Agenda Date: 8/17/22
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY AND
CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2018, C. 17 REGARDING THE ESTABLISHMENT OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS	ORDER ADOPTING STIPULATION DOCKET NO. QO19010040
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 NO. EO20090621
IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY FOR APPROVAL OF NEW ENERGY EFFICIENCY PROGRAMS AND THE ASSOCIATED COST RECOVERY MECHANISM PURSUANT TO THE CLEAN ENERGY ACT AND THE ESTABLISHMENT OF A CONSERVATION INCENTIVE PROGRAM	DOCKET NO. GO20090619
IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR APPROVAL OF JCP&L'S ENERGY EFFICIENCY AND CONSERVATION PLAN INCLUDING ENERGY AND PEAK DEMAND REDUCTION PROGRAMS (JCP&L EEC)	DOCKET NO. EO20090620
IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR APPROVAL OF ENERGY EFFICIENCY PROGRAM AND THE ASSOCIATED COST RECOVERY MECHANISM PURSUANT TO THE CLEAN ENERGY ACT, N.J.S.A. 48:3-87.8 ET SEQ. AND 48:3-98.1 ET SEQ.	DOCKET NO. GO20090622
IN THE MATTER OF 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 & EO18101113

IN THE MATTER OF THE PETITION OF ROCKLAND ELECTRIC COMPANY FOR APPROVAL ITS ENERGY EFFICIENCY PROGRAM AND PEAK DEMAND REDUCTION PROGRAMS	)	DOCKET NO. EO20090623
IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL OF NEW ENERGY EFFICIENCY PROGRAMS AND THE ASSOCIATED COST RECOVERY PURSUANT TO THE CLEAN ENERGY ACT	)	DOCKET NO. GO20090618

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Philip J. Passanante, Esq., Assistant General Counsel, Atlantic City Electric Company
Joshua R. Eckert, Esq., Counsel for Jersey Central Power & Light Company
Andrew K. Dembia, Esq., Regulatory Affairs Counsel, New Jersey Natural Gas Company
Matthew M. Weissman, Esq., Managing Counsel, Public Service Electric and Gas Company
Margaret Comes, Esq., Associate Counsel, Rockland Electric Company
Deborah M. Franco, Esq., Vice President, Rates, Regulatory and Sustainability, SJI Utilities, Inc.
John M. Kolesnik, Esq., Policy Counsel for Energy Efficiency Alliance of New Jersey
Eric Miller, Esq., Counsel for Natural Resources Defense Council
Daniel Greenhouse, Esq., Counsel for Eastern Environmental Law Center
Steven S. Goldenberg, Esq., Giordano, Halleran & Ciesla, P.C. for New Jersey Large Energy Users Coalition
Christopher E. Torkelson, Esq., Eckert Seamans Cherin and Mellott, LLC for Market Participants

BY THE BOARD:[1]

On November 8, 2021, Atlantic City Electric Company ("ACE"), Elizabethtown Gas Company ("ETG"), Jersey Central Power & Light Company ("JCP&L"), New Jersey Natural Gas Company ("NJNG"), Public Service Electric and Gas Company ("PSE&G"), Rockland Electric Company ("RECO"), and South Jersey Gas Company ("SJG") (collectively, "Joint Petitioners" or "utilities") filed a joint letter petition with the New Jersey Board of Public Utilities ("Board" or "BPU") requesting approval to implement a proposed joint utility solution to the budget constraints experienced during the first triennium ("Triennium 1") of approved energy efficiency ("EE") programs ("November 8, 2021 Joint Petition"). By this Decision and Order, the Board considers a stipulation of settlement ("Stipulation") executed by the utilities, New Jersey Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") (collectively, "Parties"), which resolves the utilities' requests related to the above-captioned matter.

BACKGROUND

On January 13, 2008, L. 2007, c. 340 ("RGGI Act") was signed into law based upon the New Jersey ("State") Legislature's findings that EE and conservation measures must be essential

[1] Commissioner Zenon Christodoulou abstained from voting on this matter.

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] The Legislature also found that public utility involvement and competition in the conservation and EE industries are essential to maximize efficiencies.

On May 23, 2018, Governor Murphy signed into law the Clean Energy Act of 2018 ("CEA").[3] The CEA plays a key role in achieving the State's goal of 100% clean energy by 2050, as set forth in the 2019 New Jersey Energy Master Plan ("EMP"), by establishing aggressive energy reduction requirements, among other clean energy strategies.[4] The CEA emphasizes the importance of EE and peak demand reduction ("PDR") and requires the Board to adopt an efficiency program "to ensure investment in cost-effective energy efficiency measures, ensure universal access to energy efficiency measures, and serve the needs of low-income communities . . . "[5] The CEA also calls upon New Jersey's electric and gas public utility companies to play an increased role in delivering EE and PDR programs to customers by requiring the utilities to reduce the use of electricity and natural gas in their respective service territories.[6]

On October 11, 2018, PSE&G filed a petition with the Board requesting approval of its CEF-EE Program.

By Order dated June 10, 2020, the Board approved a transition framework for EE programs implemented pursuant to the CEA, including requirements for the utilities to establish programs that reduce the use of electricity and natural gas within their territories.[7] In the June 2020 Order, the Board directed New Jersey's remaining electric and gas companies to submit their first respective three-year filings for EE and PDR programs by September 25, 2020 for Board approval by May 1, 2021 and implementation beginning July 1, 2021.[8]

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[2] N.J.S.A. 26:2C-45 et al.

[3] L. 2018, c. 17 (N.J.S.A. 48:3-87.8 et al.).

[4] See 2019 New Jersey Energy Master Plan: Pathway to 2050. The EMP defines "100% clean energy by 2050" to mean the achievement of 100% carbon-neutral electricity generation (a net zero carbon footprint, achieved through the elimination of carbon emissions, or balancing carbon emissions with carbon removal) and maximum electrification of the building and transportation sectors to meet or exceed the Global Warming Response Act of 2007's target of achieving greenhouse gas emissions reductions of 80% below 2006 levels by 2050 (often referred to as the "80x50" goal). Id. at 11, 21.

[5] N.J.S.A. 48:3-87(g).

[6] N.J.S.A. 48:3-87.9(a). The CEA required, in part, that "[e]ach electric public utility . . . achieve annual reductions in the use of electricity of two percent of the average annual usage in the prior three years within five years of implementation of its electric energy efficiency program" and that "[e]ach natural gas public utility . . . achieve annual reductions in the use of natural gas of 0.75 percent of the average annual usage in the prior three years within five years of implementation of its gas energy efficiency program." Id.

[7] 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 June 10, 2020 ("June 2020 Order").

