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July 15, 2021

Electronic Filing

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

**Re: IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY TO
REVIEW ITS PERIODIC BASIC GAS SUPPLY SERVICE RATE
BPU Docket No. GR21060876**

Dear Secretary Camacho-Welch:

Elizabethtown Gas Company ("Elizabethtown") submits this letter in response to the June 22, 2021 Motion of NRG Energy, Inc. to intervene in this proceeding. Elizabethtown is in opposition to this motion.

Due to the pandemic, and in accordance with the New Jersey Board of Public Utilities ("BPU") March 19, 2020 and May 20, 2020 Orders issued in BPU Docket No. EO20030254, hard copies are not being provided at this time, but can be provided at a later time, as needed.

If you have any questions, please feel free to contact me directly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah M. Franco", is written over a light blue horizontal line.

Deborah M. Franco

DMF:caj
Enclosures

cc: Stacy Peterson (via electronic mail)
Stefanie Brand (via electronic mail)
Brian Lipman (via electronic mail)
Matko Ilic (via electronic mail)
Murray E. Bevan (via electron mail)

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

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In the Matter of the Petition of Elizabethtown	: BPU Docket No. GR21060876
Gas Company to Review its Periodic Basic	:
Gas Supply Service Rate	: OPPOSITION TO MOTION TO
	: INTERVENE
	:

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TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

In accordance with N.J.A.C. 1:1-12.2, Elizabethtown Gas Company (“ETG” or “Company”) hereby submits this response to the New Jersey Board of Public Utilities (“Board” or “BPU”) in opposition to the Motion to Intervene (“Motion”) of NRG Energy, Inc., and its affiliates Reliant Energy Northeast, LLC, d/b/a NRG Home/NRG Business; Energy Plus Natural Gas LP; Xoom Energy New Jersey, LLC; Stream Energy New Jersey, LLC; Direct Energy Services, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; and Gateway Energy Services Corporation (collectively “NRG”). As more fully described below, ETG respectfully requests that the Board deny NRG’s Motion. In support thereof, the Company states as follows:

Background Statement

1. On June 1, 2021, ETG filed a petition (“Petition”) in this proceeding seeking authorization to increase its BGSS-P rate from \$0.3783 per therm to \$0.4367 per therm, inclusive of applicable taxes. The purpose of this proceeding is to set ETG’s Basic Gas Supply Service (“BGSS”) rate for the period October 1, 2021 through September 30, 2022. On or about June 22, 2021, NRG filed its Motion in this proceeding. As set forth below, NRG failed to meet its burden and satisfy the standards for intervention.

2. As explained below, NRG has zero interest in the issues that are in front of the Board in the Petition and has no stake in the outcome of this proceeding. The Motion is an attempt by competitive gas suppliers to introduce irrelevant issues regarding competition and the structure of the BGSS into this proceeding, the sole purpose of which is to ensure that ETG is able to recover its costs of providing BGSS. NRG's issues are generic in nature and have no place here where the focus is to set a BGSS rate reflective of costs during the 2021/2022 BGSS year. Therefore, NRG's Motion must be denied.

Standards Applicable to Motions to Intervene and/or Participate

3. N.J.A.C. 1:1-16.3(a) provides that the following factors shall be considered when ruling upon a motion to intervene:

- (i) the nature and extent of the movant's interests in the outcome of the case;
- (ii) whether or not the movant's interest is sufficiently different than 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 movant's inclusion; and
- (iv) other appropriate matters.

4. In addition, under N.J.A.C. 1:1-16.5, every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate. Under N.J.A.C. 1:1-16.6, a "participant" must have a significant interest in the outcome of a case and, in ruling on a request to participate, the trier of fact is required to determine whether the participant's interest "is likely to add constructively to the case without causing undue delay or confusion." Under N.J.A.C. 1:1-16.6(c), participation is limited to (i) the right to argue orally, (ii) the right to file a statement or brief, (iii) the right to file exceptions to the initial decision with the agency head, or (iv) all of the

above. NRG has failed to meet the standards applicable to either intervenor or participant status in this proceeding and must be denied.

**NRG has not Met the Standards for Intervention or Participation and
Therefore, its Motion Must be Denied**

5. NRG has failed to establish any relevant or legitimate basis to support its intervention in this proceeding. NRG asserts that its intervention is appropriate to ensure that ETG's plans regarding winter bill credits and renewable natural gas will not affect the competitive market for NRG's TPS gas supply companies and their customers (NRG Motion at para.6) – issues that have no place in this proceeding, which again is strictly to set the BGSS rate to be in effect during the 2021-2022 BGSS year. NRG is not itself even an ETG customer that is subject to the BGSS rate that will be in effect during this period and its request to participate in this proceeding is a resurrection of a similar failed attempt by the Retail Energy Supply Association or "RESA", in PSE&G's 2014/2015 BGSS proceeding ("PSE&G 2014/2015 BGSS Proceeding").¹

6. RESA in the PSE&G 2014/2015 BGSS Proceeding, like NRG in this case, raised issues concerning the notice provisions preceding the self-implemented bill adjustments in the Company's BGSS tariff, a process that was established in a January 2003 order² ("January 2003 Order") after a full vetting and comprehensive review by all stakeholders. The Board agreed with PSE&G and Rate Counsel that the relief sought was beyond the scope of the proceeding and, if addressed, would delay review.

