



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

DIVISIONS OF CLEAN ENERGY  
AND ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF L. )  
2018, c. 17 REGARDING THE ESTABLISHMENT OF )  
ENERGY EFFICIENCY AND PEAK DEMAND )  
REDUCTION PROGRAMS )  
IN THE MATTER OF THE PETITION OF ATLANTIC )  
CITY ELECTRIC COMPANY FOR APPROVAL OF AN )  
ENERGY EFFICIENCY PROGRAM, COST )  
RECOVERY MECHANISM, AND OTHER RELATED )  
RELIEF FOR PLAN YEARS ONE THROUGH THREE )

) PREHEARING ORDER SETTING  
) PROCEDURAL SCHEDULE,  
) RULING ON MOTIONS TO  
) PARTICIPATE AND INTERVENE,  
) AND EXTENDING 180 DAY  
) REVIEW PERIOD  
) DOCKET NOS. QO19010040 AND  
) EO20090621

**Parties of Record:**

**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel  
**Philip J. Passanante, Esq.**, Assistant General Counsel, Atlantic City Electric Company  
**Erin Cosgrove, Esq.**, Counsel for Energy Efficiency Alliance of New Jersey  
**Eric Miller, Esq.**, Counsel for Natural Resources Defense Council

BY PRESIDENT FIORDALISO:

**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 New Jersey Board of Public Utilities (“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.<sup>1</sup> 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.

**SEPTEMBER 2020 PETITION**

On September 25, 2020, Atlantic City Electric Company (“ACE or “Company”) filed the requisite petition with the Board (“September 2020 Petition” or “Petition”). In the Petition, the Company proposed to invest approximately \$99 million in its EE Program (“EE 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:

<b>Sector</b>	<b>Program</b>	<b>Subprogram</b>	<b>Type</b>	<b>Total Cost</b>
Residential	Behavior	Home Energy Reports	Utility-led	\$502,994
	Efficient Products	HVAC	Core	\$15,762,975
		Online Marketplace	Core	
		Appliance Rebates	Core	
		Appliance Recycling	Core	
	Existing Homes	Home Performance with ENERGY STAR	Core	\$8,984,106
		Quick Home Energy Check Up	Utility-led	\$8,970,810
Moderate-Income Weatherization		Utility-led	\$13,414,237	
Multi-Family	Multi-Family	N/A	Core	\$3,757,222
Commercial and Industrial	Small Business Direct Install	N/A	Core	\$27,898,354
	Energy Solutions for Business	Prescriptive/Custom	Core	\$11,677,549
		Energy Management	Utility-led	\$2,029,923
		Engineered Solutions	Utility-led	\$2,749,382
Portfolio Costs <sup>2</sup>				\$2,875,000
<b>Total</b>				<b>\$98,622,553</b>

<sup>1</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 (“June 2020 Order”).

<sup>2</sup> Portfolio costs include development and maintenance of the statewide coordinator platform, workforce development funds, and some evaluation, measurement, and verification for statewide coordination.

In addition to approval of the plan to implement the EE Program, the Company requested approval of a cost recovery mechanism. Specifically, ACE requested authority to create a regulatory asset to capture the incremental capital investment costs related to the EE Program and to implement a Rider EE. Rider EE would be set annually based upon budgeted and actual expenditures through annual filings, subject to Board approval. The revenue requirement recovered through Rider EE would be designed to recover the annual depreciation and amortization of capital investments, plus carrying costs, and annual operations and maintenance (“O&M”) expenses, as well as any prior period over/under amounts in subsequent true-ups. ACE also sought the Board’s approval of a modified electric Conservation Incentive Plan calculation methodology to recover a portion of the Company’s revenues that will be lost as a result of the successful implementation of the EE Program and the related decrease in energy sales.

ACE estimated that the Rider EE bill impact for a typical residential customer on Basic Generation Service using 679 kilowatt-hours (“kWh”) per month would be an increase of \$0.30 or 0.23%, from \$132.16 to \$132.46 for the initial year of the EE Program.