[8] The first three-year ("Triennium 1") program cycle comprises the following program years (each, a "Program Year"):

Program Year 1: July 1, 2021 – June 30, 2022 ("Program Year 2022");

On September 23, 2020, the Board issued an order approving a stipulation of settlement for PSE&G's CEF-EE Program.[9]

On September 25, 2020, ACE, ETG, JCP&L, NJNG, RECO, and SJG filed petitions with the Board requesting approval of their respective EE programs. On March 3, 2021, the Board issued an order approving a stipulation of settlement for NJNG's SAVEGREEN 2020 Program.[10] On March 24, 2021, the Board issued orders approving stipulations of settlement for ETG and SJG programs.[11] On April 27, 2021, the Board issued orders approving stipulations of settlement for ACE and JCP&L, and on June 9, 2021, the Board issued an order approving a stipulation of settlement for RECO.[12]

In compliance with the requirements of the June 2020 Order, the utilities coordinated on the design of the core EE programs, as well as many of the additional utility-led programs. Many of the approved programs provide an opportunity to deliver comprehensive EE solutions to customers that can reduce both their gas and electric usage and increase their energy savings. This requires the sharing of investments and savings for dual-fuel projects where electric and gas utility service territories overlap.

In such a territory overlap scenario, a utility that serves as the primary point of contact for customers, contractors, and trade allies for a project is considered to be the lead utility ("Lead Utility") for that project. Customers and contractors have the option of applying to either their

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Program Year 2: July 1, 2022 – June 30, 2023 ("Program Year 2023"); and
Program Year 3: July 1, 2023 – June 30, 2024 ("Program Year 2024").

The second three-year ("Triennium 2") program cycle comprises the following Program Years:

Program Year 4: July 1, 2024 – June 30, 2025 ("Program Year 2025");
Program Year 5: July l, 2025 – June 30, 2026 ("Program Year 2026"); and
Program Year 6: July 1, 2026 – June 30, 2027 ("Program Year 2027").

[9] 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, Order dated September 23, 2020.

[10] In re the Petition of New Jersey Natural Gas Company for Approval of Energy Efficiency Program and the Associated Cost Recovery Mechanism Pursuant to the Clean Energy Act, N.J.S.A. 48:3-87.8 et seq. and 48:3-98.1 et seq., BPU Docket Nos. QO19010040 and GO20090622, Order dated March 3, 2021.

[11] In re the Petition of Elizabethtown Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act and the Establishment of a Conservation Incentive Program, BPU Docket No. GO20090619, Order dated March 24, 2021; In re the Petition of South Jersey Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act, BPU Docket No. GO20090618, Order dated March 24, 2021.

[12] In re the Petition of Atlantic City Electric Company for Approval of an Energy Efficiency Program, Cost Recovery Program, and Other Related Relief for Plan Years One Through Three, BPU Docket No. EO20090621, Order dated April 27, 2021; In re the Verified Petition of Jersey Central Power & Light Company for Approval of JCP&L's Energy Efficiency and Conservation Plan Including Energy and Peak Demand Reduction Programs, BPU Docket No. EO20090620, Order dated April 27, 2021; In re the Petition of Rockland Electric Company for Approval of Its Energy Efficiency Program and Peak Demand Reduction Programs, BPU Docket No. EO20090623, Order dated June 9, 2021.

electric or gas utility to participate in a program when their project involves both fuels. The Lead Utility follows the project through to completion, pays the project incentive and financing/on-bill repayment, if relevant, and then works with the other applicable electric or gas partner utility ("Partner Utility") to transfer the energy savings for their fuel and the cost of the investment for their share of the project, commensurate with savings for each fuel.

Each set of Partner Utilities executed a bilateral Memorandum of Agreement dated June 2021 (each an "MOA" and, collectively, the "MOAs," attached as Exhibit A) to document the agreements regarding the treatment of transferred energy savings and shared investments on joint projects. The terms are consistent across the MOAs.[13] In accordance with the MOAs, the utilities have established a Joint Budget Allocation Committee ("JBAC") to monitor and manage program budget coordination among the utilities.

While Partner Utilities have Board-approved budgets that were, at the time of approval, forecasted to be sufficient to achieve their respective efficiency savings targets, in some instances these budgets are proving insufficient to cover a Partner Utility's share of costs for all of the dual-fuel EE projects that a Lead Utility is able to implement in a shared service territory.

The utilities initiated discussions with Staff and Rate Counsel through the Utility Working Group in July 2021, raising concerns about how the lack of alignment of budget funding between Lead Utilities and Partner Utilities threatens the continuous implementation of core EE programs.[14] Although the June 2020 Order provides some flexibility for utilities to shift funding as needed, according to the utilities, these tools are insufficient to handle the magnitude of the current budget constraints, as described above, between some utilities. Some utilities have already shifted funding to accommodate the needs of overlapping utilities in their service territory. Nonetheless, the utilities anticipate that it will become increasingly difficult to find additional funding to shift to cover these funding gaps in overlapping service areas as the program cycle progresses. The utilities explained that any lack of program continuity due to budgetary pressures could disrupt EE markets and prevent certain utilities from meeting planned savings targets in overlapping territories.

Joint Utilities' November 2021 Petition

The November 8, 2021 Joint Petition highlighted the budget challenges described above, noted the general concern among utilities that annual goals create a disincentive for utilities to achieve savings in excess of annual targets, and proposed a solution to address the budget problem and reduce the likelihood of disruptions. The Joint Petitioners' Proposed Solution was as follows:

1. Utilities will work cooperatively, as set forth in the MOAs, to address budget constraints between the utilities. In no case will Lead Utilities commit Partner Utility budgets without

[13] The MOA terms are the same in each MOA except for notice parties at each company. In addition, PSE&G and SJI Utilities, Inc. ("SJI") have an incremental addendum 5 specific to their on-bill financing sharing arrangement.

[14] The "Utility Working Group" consists of representatives from Staff, Rate Counsel, and each of the utilities, as well as staff from other entities that support Staff, including TRC Environmental Corporation; the Rutgers Center for Green Building; and the New Jersey Institute of Technology. The group typically meets on a bi-weekly basis.

the consent and approval of the Partner Utility. Consistent with the flexibility provided for in the June 2020 Order and/or each utility's respective Triennium 1 EE program approval, a Partner Utility may implement potential remedies to address budget constraints, including but not limited to the following:

a. Transfer projects within coordinated programs between Lead Utilities and Partner Utilities;
b. Reallocate budgets among programs, consistent with the authorities established in the June 2020 Order and/or each utility's respective Triennium 1 EE program approval;
c. Reallocate budgets among Program Years, consistent with the authorities established within each utility's respective Triennium 1 EE program approval; and
d. Seek Board approval for additional budget funding amounts.