¹ *I/M/O Public Service Electric and Gas Company's 2014/2015 Annual BGSS Commodity Charge Filing For Its Residential Gas Customers Under Its Periodic Pricing Mechanism*, BPU Dkt. No. GR14050512, OAL Dkt. No. PUC 16108-14, Order dated April 15, 2015, at 3. See also *I/M/O Public Service Electric and Gas Company's 2012/2013 Annual BGSS Commodity Charge Filing For Its Residential Gas Customers Under Its Periodic Pricing Mechanism and For Changes in the Tariff for Gas Service*, BPU Dkt No. 12060490, OAL Dkt No. PUC14136-12, Order dated January 14, 2013 (denying Hess Corporation Motion to Intervene and granting participant status).

² See *I/M/O the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act*, N.J.S.A. 48:3-49 et seq, BPU Docket No. GX01050304, Order dated January 6, 2003.

7. Similarly, issues raised by NRG are not even remotely germane to the ETG BGSS cost recovery issues being addressed here. Rather, NRG is raising issues of policy concerning the well-settled processes established by the Board in the January 2003 Order that has generic application to all gas distribution companies and is not unique to ETG. Addressing the competitive and structural issues raised by NRG are entirely outside the scope of this proceeding which is limited to ensuring that ETG's BGSS rates are just and reasonable.

8. Further still, NRG's assertion that it intends to intervene "to ensure that ETG's plans regarding renewable natural gas ("RNG") and the winter bill credits do not adversely affect the competitive market for NRG's TPS gas supply companies and their customers" (NRG Motion at 6) is misplaced. ETG's proposed inclusion of RNG in its gas supply plan is a limited diversification of its current supply portfolio and is not a competitive offering. As the Board has determined in similar circumstances in the past, this proceeding is not intended to set energy competition policy or to establish the pricing structure by which ETG or any of New Jersey's other gas distribution companies recovers the costs associated with discharging the BGSS supplier of last resort obligation. *See generally* PSE&G 2014/2015 BGSS Proceeding. NRG's introduction of these extraneous and generic issues are outside the scope of this proceeding and cannot and will not add measurably and constructively thereto. Rather, it will create confusion and unduly delay the case.

9. Even if NRG raised an issue relevant to this proceeding (which it does not), NRG lacks any interest "substantially, specifically and directly affected" by the outcome of this case. *N.J.A.C.* 1:1-16.1. NRG does not have an interest here that is different from those of other parties. The BGSS rate proposed in the Petition will not impose any costs on NRG because it is not a customer of ETG. While NRG's customers may be customers of ETG, the interests of those customers are

already represented in this case by BPU Staff and Rate Counsel.³ Not only has NRG failed to demonstrate that it is directly affected by ETG's proposed BGSS rate, NRG also has not demonstrated that its interest in the Company's proposed BGSS rate is different from the interests of other parties so as to add constructively to the scope of the case. Thus, NRG is not "substantially, specifically and directly affected" by ETG's proposed BGSS rate, it will not add measurably or constructively to the scope of this proceeding and its concerns provide no basis to afford it intervention status.⁴

10. Pursuant to N.J.A.C. 1:1-16.5, the Board may treat the NRG motion, in the alternative, as one to participate. Even if the Board should elect to do so, it is similarly clear that NRG fails to satisfy the criteria for participation. Under N.J.A.C. 1:1-16.6(b), "[i]n deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion". Here, because NRG will not in any way be impacted by the proposed change in the residential BGSS rate for the 2021-2022 BGSS year, its participation cannot "add constructively to the case." Accordingly, NRG fails to satisfy the criteria for participation in this matter.

³ See, e.g., *In re Petition of Public Service Electric and Gas Co. for Approval of the Energy Strong Program*, BPU Docket No. EO13020155 (Aug. 2, 2014) (denying environmental groups intervenor status where the movant's only directly affected interest was a ratepayer).

⁴ See, e.g., *In re PSE&G Co. for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism*, BPU Docket No. GR15030272 (May 27, 2015) (denying motion to intervene because the tangential issues raised would not "add measurably to this proceeding").

Conclusion

11. In sum, NRG has failed to meet its burden and demonstrate with relevant and credible facts that it should be afforded intervenor or participant status in this proceeding. NRG will not be substantially, specifically, or directly affected by the BPU's resolution of the issues presented in the Petition, as the concerns raised by NRG fail to establish a substantial or specific interest, are adequately addressed by other parties, and/or will raise confusion and delay in this proceeding. Accordingly, ETG respectfully requests that NRG's Motion be denied.

Respectfully submitted,



By: _____

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Dated: July 15, 2021

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

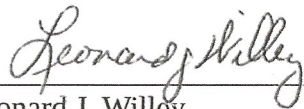
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In the Matter of the Petition of Elizabethtown Gas Company to Review its Periodic Basic Gas Supply Service Rate	: : : : :	BPU Docket No. GR21060876 VERIFICATION OF LEONARD J. WILLEY
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I, Leonard J. Willey, of full age, being duly sworn according to law, upon my oath,
depose and say:

1. I am Manager of Gas Supply for Elizabethtown Gas Company ("Company") and I am
authorized to make this verification on behalf of the Company.
2. I have reviewed the within Opposition To Motion to Intervene and the information
contained therein is true according to the best of my knowledge, information and belief.



Leonard J. Willey
Manager, Gas Supply

Sworn to and subscribed
Before me this 15 day
of July 2021


CAROLYN A. JACOBS

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 28, 2023