By Order dated September 23, 2020, the Board determined that ACE’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.<sup>3</sup> 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.

On October 16, 2020, Board Staff (“Staff”) issued a letter of administrative deficiency. In response to this letter, the Company made supplemental filings on October 9 and 21, 2020. On October 22, 2020, Staff issued a letter indicating that the supplemental filing satisfied the minimum filing requirements. The 180-day period for Board review therefore began on October 21, 2020.

Based on the status of current discovery, ACE, the New Jersey Division of Rate Counsel (“Rate Counsel”), and Staff have agreed that an extension of the 180-day review period is appropriate. Accordingly, on December 17, 2020, they entered into a stipulation to extend the review period to April 30, 2021 to allow more time for review of ACE’s Petition.

## **THE MOTIONS**

### Motions to Intervene

On October 2, 2020, New Jersey Natural Gas Company (“NJNG”), 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.

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<sup>3</sup> 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”).

## *NJNG*

NJNG stated that the Board accepted the recommendation of Staff to have the Utilities collaborate with Staff to develop program design and requirements that are complementary to, and not competitive or overlapping with, the designs and requirements of State-administered or co-managed programs and to have the Utilities collaborate to consistently implement the Utility core programs. Additionally, in areas where gas and electric services territories overlap, in addition to establishing programs that include agreed-upon program design requirements, the Board directed the Utilities to 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, in order to ensure that customers do not face confusion as a result of overlapping territories and can access both electric and gas measures simultaneously, where appropriate. NJNG asserted that ACE's proposed EE Program would directly affect NJNG, as ACE's service territory is overlapping with NJNG's service territory and the two Utilities will need to coordinate efforts to process several of their respective EE programs. Accordingly, NJNG maintained that it should be granted full intervener status so as to avoid customer confusion with program offerings. NJNG also expressed that it believes that the Board's decision in this proceeding is likely to have precedential effect and impact not only on ACE and its customers, but also on New Jersey's other gas and electric Utilities. NJNG asserted that a variety of issues that will be addressed in this case may have an impact on NJNG by establishing precedent and that NJNG will likely be directly and specifically affected by the relief provided in the matter. In the alternative, NJNG requested that its motion be treated as a motion to participate.

## *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 argued 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 stated 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 gas territory overlaps with ACE's electric territory, PSE&G asserted that any decision by the Board with respect to ACE'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 ACE 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 energy efficiency programs in the state, most recently completing its Clean Energy Future - Energy Efficiency proceeding. Accordingly, PSE&G expressed its belief that its intervention in this proceeding is likely to add constructively to the proceeding.

## *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 ACE'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, NRDC argued that, as ACE seeks ratepayer dollars to fund its proposed EE Program, the outcome of the case will affect NRDC's members who are ACE 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 stated 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

### *JCP&L, RECO, SJG, ETG*

Jersey Central Power & Light Company ("JCP&L"), Rockland Electric Company ("RECO"), South Jersey Gas Company ("SJG"), and Elizabethtown Gas Company ("ETG") each submitted motions to participate.<sup>4</sup> 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 or 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. Each also argued that its interest as an investor-owned electric or gas Utility serving retail customers is materially different from that of ACE and from that 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.

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<sup>4</sup> SJG and ETG submitted a joint motion to participate.

Although JCP&L, SJG, ETG, and RECO 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, pursuant to N.J.A.C. 1:1-16.1(a). JCP&L, SJG, ETG, and RECO 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, JCP&L, SJG, ETG, and RECO indicated that their motions for participant status are provisional and should be treated as motions to intervene should ACE be granted intervenor status in their cases.