2. When the JBAC identifies that a Lead Utility is forecast to exhaust the available funding from its Partner Utility for an approved program that includes energy savings on both fuels, the Partner Utility, in consultation with the JBAC, will consider whether the Partner Utility budget allocation can be increased or if the Partner Utility can pursue remedies set forth in its MOA or, as noted above, to accommodate the anticipated shortfall. If such remedies cannot be implemented, the members of the JBAC who are affected by the shortfall in funding for the program(s) will strive to reach agreement to either: (1) notify the Board that a program is anticipated to shut down in specific utility territories; or (2) allow those Lead Utilities with available budget to continue to implement the program with investment from its approved budget unless and until such time as a Partner Utility budget allocation may be increased, consistent with the following:

   a. Costs and Investment Recovery
      i. The Lead Utility may invest from its approved budget to support customers pursuing comprehensive EE solutions for both fuels, up to the amount of the Lead Utility's approved budget.
      ii. Investments, rebates, and financing will be paid for through the Lead Utility's approved budget and tracked separately from other program investments, rebates, and financing. These costs will be fully recoverable through the Lead Utility's cost recovery mechanism(s).

   b. Lost Revenues, Quantitative Performance Indicators, and Statutory Energy Savings
      The Partner Utility will claim all savings that the Lead Utility achieves under this remedy for purposes related to determining compliance with statutory savings targets, Quantitative Performance Indicators ("QPIs")[15] other than those associated with cost-benefit analysis, and for the purpose of recovering lost revenues through a Lost Revenue Adjustment Mechanism ("LRAM").[16] The

[15] The CEA requires the Board to adopt QPIs to establish utility targets for energy usage reduction and peak demand reduction. N.J.S.A. 48:3-87.9(c).

[16] The CEA calls for utilities to file for the revenue impact of sales losses resulting from implementation of EE and PDR programs. The June 2020 Order permits Utilities to file for and recover lost revenues in the

Lead Utility will be eligible to recover all other costs according to existing investment and cost recovery mechanisms, but will not claim the savings achieved from the Partner Utility's fuel as part of any LRAM.

c. Cost-Effectiveness Testing
The Lead Utility making such an investment may claim savings achieved (kWh or therm) through its investments made in the Partner Utility's service territory for purposes of testing program cost-effectiveness and for QPIs associated with cost-benefit analysis.

d. Tracking
Lead Utilities and Partner Utilities will separately track investments made and savings achieved pursuant to the above remedy where Lead Utilities invest from its approved budget for Partner Utility fuel savings realized in the Partner Utility's territory.

In terms of carryover of excess savings, the Utilities requested permission to apply excess annual energy savings toward goals and QPIs in subsequent compliance years.

Staff notified all parties to the original docketed EE cases of the November 8, 2021 Joint Petition.

STIPULATION

Following discovery and settlement conferences, the Parties reached an agreement to enter into the Stipulation, resolving all issues raised in or related to the November 8, 2021 Joint Petition, which in relevant part provides for the following:[17]

13. The Utilities will work cooperatively, as set forth in the MOAs, to address budget constraints between the Utilities. In no case will Lead Utilities commit Partner Utility budgets without the consent and approval of the Partner Utility, which consent and approval shall not be unreasonably withheld, conditioned, or delayed.

14. Consistent with the flexibility that the June 2020 Order provides regarding each utility's respective Triennium 1 EE program approval, a Partner Utility may implement the following remedies to address budget constraints:
    a. Transfer projects within coordinated programs between each Lead Utility and Partner Utility in each such grouping;

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amount that they can demonstrate was attributable to utility-run EE and PDR programs through an LRAM. As an alternative to an LRAM, most utilities utilize an approved Conservation Incentive Program, which adjusts revenues for any differences from the baseline after consideration of the other CIP requirements. See June 2020 Order at 26–27, 40.

[17] Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Paragraphs are numbered to coincide with the Stipulation.

b. Reallocate budgets among programs, consistent with the parameters established in the June 2020 Order and/or each utility's respective Triennium 1 EE program approval;[18] and
c. Reallocate budgets among Program Years, consistent with the parameters established in the June 2020 Order and/or each utility's respective Triennium 1 EE program approval.

15. With respect to approved programs that include energy savings on both fuels, in the event that the JBAC identifies that one or more Lead Utilities are forecasted to exhaust the available funding from a Partner Utility for an approved program that includes energy savings on both electricity and natural gas, the Partner Utility, in consultation with the JBAC, will consider whether the Partner Utility's budget allocation can be increased or if the Partner Utility may pursue remedies to accommodate the anticipated shortfall as set forth in its respective MOA or as noted in the Stipulation.

16. If such remedies cannot be implemented, the JBAC members whom the projected shortfall affects in terms of funding for the EE program(s) will strive to reach agreement to either: (1) initiate discussions with Staff and Rate Counsel that a program is anticipated to shut down in specific utility territories; or (2) allow those Lead Utilities with available budget to continue to implement the EE program with investment from their respective approved budgets unless and until such time as a Partner Utility budget allocation may be increased, consistent with the following:

   a. Costs and Investment Recovery
      i. The Lead Utility may invest from its approved budget to support customers pursuing comprehensive EE solutions for both electricity and natural gas, up to the amount of the Lead Utility's approved budget. The affected Lead Utilities and Partner Utilities shall agree to such investments.
      ii. Investments, rebates, and financing shall be paid for through the Lead Utility's approved budget and tracked separately from other EE program investments, rebates, and financing. These costs will be fully recoverable through the Lead Utility's cost recovery mechanism(s).

   b. Lost Revenues, Quantitative Performance Indicators, and Statutory Energy Savings
      i. The Partner Utility will claim all savings that the Lead Utility achieves under this remedy as a result of the Lead Utility's investment in its Partner Utility's electricity or natural gas fuel, as applicable, under this remedy for purposes related to determining compliance with statutory savings targets, QPIs other than those associated with cost-benefit analysis, and for the purpose of recovering lost revenues through a LRAM. The Lead Utility will be eligible to recover all other reasonable and prudent costs according to

[18] The June 2020 Order allows each utility to shift its program budget(s) for programs within the same sector up to 25% of the individual program's total budget with Staff notification, 25–50% with Staff approval, and over 50% with Board approval, and that each utility can shift budgets between or among sectors up to 5% of individual utility sector budgets with Staff notification, 5–10% with Staff approval, and over 10% with Board approval. See June 2020 Order at 13.

existing investment and cost recovery mechanisms, but will not claim the savings achieved from the Partner Utility's fuel as part of any LRAM.

c. Cost-Effectiveness Testing
    i. The Lead Utility making such an investment may claim savings achieved (in terms of avoided energy or gas, measured in either kWh or therm, as applicable) through its investments made in the Partner Utility's service territory for purposes of testing program cost-effectiveness and for QPIs associated with cost-benefit analysis.

d. Tracking
    i. Each Lead Utility and its respective Partner Utility will separately track investments made and savings achieved pursuant to the above remedy where the Lead Utility invests from its approved budget for its Partner Utility's EE savings realized in the Partner Utility's territory.

