affect the utilization of their services and products. EEANJ also represented that its interests in the proceeding are unique and not adequately represented by any other party; that its members can offer valuable perspectives on the design and implementation of the proposed programs; and that its intervention will not cause confusion or undue delay since it will coordinate its representation with similarly situated parties to the extent that it deems such coordination appropriate.

NRDC

NRDC is a global nonprofit membership organization with a mission to ensure the rights of all people to the air, water and the wild. NRDC has more than 410,000 dues-paying members globally, including more than 12,000 in New Jersey and many in NJNG's service territory. NRDC asserted that its members are specifically and directly affected by the outcome of this case because NRDC has long-standing initiatives to promote cost-effective EE programs implemented by regulated electric and gas utilities. Additionally, as NJNG seeks ratepayer dollars to fund its proposed EE Program, the outcome of the case will affect NRDC's members who are NJNG customers. NRDC further asserted that the outcome of the case has significant implications for the provision of utility service and the functioning of the electric grid as it relates to safety, modernization, economic welfare, and equity. Additionally, NRDC argued that the case goes to the heart of NRDC's mission with regard to ensuring optimal planning and support for clean energy technologies and programs. NRDC indicated that it will work with other parties to ensure that they avoid duplicating efforts and to prevent confusion and undue delay. In addition, NRDC stated that it will strictly abide by the schedule and other rulings.

Motions to Participate

ACE, JCP&L, RECO, SJG, ETG

Atlantic City Electric Company ("ACE"), Jersey Central Power and Light Company ("JCP&L"), Rockland Electric Company ("RECO"), South Jersey Gas Company ("SJG"), and Elizabethtown Gas Company ("ETG") each submitted motions to participate.³ Each stated that it is a New Jersey public utility incorporated in the State of New Jersey engaged in the transmission, distribution, and sale of electricity and gas for residential, commercial, and industrial purposes within New Jersey. Each claimed a significant interest in the outcome of the proceeding because the substantive policy and/or procedural requirements established in this proceeding are likely to have a precedential effect on proceedings involving the other Utilities. ACE, JCP&L and RECO each also argued that its interest as an investor-owned electric utility serving retail customers is materially different from that of NJNG and from those of the other parties. Finally, each also stated that its participation would not cause delay or confusion because it would abide by any schedule set for the proceeding.

³ SJG and ETG submitted a joint motion to participate.

Although ACE, JCP&L, RECO, SJG, and ETG sought participant status, each indicated that it is aware that certain Utilities may seek intervenor status in their individual cases pending before the Board. Each pointed out that any Board order approving intervention for a Utility in their case would have to find that, based on the common/overlapping concerns in the June 2020 Order, the Utility satisfies the standard of being “substantially, specifically, and directly affected by the outcome” of the case. N.J.A.C. 1:1-16.1(a). ACE, JCP&L, RECO, SJG, and ETG each stated that, if the Board determines that another Utility has a sufficient interest to be an intervenor in their individual case, then they would have the identical sufficient interest to be an intervenor in that Utility’s case. Accordingly, ACE, JCP&L, RECO, SJG, and ETG indicated that their motions for participant status are provisional and should be treated as motions to intervene should NJNG be granted intervenor status in their cases.

Google

On October 2, 2020, Google, LLC ("Google") submitted a motion to participate. Google stated that it is a multinational technology company, an industry leader in smart home technology, including the Nest Learning Thermostat and the Nest Thermostat E. Google argued that it has a significant interest in the outcome of this proceeding because Google already participates in energy efficiency programs with PSE&G, NJNG, and SJG and believes that implementation of NJNG's proposals will enlarge this opportunity and bring further benefits to New Jersey residents and businesses. Additionally, Google asserted that it would add constructively to this matter by clarifying certain issues and contributing to the development of a complete record based on its unique, significant interests in employing its technology to assist NJNG and the State in reaching energy efficiency goals. Google further stated that it will not seek to delay the proceeding in any manner. Google noted that it was a participant in PSE&G’s recently approved EE program.

BPA

The Building Performance Association (“BPA”) is a 501(c)6 industry association committed to supporting policies that will improve and increase the expansion of home and building performance, EE businesses, and industries. BPA is made up of more than 9,800 members who are working professionals in contracting services, weatherization, product manufacturing and distribution, program administration, building science, and nonprofits. BPA asserted that it and its New Jersey members have a significant interest in the outcome of the case and will add constructively to the case. Additionally, BPA stated that its participation will not cause undue delay or confusion. By letter dated October 16, 2020, BPA withdrew its motion to participate.

RESPONSES

On October 8, 2020, NJNG submitted a letter responding to the filed motions to intervene and participate. In its letter, NJNG indicated that it had no opposition to the motions to intervene or participate. By way of a supplemental letter, NJNG indicated that it did not oppose the participation of BPA.

DISCUSSION AND FINDINGS

Motions to Intervene or Participate

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record involves consideration of a diversity of interests. They must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that EEANJ and NRDC will be directly affected by the outcome of this proceeding and will add measurably and constructively to the case without causing undue delay or confusion. I **HEREBY FIND** that EEANJ and NRDC have met the standards for intervention in this proceeding. Accordingly, having received no objections, I **HEREBY GRANT** the motion for interventions of EEANJ and NRDC pursuant to the authority granted to me by the Board under the September 23, 2020 Order.