#### *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, ACE submitted a letter responding to the filed motions to intervene and participate. In its letter, ACE indicated that it had no opposition to the motions to participate filed by JCP&L, RECO, ETG, and SJG. Additionally, ACE did not oppose the intervention of EEANJ and did not submit a response regarding NRDC’s intervention. With respect to the motions to intervene filed by NJNG and PSE&G, ACE stated that, while the Company agrees that each utility’s EE program will require coordination and involve important cost sharing and investment allocation issues, this could be adequately addressed with participant status and ongoing dialogue among the Utilities. Accordingly, ACE requested that NJNG and PSE&G be granted participant status. However, ACE stated that, should NJNG be granted intervenor status, ACE should be granted intervenor status in NJNG’s pending filing. By way of a supplemental letter dated October 12, 2020, ACE indicated that it did not oppose the participation of BPA.

By way of a supplemental letter dated December 18, 2020, ACE noted that NRDC had sent the motion to an incorrect email address at ACE. ACE indicated that it did not object to NRDC’s motion.

## **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 that involves consideration of a diversity of interests must be weighed against the requirement 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 motions for intervention of EEANJ and NRDC pursuant to the authority granted to me by the Board under the September 23, 2020 Order.

NJNG and PSE&G, both Utilities 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 NJNG's and PSE&G's experience running their own EE programs in New Jersey put them in a position to add to the development of the record in this matter. I am not persuaded, however, that their interests are sufficiently distinct from that of the other parties to merit intervenor status or that NJNG or PSE&G will be affected by the alleged precedential effect of this case. All of the proposed EE programs will be examined based on their specific components, just as programs proposed by NJNG and PSE&G will be reviewed and analyzed upon their own merits. After weighing the issues, I **FIND** that NJNG and PSE&G have not made a showing that their interests in this matter warrant granting their motions to intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** NJNG's and PSE&G's

motions for intervention. Pursuant to N.J.A.C. 1:1-16.5, I will treat these motions, in the alternative, as motions to participate. Considered under this standard, I **FIND** that NJNG and PSE&G have a significant interest in this proceeding and that, as participants, NJNG and PSE&G are likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** NJNG and PSE&G participant status, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

With regard to the motions to participate filed by JCP&L, RECO, SJG, and ETG, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of JCP&L, RECO, SJG, and ETG 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 JCP&L, RECO, SJG and ETG, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

#### Extension of the 180-Day Review Period

N.J.S.A. 48:2-21.3 allows any public utility to file with the Board a written stipulation waiving the effective date of any tariff or rate, subject to the Board's approval. In this case, ACE, Rate Counsel, and Staff have agreed to an extension until April 30, 2021. I **HEREBY FIND** that the stipulation extending the review period to April 30, 2021 is fair, reasonable, and in the public interest as it provides additional time for review of ACE's Petition. Accordingly, I **HEREBY ADOPT** the stipulation identified as Exhibit A, incorporating by reference its terms and conditions as if fully set forth herein and **HEREBY EXTEND** the review period to April 30, 2021.

Finally, I reviewed the proposal for a preliminary schedule, which is consistent with the extension of the 180-day review period and which has been agreed to by Staff, Rate Counsel, and the Company. I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit B, and **HEREBY DIRECT** the parties to comply with its terms.



## PREHEARING ORDER

### 1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, ACE seeks approval to implement its proposed \$99 million EE Program over a three (3) year period (July 1, 2021 through June 30, 2024). In addition to approval of the plan to implement the EE Program, the Company requested approval of a cost recovery mechanism. Specifically, ACE requested authority to create a regulatory asset to capture the incremental capital investment costs related to the EE Program and to implement a Rider EE. Rider EE would be set annually based upon budgeted and actual expenditures through annual filings, subject to Board approval. The revenue requirement recovered through Rider EE would be designed to recover the annual depreciation and amortization of capital investments, plus carrying costs, and annual O&M expenses, as well as any prior period over/under amounts in subsequent true-ups. ACE also sought the Board's approval of a modified Conservation Incentive Plan calculation methodology to recover a portion of the Company's revenues that will be lost as a result of the successful implementation of the EE Program and the related decrease in energy sales.