e. Carry-Over of Excess Savings
    i. To promote customer adoption of EE and ensure EE program continuity, the Utilities may apply energy savings in excess of annual compliance goals ("Carryover Savings") toward goals and QPIs for Program Years 2023, 2024, and 2025, but this shall not alleviate the utilities' minimum energy savings obligations under the CEA, as described in footnote (5). Carryover Savings will be applied to only the immediately subsequent Program Year and will be the first savings counted prior to application of any efficiency savings captured in that subsequent Program Year. Since there is no formal energy savings target for Program Year 2022, the Parties agree to derive a target for Program Year 2022, as follows:

Electric Targets				Gas Targets	
Overall	Utility	Reporting Program Year	CEA Program Year Reference	Overall	Utility
2.15%	1.44%	**PY26**	**Year 5**	1.10%	0.75%
1.80%	1.21%	**PY25**	**Year 4**	0.95%	0.65%
1.45%	0.97%	**PY24**	**Year 3**	0.75%	0.51%
1.10%	0.74%	**PY23**	**Year 2**	0.50%	0.34%
0.75%	0.51%	**PY22 Derived**	**Year 1**	0.25%	0.17%

    ii. Carryover Savings to be applied to Program Year 2025 shall be limited to no more than 10% of any utility's Program Year 2025 annual compliance goal based solely on the savings calculation using the primary metric for Program Year 2025. Should a utility seek to apply Carryover Savings in excess of 10% of its Program Year 2025 annual compliance goal, the Carryover Savings shall be adjusted based on information reported in each utility's next triennial progress report, which is presently due to be filed 90 days following the end of Program Year 2024. Such adjustment shall be based on a ratio of the savings reported after application of the Program

Year 2024 secondary metric for key measures, as defined by the Technical Reference Manual ("TRM") Committee of the Evaluation, Measurement, and Verification ("EM&V") Workgroup, compared against the savings reported utilizing the Program Year 2024 primary metric used for compliance.[19] An illustrative example of the adjustment for Carryover Savings in excess of 10% is shown in the following table:

Calculation	Formula	Example Value
(A) Utility Energy Reduction Target for PY 2024		100,000
(B) Energy Reduction Achieved in PY 2024		115,000
(C) Unadjusted Carryover Savings for PY 2025	B - A	15,000
(D) Carryover Adjustment Ratio	PY 2024 Savings (Secondary) / PY 2024 Savings (Primary)	93%
(E) Adjusted Carryover Savings for PY 2025	C * D	13,950

iii. The Parties recognize that Carryover Savings, to the extent they exist, will be relevant to the development of plans for the next triennium and agree that there will be a review of the potential budget impacts of any Carryover Savings as part of the comprehensive review of Triennium 2 filings.

17. The Parties respectfully ask the Board to give consideration to the process for resolving inter-utility budget and energy savings issues as part of its comment and review of the framework for future triennia of utility EE and PDR programs. The Parties agree that the issues addressed in the Stipulation should be discussed within future framework review proceedings. Such discussions should be conducted as part of a broader Board policy effort in advance of the utilities' submittal of EE program filings for Triennium 2.

18. While the Stipulation does not seek approval of an increase to current utility budgets, the Utilities reserve their right to make future filings as necessary to ensure uninterrupted provision of clean energy programs. An acceleration of EE programs leading to depletion of budgets in Program Year 2024 where the utility has attained or expected to attain the original energy savings goals approved in the utility's Triennium 1 EE Programs will not on its own justify an increase in the current budget, and the utility shall have the burden of demonstrating why an increase is necessary. Additionally, any request for budget increases shall demonstrate that the utility first pursued the remedies set forth in paragraph 17 of the Stipulation. Any such potential filing will identify why additional funding is needed, the impact to ratepayers, and the potential impacts on the marketplace in the absence of additional funding being provided. Similarly, all Parties reserve their right to argue the merits of any such future filing made.

[19] As agreed to by the EM&V Working Group, the TRM Committee of the Working Group will develop a subset of key measures to which savings adjustments will apply and be utilized in the calculation of a secondary savings metric to be reported in the Program Year 2024 Annual Report.

Staff notified all parties to the original docketed EE cases of the Stipulation and received no objections.

DISCUSSION AND FINDINGS

The June 2020 Order directed the utilities to coordinate with each other to design and deliver a consistent set of EE programs throughout the State, and permitted some flexibility in adjusting budget and incentive levels. The Board **RECOGNIZES** that the utilities coordinated extensively on the design of the core EE programs, as well as many of the additional utility-led EE programs. It has since become evident, however, that there is a need for detailed coordination among all of the utilities on program budgets in overlapping service areas toward the end of offering comprehensive EE solutions to customers that reduce both gas and electricity usage and increase energy savings.

The Board **AGREES** that the current challenges related to overlapping budgets pose a threat to continuous delivery of EE programs. The Board **RECOGNIZES** the need for a solution that will prevent disruptions in EE markets and help to provide stability in the first triennium of EE programs. The Board **ACKNOWLEDGES** that the utilities, Rate Counsel, and Staff worked diligently and collaboratively to reach agreement on the best possible solution under the circumstances in terms of addressing current budget constraints, supporting the success of the EE transition and therefore increased adoption of EE throughout the state, and protecting ratepayer interests. At the same time, the Board expects that the Utilities' approach to EE budgeting, now that these problems have been identified, will be thoroughly and fully coordinated in future EE program cycles. The Board **DIRECTS** Staff to work with the utilities and Rate Counsel to implement the remedies so provided in the Stipulation, as applicable, through Program Year 2025.

Having carefully reviewed the November 8, 2021 Joint Petition and the Stipulation, the Board **HEREBY FINDS** the Stipulation to be reasonable, in the public interest, and in accordance with the law. Accordingly, the Board **HEREBY APPROVES** the Stipulation and **HEREBY INCORPORATES** its terms and conditions as though fully stated herein.

The effective date of this Order is August 24, 2022.

DATED: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:

JOSEPH L. FIORDALISO
PRESIDENT

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

ROBERT M. GORDON
COMMISSIONER

ATTEST:

CARMEN D. DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

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 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 PETITION OF ELIZABETHTOWN GAS COMPANY FOR APPROVAL OF NEW ENERGY EFFICIENCY PROGRAMS AND THE ASSOCIATED COST RECOVERY MECHANISM PURSUANT TO THE CLEAN ENERGY ACT AND THE ESTABLISHMENT OF A CONSERVATION INCENTIVE PROGRAM

IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR APPROVAL OF JCP&L'S ENERGY EFFICIENCY AND CONSERVATION PLAN INCLUDING ENERGY AND PEAK DEMAND REDUCTION PROGRAMS (JCP&L EEC)

IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR APPROVAL OF ENERGY EFFICIENCY PROGRAM AND THE ASSOCIATED COST RECOVERY MECHANISM PURSUANT TO THE CLEAN ENERGY ACT, N.J.S.A. 48:3-87.8 ET SEQ. AND 48:3-98.1 ET SEQ.