PSE&G, a public utility serving customers in New Jersey, noted that the Board's decision is likely to have precedential effect and impact on their utilities. I acknowledge that PSE&G's experience running its own EE programs in New Jersey puts it in a position to add to the development of the record in this matter. I am not persuaded, however, that its interest is sufficiently distinct from that of the other parties to merit intervenor status or that PSE&G will be affected by the alleged precedential effect of this case. All of the proposed programs will be examined based on their specific components, just as programs proposed by PSE&G will be reviewed and analyzed upon their own merits. After weighing the issues, I **FIND** that PSE&G has not made a showing that its interest in this matter warrants granting its motion to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** PSE&G's motion for intervention. Pursuant to N.J.A.C. 1:1-16.5, I will treat this motion, in the alternative, as a motion

to participate. Considered under this standard, I **FIND** that PSE&G has a significant interest in this proceeding and that, as a participant, PSE&G is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** PSE&G participant status.

With regard to the motions to participate filed by ACE, JCP&L, ETG, SJG, RECO, and Google, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of ACE, JCP&L, ETG, SJG, RECO, and Google in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motions to participate filed on behalf of ACE, JCP&L, ETG, SJG, RECO, and Google pursuant to the authority granted to me by the Board under the September 23, 2020 Order.

All grants of intervention and participation are conditioned upon executing the Agreement of Non-Disclosure.

In addition, I reviewed the proposal for a preliminary schedule, which has been agreed to by Board Staff, the New Jersey Division of Rate Counsel (“Rate Counsel”), and the Company. I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, NJNG seeks approval to implement its proposed \$258.3 million (investment and expenses) SAVEGREEN Program over a three (3) year period (July 1, 2021 through June 30, 2024). In addition to approval of the plan to implement the SAVEGREEN Program, the Company requested approval of a cost recovery mechanism. Specifically, NJNG requested authority to recover the revenue requirement associated with the costs to implement the SAVEGREEN Program, including incentives, outside services, inspections and quality control, information technology costs, and O&M costs. The Company proposed to recover program costs through a separate surcharge clause of its tariff, Rider F. The revenue requirement recovered through Rider F would be designed to recover the annual costs of the SAVEGREEN Program as well as a true-up for any prior period over/under recovery. The Company proposed to recover lost revenues from reduced electricity sales associated with the SAVEGREEN Program by way of its current Conservation Incentive Program mechanism.

Issues to be Resolved

- A. The cost effectiveness and cost efficiency of the proposed activities and programs.
- B. The lawfulness of the proposed program offerings.
- C. The reasonableness and lawfulness of the proposed cost recovery mechanism.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:

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3. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in NJNG's service territory. The dates, times, and locations of the public hearings are to be determined.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Evidentiary hearings are tentatively scheduled for February 1, 3, and 4, 2021 at a time and location to be determined based upon the availability of the parties and myself.

5. **STIPULATIONS:**

The Staff of the Board of Public Utilities, Rate Counsel, and NJNG have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be as provided as agreed to by the parties or in accordance with N.J.A.C. 1:1-10.4.

9. **ORDER OF PROOFS:**

NJNG has the burden of proof. The hearings will be conducted by topic in the following order:

First – NJNG

Second – Rate Counsel

Third – EEANJ

Fourth – NRDC

Fifth – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

NJNG will present the following witnesses: Anne-Marie Peracchio, James M. Corcoran, Brendon J. Baatz

Rate Counsel and Intervener witnesses will be determined at a later time.

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross-examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

All pending motions to intervene and/or participate have been addressed.

14. **SPECIAL MATTERS:**

None at this time.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: October 27, 2020

BY:



UPENDRA J. CHIVUKULA
COMMISSIONER

IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, c. 17 REGARDING THE
ESTABLISHMENT OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION
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EXHIBIT A

DOCKET NOS. QO19010040 AND GO20090622

Procedural Schedule

Motions to Intervene/Participate	October 2, 2020
Responses to Intervention/Participation	October 9, 2020
First Round Discovery Requests+	October 19, 2020
First Round Discovery Answers	October 29, 2020
Discovery Conference	November 16, 2020
Second Round Discovery Requests	November 23, 2020
Second Round Discovery Answers	November 30, 2020
Rate Counsel/Intervener Testimony	December 15, 2020
Discovery on Testimony	December 22, 2020
Responses to Discovery	January 5, 2021
Rebuttal Testimony	January 12, 2021
Discovery on Rebuttal	January 19, 2021
Answers to Rebuttal Discovery	January 26, 2021
Public Hearing	TBD
Settlement Conference	January 29, 2021
Evidentiary Hearings with oral surrebuttal	February 1, 3, & 4, 2021
Initial Briefs	February 24, 2021
Reply Briefs	March 5, 2021

+ Petitioner agrees that discovery is ongoing and will endeavor to answer all discovery within seven business days of service.