#### 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 ACE'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 March 15, 16, and 17, 2021 at a time and location to be determined based upon the availability of the parties and myself.

5. **STIPULATIONS:**

Staff, Rate Counsel, and ACE have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

Staff, Rate Counsel, and ACE have also agreed that an extension of the 180-day review period is appropriate and have entered into a stipulation to extend the review period to April 30, 2021 to allow more time for review of ACE's Petition by the Board.

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 in Exhibit A or in accordance with N.J.A.C. 1:1-10.4.

9. **ORDER OF PROOFS:**

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

First – ACE

Second – Rate Counsel

Third – EEANJ

Fourth – NRDC

Fifth – 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:**

ACE will present the following witnesses: Marisa Slaten, William Ellis, Brendon Baatz, Michael Normand.

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: December 21, 2020

BY:



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JOSEPH L. FIORDALISO  
PRESIDENT

IN THE MATTER OF THE IMPLEMENTATION OF L. 2018, C. 17 REGARDING THE  
ESTABLISHMENT OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION  
PROGRAMS

IN THE MATTER OF THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR  
APPROVAL OF AN ENERGY EFFICIENCY PROGRAM, COST RECOVERY MECHANISM,  
AND OTHER RELATED RELIEF FOR PLAN YEARS ONE THROUGH THREE

DOCKET NOS. QO19010040 AND EO20090621

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# EXHIBIT A

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**IN THE MATTER OF THE PETITION  
OF ATLANTIC CITY ELECTRIC  
COMPANY FOR APPROVAL OF AN  
ENERGY EFFICIENCY PROGRAM,  
COST RECOVERY MECHANISM AND  
OTHER RELATED RELIEF FOR PLAN  
YEARS ONE THROUGH THREE**

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

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
BPU DOCKET NO. EO20090621**

**BPU DOCKET NO. QO19010040**

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**BEFORE THE HONORABLE JOSEPH L. FIORDALISO,  
PRESIDENT AND COMMISSIONER**

**APPEARANCES:**

**Philip J. Passanante, Esq.**, Assistant General Counsel, on behalf of Petitioner, Atlantic City Electric Company;

**Brandon C. Simmons**, Deputy Attorney General, on behalf of the Staff of the New Jersey Board of Public Utilities (**Gurbir S. Grewal**, Attorney General of New Jersey); and

**Felicia Thomas Friel**, Kurt Lewandowski, Sarah Steindel, and Maura Caroselli, Assistant Deputy Rate Counsels, on behalf of the New Jersey Division of Rate Counsel (**Stefanie A. Brand, Esq.**, Director).

**TO THE HONORABLE COMMISSIONER:**

It is hereby **AGREED**, as of the 17<sup>th</sup> day of December, 2020, by and among Atlantic City Electric Company (“ACE”), the Staff of the New Jersey Board of Public Utilities (“Board Staff”), and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, “Signatory Parties”) to execute this Stipulation Extending the 180-Day Review Period (“Stipulation”) for approval of ACE’s Petition in BPU Docket No. EO20090621, seeking to offer an Energy Efficiency Program

(“EE Program” or “Program”) pursuant to N.J.S.A. 48:3-98.1 with an associated cost recovery proposal.<sup>1</sup>

The Signatory Parties do hereby join in recommending that President Fiordaliso, as Presiding Commissioner, issue an Order approving this Stipulation as set forth herein.

### **BACKGROUND**

1. 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.

2. 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 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.

3. By Order dated June 10, 2020, the Board approved an EE transition framework for EE programs implemented pursuant to the Clean Energy Act of 2018, L. 2018, c. 17, including requirements for the utilities to establish programs that reduce the use of electricity and natural gas within their territories (“June 2020 Order”).

4. In the June 2020 Order, the Board directed New Jersey’s other 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.

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<sup>1</sup> The New Jersey Board of Public Utilities shall be referred to in this Stipulation as the “Board” or “BPU.”