IN THE MATTER OF 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

IN THE MATTER OF THE PETITION OF ROCKLAND ELECTRIC COMPANY FOR APPROVAL OF ITS ENERGY EFFICIENCY PROGRAM AND PEAK DEMAND REDUCTION PROGRAMS

IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL OF NEW ENERGY EFFICIENCY PROGRAMS AND THE ASSOCIATED COST RECOVERY PURSUANT TO THE CLEAN ENERGY ACT

DOCKET NOS. QO19010040, EO20090621, GO20090619, EO20090620, GO20090622, GO18101112, EO18101113, EO20090623, & GO20090618

SERVICE LIST

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Division of Rate Counsel, cont'd

Maura Caroselli, Esq.
Manager of Gas & Clean Energy
mcaroselli@rpa.nj.gov

Kurt S. Lewandowski, Esq.
Assistant Deputy Rate Counsel
klewando@rpa.nj.gov

NJ Division of Rate Counsel, cont'd

Rate Counsel Consultants

David Dismukes, Ph.D.
Acadian Consulting Group
5800 One Perkins Place Drive, Suite 5-F
Baton Rouge, LA 70808
daviddismukes@acadianconsulting.com

Ezra Hausman, Ph.D., President
Ezra Hausman Consulting
77 Kaposia St.
Auburndale, MA 02466
ezra@ezrahausman.com

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Carmen D. Diaz, Acting Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Henry Gajda, Deputy Chief of Staff
henry.gajda@bpu.nj.gov

Abe Silverman, Esq.,
Executive Policy Counsel
abe.silverman@bpu.nj.gov

General Counsel's Office

Carol Artale, Esq.,
Deputy General Counsel
carol.artale@bpu.nj.gov

Kim Diamond, Esq.
Legal Specialist
kimberly.diamond@bpu.nj.gov

NJBPU, cont'd

Ian Oxenham, Esq., Legal Specialist
ian.oxenham@bpu.nj.gov

Office of the Economist

Dr. Ben Witherell, Chief Economist
benjamin.witherell@bpu.nj.gov

Jackie O'Grady
jackie.ogrady@bpu.nj.gov

Division of Clean Energy

Kelly Mooij, Director
kelly.mooij@bpu.nj.gov

Stacy Ho Richardson, Esq.
Deputy Director
stacy.richardson@bpu.nj.gov

Phil Chao, Ph.D, CEM, Climate Fellow
philip.chao@bpu.nj.gov

Earl Thomas Pierce
earl.pierce@bpu.nj.gov

Division of Water and Energy

Paul Lupo, Energy Division
paul.lupo@bpu.nj.gov

Bart Kilar, Energy Division
bart.kilar@bpu.nj.gov

New Jersey Division of Law

Public Utilities Section
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

NJ Division of Law, cont'd

Michael Beck, DAG
michael.beck@law.njoag.gov

Matko Ilic, DAG
matko.ilic@law.njoag.gov

Steven Chaplar, DAG
steven.chaplar@law.njoag.gov

Atlantic City Electric Company

Philip J. Passanante, Esq.
Assistant General Counsel
Atlantic City Electric Company
92DC42
500 North Wakefield Drive
Newark, DE 19702
philip.passanante@pepcoholdings.com

Nicholas Rosenthal
Manager, Energy Efficiency Programs
nicholas.rosenthal@exeloncorp.com

Jersey Central Power and Light Company

Joshua R. Eckert, Esq.
300 Madison Avenue
Morristown, NJ 07962
jeckert@firstenergycorp.com

Kurt Turosky
Director, Energy Efficiency Compliance & Reporting
turoskyk@firstenergycorp.com

New Jersey Natural Gas Company

1415 Wyckoff Road
P. O. Box 1464
Wall, New Jersey 07719

Andrew K. Dembia, Esq.
Regulatory Affairs Counsel
adembia@njng.com

Anne-Marie Peracchio
Managing Director of Marketing and Energy Efficiency
aperacchio@njng.com

Public Service Electric and Gas Company

PSEG Services Corporation
80 Park Plaza, T5
P.O. Box 570
Newark, New Jersey 07102
Matthew M. Weissman, Esq.
Managing Counsel, State Regulatory
matthew.weissman@pseg.com

Danielle Lopez, Esq.
Associate Counsel - Regulatory
danielle.lopez@pseg.com

Stacey M. Barnes, Esq.
Associate Counsel - Regulatory
stacey.barnes@pseg.com

Mark Scorsolini
mark.scorsolini@pseg.com

Rockland Electric Company

Margaret Comes, Esq., Associate Counsel
4 Irving Place Suite 1815-S
New York, New York 10003
comesm@coned.com

Charmaine Cigliano
Director, Customer Energy Services
cigliano@oru.com

South Jersey Gas Company and Elizabethtown Gas Company

Deborah M. Franco, Esq., Vice President,
Rates, Regulatory and Sustainability
SJI Utilities, Inc.
520 Green Lane
Union, NJ 07083
dfranco@sjindustries.com

Maureen Minkel, Director
Energy Efficiency and Conservation
mminkel@sjindustries.com

Eastern Environmental Law Center

Daniel Greenhouse, Esq.
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
dgreenhouse@easternenvironmental.org

Energy Efficiency Alliance of New Jersey

John M. Kolesnik, Esq., Policy Counsel
701 E. Gate Dr.
Mt. Laurel Township, NJ 08054
jkolesnik@keealliance.org

Market Participants

Christopher Torkelson, Esq.
Eckert Seamans Cherin & Mellott, LLC
P.O. Box 5404
Princeton, NJ 08543
ctorkelson@eckertseamans.com

Karen O. Moury, Esq.
Kristine Marsilio, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
kmarsilio@eckertseamans.com

Natural Resources Defense Council

Eric Miller, Esq.
40 W 20th St. #11
New York, NY 10011
emiller@nrdc.org

New Jersey Large Energy Users Coalition

Steven S. Goldenberg, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
sgoldenberg@ghclaw.com

Paul F. Forshay, Esq.
Eversheds Sutherland (US) LLP
700 Sixth Street, N.W., Suite 700
Washington, D.C. 20001-3980
paulforshay@eversheds-sutherland.com

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE IMPLEMENTATION OF L. 2018, C. 17 REGARDING THE ESTABLISHMENT OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS	: : : : :	 BPU Docket No. QO19010040
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	: : : : : : :	 BPU Docket No. EO20090621
IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY FOR APPROVAL OF NEW ENERGY EFFICIENCY PROGRAMS AND THE ASSOCIATED COST RECOVERY MECHANISM PURSUANT TO THE CLEAN ENERGY ACT AND THE ESTABLISHMENT OF A CONSERVATION INCENTIVE PROGRAM	: : : : : : : :	 BPU Docket No. GO20090619
IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR APPROVAL OF JCP&L'S ENERGY EFFICIENCY AND CONSERVATION PLAN INCLUDING ENERGY AND PEAK DEMAND REDUCTION PROGRAMS (JCP&L EEC)	: : : : : : :	 BPU Docket No. EO20090620
IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR APPROVAL OF ENERGY EFFICIENCY PROGRAM AND THE ASSOCIATED COST RECOVERY MECHANISM PURSUANT TO THE CLEAN ENERGY ACT, N.J.S.A.48:3-87.8 ET SEQ. AND 48:3-98.1 ET SEQ.	: : : : : : :	 BPU Docket No. GO20090622
IN THE MATTER OF 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

IN THE MATTER OF THE PETITION OF ROCKLAND ELECTRIC COMPANY FOR APPROVAL OF ITS ENERGY EFFICIENCY PROGRAM AND PEAK DEMAND REDUCTION PROGRAMS	:	BPU Docket No. EO20090623
IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL OF NEW ENERGY EFFICIENCY PROGRAMS AND THE ASSOCIATED COST RECOVERY PURSUANT TO THE CLEAN ENERGY ACT	:	BPU Docket No. GO20090618

STIPULATION AND AGREEMENT

APPEARANCES:

Philip J. Passanante, Assistant General Counsel, Atlantic City Electric Company
Joshua R. Eckert, Counsel for Jersey Central Power & Light Company
Andrew K. Dembia, Regulatory Affairs Counsel, New Jersey Natural Gas Company
Danielle Lopez, Associate Counsel—Regulatory and Stacey M. Barnes, Associate Counsel—Regulatory, Public Service Electric and Gas Company
Margaret Comes, Associate Counsel, Rockland Electric Company
Deborah M. Franco, Vice President, Rates, Regulatory and Sustainability, SJI Utilities, Inc.
Maura Caroselli, Deputy Rate Counsel, Kurt Lewandowski, Esq., Assistant Deputy Rate Counsel, New Jersey Division of Rate Counsel (Brian O. Lipman, Director)
Matko Ilic, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Matthew J. Platkin, Acting Attorney General of New Jersey).

It is hereby AGREED, by and between Atlantic City Electric Company ("ACE"), Elizabethtown Gas Company ("ETG"), Jersey Central Power & Light Company ("JCP&L"), New Jersey Natural Gas Company ("NJNG"), Public Service Electric and Gas Company ("PSE&G"), Rockland Electric Company ("RECO"), South Jersey Gas Company ("SJG") (collectively referred to herein as the "Utilities" and each a "Utility"), the Staff of the New Jersey Board of Public Utilities ("Board Staff"), and the New Jersey Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties") to execute this Stipulation of Settlement ("Stipulation") for approval of a solution to address budget constraints across the Utilities that the Utilities assert have the potential to disrupt the delivery of comprehensive energy efficiency ("EE") solutions for customers and inhibit the ability of some Utilities to meet their energy savings targets. The Parties hereby join in recommending that the New Jersey Board of Public Utilities ("Board") issue an Order approving this Stipulation.

BACKGROUND

1. On January 13, 2008, P.L. 2007, c. 340 (often referred to as the "RGGI Act") was signed into law based upon the New Jersey ("State") Legislature's findings that 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.

2. By Order dated June 10, 2020, the Board approved an EE transition framework for EE programs implemented pursuant to the Clean Energy Act ("CEA"), P.L. 2018, c. 17, including requirements for the Utilities to establish programs that reduce the use of electricity and natural gas within their territories (the "CEA Order").[1] In the CEA Order, the Board directed New Jersey's electric and gas companies to submit their first respective three-year filings for EE and peak demand reduction ("PDR") programs by September 25, 2020, for Board approval by May 1, 2021 and implementation beginning July 1, 2021.[2]

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[1] The CEA required, in part, that "[e]ach electric public utility . . . achieve annual reductions in the use of electricity of two percent of the average annual usage in the prior three years within five years of implementation of its electric energy efficiency program" and that "[e]ach natural gas public utility . . . achieve annual reductions in the use of natural gas of 0.75 percent of the average annual usage in the prior three years within five years of implementation of its gas energy efficiency program." See N.J.S.A. 48:3-87.9(a). *See also* 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).

[2] The first three-year ("Triennium 1") program cycle comprises the following program years (each a "Program

3. With the exception of PSE&G, which had an existing filing pending with the Board at the time the CEA Order was issued, the Utilities filed petitions pursuant to the CEA Order, and each received approval of their respective programs, as modified by the Stipulation of Settlement entered in each proceeding.[3]

4. As the CEA Order requires, the Utilities were directed to coordinate on the design of the core EE programs, as well as many of the additional Utility-led programs.

5. Many of the approved programs provide an opportunity to deliver comprehensive EE solutions to customers that can reduce both their gas and electric usage and increase their energy savings. This requires the sharing of investments and savings for dual fuel projects where electric and gas utility service territories overlap.

6. In such a territory overlap scenario, the Utility that serves as the primary point of contact for customers, contractors, and trade allies for a project is considered to be the lead Utility ("Lead Utility") for that project.[4] The Lead Utility follows the project through to completion, pays the project incentive and financing/on-bill repayment, if relevant, and then works with the applicable electric or gas partner Utility ("Partner Utility") to transfer the energy savings for their

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Year"):
Program Year 1: July 1, 2021 – June 30, 2022 ("Program Year 2022");
Program Year 2: July 1, 2022 – June 30, 2023 ("Program Year 2023"); and
Program Year 3: July 1, 2023 – June 30, 2024 ("Program Year 2024").

The second three-year ("Triennium 2") program cycle comprises the following Program Years:
Program Year 4: July 1, 2024 – June 30, 2025 ("Program Year 2025");
Program Year 5: July l, 2025 – June 30, 2026 ("Program Year 2026"); and
Program Year 6: July 1, 2026 – June 30, 2027 ("Program Year 2027").

[3] The relevant docket numbers are listed in the caption of this stipulation.

[4] Customers and contractors have the option of selecting either of their Utilities to participate in the program when their project involves both fuels. The Utility which customers ultimately apply to is considered the Lead Utility for that particular project.

fuel and the cost of the investment for their share of the project, commensurate with savings for each fuel.

7. The Utilities executed a series of bilateral Memoranda of Agreement dated June 2021 (each an "MOA" and, collectively, the "MOAs" attached hereto as Exhibit A) to document the agreements regarding the treatment of transferred energy savings and shared investments on joint projects. The terms are consistent across the MOAs.[5] In accordance with the MOAs, the Utilities have established a Joint Budget Allocation Committee ("JBAC") to monitor and manage program budget coordination among the joint Utilities.

8. While Partner Utilities have Board-approved budgets that were forecasted at the time of approval to be sufficient to achieve their respective efficiency savings targets, in some instances, these budgets are proving insufficient to cover a Partner Utility's share of costs for all of the dual-fuel EE projects that a Lead Utility is able to implement in a shared service territory.