5. On September 25, 2020, consistent with the terms of the June 2020 Order, the Company petitioned the Board in this matter for approval seeking the Board's approval of an EE Program to be implemented throughout the Company's service territory over a three-year period beginning in July 2021. The EE Program is an extensive array of individual EE products and services designed to enable ACE customers to reduce their use of electricity. The costs of the EE Program include investment costs of approximately \$89 million and incremental operations and maintenance costs of \$10 million, for a total incremental EE Program cost of approximately \$99 million over three years.

6. On September 23, 2020, the Board issued an Order Designating Commissioner, Setting Manner of Service and Bar Dates ("September 2020 Order") in BPU Docket No. QO19010040, retaining all EE filings for review and designating President Joseph L. Fiordaliso or his designee as the Presiding Commissioner over electric distribution company cases, including the proposal filed by ACE.

7. On October 22, 2020, Board Staff notified the Company that ACE's EE Program Petition was administratively complete with respect to the Board's Minimum Filing Requirements and that the 180-day administrative review period commenced on October 21, 2020.

8. Conferences are being scheduled between and among the Signatory Parties in order to facilitate discovery and to discuss settlement.

#### **STIPULATED TERMS**

9. The Signatory Parties hereby agree that the 180-day review period is extended through Friday, April 30, 2021.

#### **GENERAL TERMS**

10. This Stipulation represents a mutual balancing of interests, contains interdependent provisions, and, therefore, is intended to be accepted in its entirety. In the event any particular

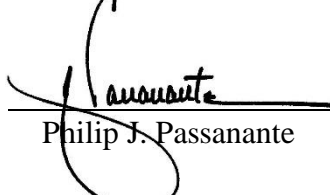
aspect of this Stipulation is not accepted and approved in its entirety by President Fiordaliso, his designee or the Board, any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by President Fiordaliso, his designee, or the Board in any applicable Order(s), then any Party hereto is free to pursue any legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

11. It is the intent of the Signatory Parties that the provision(s) hereof be approved by President Fiordaliso, his designee, or the Board as being in the public interest. The Signatory Parties further agree that they consider the Stipulation to be binding for all purposes herein.


12. It is specifically understood that this Stipulation represents a negotiated agreement and has been made exclusively for the purposes of this proceeding. Except as expressly provided herein, the Signatory Parties shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein, in total or by specific item. The Signatory Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation. All rates are subject to audit by the Board.

**WHEREFORE**, the Signatory Parties hereto do respectfully submit this Stipulation and request that President Fiordaliso, his designee, or the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

**ATLANTIC CITY ELECTRIC COMPANY**

By:  \_\_\_\_\_  
Philip J. Passanante

**GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
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By:  \_\_\_\_\_  
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**STAFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL**

By: Felicia Thomas-Friel  
Deputy Rate Counsel

Date: December 17, 2020

# EXHIBIT B

## DOCKET NOS. QO19010040 AND EO20090621

### Procedural Schedule

Motions to Intervene/Participate	October 2, 2020
Responses to Intervention/Participation	October 9, 2020
First Round Discovery Requests+	October 30, 2020
First Round Discovery Answers	November 13, 2020
Second Round Discovery Requests	December 4, 2020
Discovery Conference	December 16, 2020
Second Round Discovery Answers	December 18, 2020
Rate Counsel/Intervener Testimony	January 20, 2021
Discovery on Testimony	January 29, 2021
Responses to Discovery	February 5, 2021
Rebuttal Testimony	February 12, 2021
Discovery on Rebuttal	February 19, 2021
Answers to Rebuttal Discovery	March 1, 2021
Public Hearing	TBD
Settlement Conference	March 3, 2021
Evidentiary Hearings with Oral Surrebuttal	March 15, 16, and 17, 2021
Initial Briefs	March 31, 2021
Reply Briefs	April 7, 2021

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