9. Although the CEA Order provides some flexibility for Utilities to shift funding as needed, these tools are insufficient to handle the magnitude of the current budget constraints between some Utilities. In fact, some Utilities have already shifted funding to accommodate the needs of overlapping Utilities in their service territory. Nonetheless, the Utilities anticipate that it will become increasingly difficult to find additional funding to shift to cover these service area overlap funding gaps as the program cycle progresses.

10. A disparity of budget funding between Utilities threatens the continuity of core EE program implementation and may result in disruptions to EE markets. These disruptions may prevent customer participation in some service territories and may degrade customers' experience

[5] The MOA terms are the same except for notice parties at each company. In addition, PSE&G and SJI Utilities, Inc ("SJI") have an incremental addendum 5 specific to their on-bill financing sharing arrangement.

and confidence in energy savings efforts. They could also lead to certain Utilities being unable to meet the targets for savings which were approved in their respective EE programs.

11. The Utilities initiated discussions regarding these challenges with Board Staff and Rate Counsel through the Utility Working Group[6] in July 2021. The Utilities filed a petition on November 8, 2021 with the Docket Numbers that appear on the first page of this document that highlighted the budget challenges described above and proposed a solution to address this problem and reduce the likelihood of disruptions (the "November 8, 2021 Petition"). In the November 8, 2021 Petition, the Utilities also note that the program budget constraints highlight the general concern among Utilities that annual goals, by their nature, create a disincentive for Utilities to achieve savings in excess of annual targets. For example, with respect to the solution proposed by the Utilities, Partner Utilities with Lead Utilities achieving incremental energy savings within their service territory would be disadvantaged when facing future annual compliance goals due to the additional energy savings captured in an earlier year by the Lead Utility because the Partner Utility cannot subsequently realize the same EE savings associated with the installed measures in future compliance years. The Utilities further noted that, as a general matter, over-compliance with annual energy savings targets will cause early erosion of future-year EE savings potential because EE savings associated with the installed measures causing the over-compliance cannot be realized by the Utility again in future compliance years. Accordingly, the Utilities proposed that they be allowed to carryover EE savings in excess of annual compliance targets and to count such savings toward their compliance in future program years (each, a "Program Year"). All Parties to the original CEA dockets[7] were

[6] The Utility Working Group consists of representatives from Board Staff, Rate Counsel, and each of the Utilities, as well as staff from other entities that support Board Staff, including TRC Environmental Corporation, the Rutgers Center for Green Building, and the New Jersey Institute of Technology. The group typically meets on a bi-weekly basis.

[7] The relevant docket numbers are listed in the caption of this stipulation.

notified of the November 8, 2021 Petition. Only Board Staff and Rate Counsel took action to participate in a discovery process.

12. In recognition of the budget constraints underscored in the deployment of EE programs in overlapping territories, the Parties agree to provide additional flexibility to the Utilities to support uninterrupted delivery of EE core programs in furtherance of the State's clean energy goals. The Parties hereby **STIPULATE AND AGREE** to the following solution during the first triennium (July 2021 through June 2024) of approved EE core programs:

STIPULATED MATTERS

13. The Utilities will work cooperatively, as set forth in the MOAs, to address budget constraints between the Utilities. In no case will Lead Utilities commit Partner Utility budgets without the consent and approval of the Partner Utility, which consent and approval shall not be unreasonably withheld, conditioned, or delayed.

14. Consistent with the flexibility that the CEA Order provides regarding each Utility's respective Triennium 1 EE program approval, a Partner Utility may implement the following remedies to address budget constraints:

a. Transfer projects within coordinated programs between each Lead and Partner Utility in each such grouping;

b. Reallocate budgets among programs, consistent with the parameters established in the CEA Order[8] and/or each Utility's respective Triennium 1 EE program approval; and

[8] The CEA Order allows each Utility to shift its program budget(s) for programs within the same sector up to 25% of the individual program's total budget with Board Staff notification, 25–50% with Board Staff approval, and over 50% with Board approval, and that each Utility can shift budgets between or among sectors up to 5% of individual Utility sector budgets with Board Staff notification, 5–10% with Board Staff approval, and over 10% with Board approval. *See* CEA Order at 13.

c. Reallocate budgets among planning years, consistent with the parameters established within each Utility's respective Triennium 1 EE program approval.

15. With respect to approved programs that include energy savings on both fuels, in the event that the JBAC identifies that one or more Lead Utilities are forecasted to exhaust the available funding from a Partner Utility for an approved program that includes energy savings on both electricity and natural gas, the Partner Utility, in consultation with the JBAC, will consider whether the Partner Utility's budget allocation can be increased or if the Partner Utility may pursue remedies to accommodate the anticipated shortfall as set forth in its respective MOA or as noted above.

16. If such remedies cannot be implemented, the JBAC members whom the projected shortfall affects in terms of funding for the EE program(s) will strive to reach agreement to either: (1) initiate discussions with Board Staff and Rate Counsel that a program is anticipated to shut down in specific Utility territories; or (2) allow those Lead Utilities with available budget to continue to implement the EE program with investment from their respective approved budgets unless and until such time as a Partner Utility budget allocation may be increased, consistent with the following:

a. Costs and Investment Recovery

i. The Lead Utility may invest from its approved budget to support customers pursuing comprehensive EE solutions for both electricity and natural gas, up to the amount of the Lead Utility's approved budget. The affected Lead and Partner Utilities shall agree to such investments.

ii. Investments, rebates, and financing shall be paid for through the Lead Utility's approved budget and tracked separately from other EE program investments, rebates, and financing. These costs will be fully recoverable through the Lead Utility's cost recovery mechanism(s).

b. Lost Revenues, Quantitative Performance Indicators, and Statutory Energy Savings

i. The Partner Utility will claim all savings that the Lead Utility achieves under this remedy as a result of the Lead Utility's investment in its Partner Utility's electricity or natural gas fuel, as applicable, under this remedy for purposes related to determining compliance with statutory savings targets, Quantitative Performance Indicators ("QPIs")[9] other than those associated with cost-benefit analysis, and for the purpose of recovering lost revenues through a Lost Revenue Adjustment Mechanism ("LRAM").[10] The Lead Utility will be eligible to recover all other reasonable and prudent costs according to existing investment and cost recovery mechanisms, but will not claim the savings achieved from their Partner Utility's fuel as part of any LRAM.

c. Cost-Effectiveness Testing

i. The Lead Utility making such an investment may claim savings achieved (in terms of avoided energy or gas, measured in either kWh or therm, as applicable) through its investments made in the Partner Utility's service territory for purposes of testing program cost-effectiveness and for QPIs associated with cost-benefit analysis.

d. Tracking

i. Each Lead Utility and its respective Partner Utility will separately track investments made and savings achieved pursuant to the above remedy

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[9] The CEA requires the Board to adopt QPIs to establish utility targets for energy usage reduction and peak demand reduction. N.J.S.A. 48:3-87.9(c).

[10] The CEA calls for Utilities to file for the revenue impact of sales losses resulting from implementation of EE and PDR programs. The CEA Order permits Utilities to file for and recover lost revenues in the amount that they can demonstrate was attributable to Utility-run EE and PDR programs through a Lost Revenue Adjustment Mechanism. As an alternative to an LRAM, most utilities utilize an approved Conservation Incentive Program ("CIP") which adjusts revenues for any differences from the baseline after consideration of the other CIP requirements. *See* CEA Order at 26–27.

where the Lead Utility invests from its approved budget for its Partner Utility's EE savings realized in the Partner Utility's territory.

e. *Carry-Over of Excess Savings*

i. To promote customer adoption of EE and ensure EE program continuity, the Utilities may apply energy savings in excess of annual compliance goals ("Carryover Savings") toward goals and QPIs for Program Years 2023, 2024, and 2025, but this shall not alleviate the Utilities' minimum energy savings obligations under the CEA, as described in footnote (1) of this document. Carryover Savings will be applied to only the immediately subsequent Program Year and will be the first savings counted prior to application of any efficiency savings captured in that subsequent Program Year. Since there is no formal energy savings target for Program Year 2022, the Parties agree to derive a target for Program Year 2022, as follows:

Electric Targets				Gas Targets	
Overall	Utility	**Reporting Program Year**	**CEA Program Year Reference**	Overall	Utility
2.15%	1.44%	**PY26**	**Year 5**	1.10%	0.75%
1.80%	1.21%	**PY25**	**Year 4**	0.95%	0.65%
1.45%	0.97%	**PY24**	**Year 3**	0.75%	0.51%
1.10%	0.74%	**PY23**	**Year 2**	0.50%	0.34%
0.75%	0.51%	**PY22 Derived**	**Year 1**	0.25%	0.17%

ii. Carryover Savings to be applied to Program Year 2025 shall be limited to no more than 10% of any Utility's Program Year 2025 annual compliance goal based solely on the savings calculation using the primary metric for Program Year 2025. Should a Utility seek to apply Carryover Savings in excess of 10% of its Program Year 2025 annual compliance goal, the Carryover Savings shall be adjusted based on information reported in each Utility's next triennial progress report, which is presently due to be filed 90 days following the end of Program Year 2024. Such adjustment shall be based on a ratio of the savings reported after application of the Program Year 2024 secondary metric for key measures, as defined by the Technical Reference Manual ("TRM") Committee of the Evaluation, Measurement, and Verification ("EM&V") Workgroup, compared against the savings reported utilizing the Program Year 2024 primary metric used for compliance.[11] An illustrative example of the adjustment for Carryover Savings in excess of 10% is shown in the following table:

Calculation	Formula	Example Value
(A) Utility Energy Reduction Target for PY 2024		100,000
(B) Energy Reduction Achieved in PY 2024		115,000
(C) Unadjusted Carryover Savings for PY 2025	B-A	15,000
(D) Carryover Adjustment Ratio	PY 2024 Savings (Secondary) / PY 2024 Savings (Primary)	93%
(E) Adjusted Carryover Savings for PY 2025	C * D	13,950

iii. The Parties recognize that Carryover Savings, to the extent they exist, will be relevant to the development of plans for the next triennium and agree that there will be a review of the potential budget impacts of any Carryover Savings as part of the comprehensive review of Triennium 2 filings.

17. The Parties respectfully ask the Board to give consideration to the process for resolving inter-utility budget and energy savings issues as part of its comment and review of the framework for future triennia of Utility EE and PDR programs. The Parties agree that the issues addressed herein should be discussed within future framework review proceedings. Such

[11] As agreed to by the EM&V Working Group, the TRM Committee of the Working Group will develop a subset of key measures to which savings adjustments will apply and be utilized in the calculation of a secondary savings metric to be reported in the Program Year 2024 Annual Report.

discussions should be conducted as part of a broader Board policy effort in advance of the Utilities' submittal of EE program filings for Triennium 2.

18. While this Stipulation does not seek approval of an increase to current Utility budgets, the Utilities reserve their right to make future filings as necessary to ensure uninterrupted provision of clean energy programs. An acceleration of EE programs leading to depletion of budgets in Program Year 2024 where the Utility has attained or expected to attain the original energy savings goals approved in the Utility's Triennium 1 EE Programs will not on its own justify an increase in the current budget, and the Utility shall have the burden of demonstrating why an increase is necessary. Additionally, any request for budget increases shall demonstrate that the Utility first pursued the remedies set forth in paragraph 17 of this Stipulation. Any such potential filing will identify why additional funding is needed, the impact to ratepayers, and the potential impacts on the marketplace in the absence of additional funding being provided. Similarly, all Parties reserve their right to argue the merits of any such future filing made.

19. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event that the Board does not accept any particular aspect of this Stipulation or approve this Stipulation in its entirety, 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 that the Board does not adopt this Stipulation in its entirety, in any applicable Order, then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

20. It is the intent of the Parties that the Board approve the provisions herein as being in the public interest. The Parties further agree that they consider the Stipulation to be binding on them for all purposes.

21. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of these proceedings. Except as expressly provided herein, the 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 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.

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL
OF NEW JERSEY
Attorney for the Staff of the New Jersey
Board of Public Utilities

By: ____________________________
Steven Chaplar
Deputy Attorney General

Dated: July 13, 2022

BRIAN O. LIPMAN
DIRECTOR, NEW JERSEY
DIVISION OF RATE COUNSEL

By: __Maura Caroselli__________________
Maura Caroselli
Manager of Gas & Clean Energy

Dated: July _14_, 2022

ATLANTIC CITY ELECTRIC COMPANY

By: ________________________________
Philip J. Passanante
Assistant General Counsel

Dated: July 7, 2022

JERSEY CENTRAL POWER & LIGHT COMPANY

By: ________________________
Joshua R. Eckert
Counsel

Dated: July 7, 2022

NEW JERSEY NATURAL GAS COMPANY

By: ______________________
Andrew K. Dembia
Regulatory Affairs Counsel

Dated: July 7, 2022

PUBLIC SERVICE ELECTRIC & GAS COMPANY

By: ______________________
Danielle Lopez
Associate Counsel–Regulatory

Dated: July 7, 2022

ROCKLAND ELECTRIC COMPANY

By: Margaret Comes
Margaret Comes
Associate Counsel

Dated: July 7, 2022

SJI UTILITIES, INC[12]

By: ______________________
Deborah M. Franco
Vice President Rates, Regulatory and Sustainability

Dated: July 7, 2022

[12] ETG and SJG are wholly-owned subsidiaries of SJI Utilities, Inc.