State of New Jersey
DIVISION OF RATE COUNSEL
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August 7, 2023

Via Electronic Mail board.secretary@bpu.nj.gov
Sherri L. Golden, RMC
Board Secretary
44 South Clinton Avenue, 1ST Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of the Petition of Rockland Electric Company for Approval of an Electric Vehicle Program, Establishment of an Electric Vehicle Surcharge, And For Other Relief
BPU Docket No. EO20110730

In the Matter of the Verified Petition of Jersey Central Power & Light Company for Approval of an Electric Vehicle Program and an Associated Cost Recovery Mechanism
BPU Docket No. EO21030630

In the Matter of the Petition of Atlantic City Electric Company for approval of a Voluntary Program for Plug-In Vehicle Charging
BPU Docket No. EO18020190

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of Its Clean Energy Future – Electric Vehicle and Energy Storage ("CEF-EVES") Program on a Regulated Basis
BPU Docket No. EO18101111

Dear Board Secretary Golden:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in accordance with the Notice issued by the Board of Public Utilities ("Board") in this matter on July 21, 2023. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at

board.secretary@bpu.nj.gov.

Please acknowledge receipt of these comments.

Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.
Director, Division of Rate Counsel

By: /s/ Brian Weeks
Brian Weeks, Esq.
Deputy Rate Counsel

BW
Enclosure

cc: Stacy Peterson, BPU
Robert Brabston, BPU
Jim Ferris, BPU
Pamela Owen, DAG, ASC

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BPU Docket No. EO18101111

Comments of the New Jersey Division of Rate Counsel

August 7, 2023

The New Jersey Division of Rate Counsel ("Rate Counsel") appreciates the opportunity to comment on the modified timelines of eligibility for areas of last resort in the electric distribution companies' ("EDCs") electric vehicle ("EV") programs, as proposed by Board Staff on July 21, 2023 ("July 21 Notice").[1] The EDCs' EV programs were developed pursuant to N.J.S.A. 48:25-1 to -11 ("EV Act"), amended, and by Board Order[2] that directed the EDCs to establish and implement a program to incentivize the installation of light-duty, publicly accessible EV charging technology (EV servicing equipment or "EVSE") in the State of New

[1] https://www.nj.gov/bpu/pdf/publicnotice/Notice_requestforcomments_AreasofLastResort%20Update-Amended.pdf.

[2] In re Minimum Filing Requirements for Light-Duty Publicly-Accessible Electric Vehicle Charging, BPU Docket No. QO20050357, Order Adopting the Minimum Filing Requirements for Light-Duty, Publicly Accessible Electric Vehicle Charging (dated September 23, 2020) ("MFR Order"). The Board reissued that Order on October 20, 2020, to correct a typographical error in the definition of "publicly-available charging."

Jersey. The EDCs' EV programs provide ratepayer-funded make-ready incentives for private and commercial chargers.[3]

SUMMARY

Rate Counsel supports the concept of delaying the start of the time period during which an EDC may apply for an Area of Last Resort, to address the concerns identified in the July 21 Notice. However, Rate Counsel considers the proposed delays too short to address those concerns. The EDCs need more time to ramp up their EV programs, but even with the proposed delays two of the EDCs are currently within the timeframe of when they can propose an Area of Last Resort.. Moreover, the proposed delays do not allow sufficient time for New Jersey to benefit from the nationwide National Electric Vehicle Infrastructure ("NEVI") Program and its funding. Extending the proposed delays to address these concerns may materially advantage ratepayers; for example, the NEVI funds should reduce or even obviate the need for ratepayers to subsidize electric vehicle service equipment ("EVSE"). Rate Counsel recommends that the Board lengthen the delays by at least another year, or until federal NEVI funds are allocated to EVSE installation in New Jersey, and respond to the other issues identified below, before finalizing timeline modifications in the EDCs' EV programs.

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[3] I/M/O the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future Electric Vehicle and Energy Storage ("CEF-EVES") Program on a Regulated Basis, BPU Docket No. EO18101111 (Order, January 27, 2021) (effective Jan. 30, 2021); I/M/O the Petition of Atlantic City Electric Company for Approval of a Voluntary Program for Plug-In Vehicle Charging, BPU Docket No. EO18020190 (Order, February 17, 2021) (effective Feb. 25, 2021); I/M/O the Petition of Rockland Electric Company for Approval of an Electric Vehicle Program, Establishment of an Electric Vehicle Surcharge, and for Other Relief, BPU Docket No. EO20110730 (Order October 12, 2022) (effective Oct. 12, 2022); I/M/O the Verified Petition of Jersey Central Power & Light Company for Approval of an Electric Vehicle Program and an Associated Cost Recovery Mechanism, BPU Docket No. EO21030630 (Order, June 6, 2022).

BACKGROUND

In its September 23, 2020 Order setting forth the Minimum Filing Requirements for Light-Duty Publicly-Accessible Electric Vehicle Charging ("MFR Order"), the Board clearly described its intent to strictly limit Areas of Last Resort:

> What Staff is recommending is a very narrow application where utilities may own and operate EVSE in order to prompt competition only in areas where there is currently none. ...
>
> Staff also appreciates that in involving EDCs in the ownership and operating of EV charging infrastructure, even for short period of time, cannot be unbridled without damaging the underlying investment thesis for private entities to build out privately owned public charging networks. As such, Staff recommends requiring that EDCs seek Board approval, on a case by case basis, to own and operate EVSE chargers in areas of Last Resort.[4]

The MFR Order imposed certain conditions and limitations on an EDC petition to designate an "Area of Last Resort." The conditions material to the July 21 Notice are:

- No applications may be made until 12 months after the EDC's program is approved for chargers proposed for overburdened communities and 18 months after the EDC's program is approved for all other areas;
- An EDC may file an application to locate a charger in a given area by filing a petition with the Board, approval of which will allow the EDC to begin the process of siting the charger;
- The EDC must offer an incentive of up to 50% of the expected capital cost of the charging station for an approved Last Resort location to induce private sector investment;
- After the EDC application is filed with the Board, but prior to the installation of a charger, a private owner may opt to become the owner/operator of the equipment, under comparable terms and conditions to those that the EDC had negotiated, or may notify the Board that it intends to request a Make-Ready in a comparable location such that the utility ownership is obviated; and
- EDCs may not petition the Board for Last Resort locations after December 31, 2025.
- For overburdened communities, whether the utility has had a minimum of 12 months of no expressions of interest[5] from private owners of EVSE;

[4] MFR Order, pp. 21-22.
[5] MFR Order, p. 22.

- For non-overburdened communities, whether the utility has had a minimum of 18 months of no expressions of interest from private owners of EVSE.[6]

The MFR Order summarized its discussion of Areas of Last Resort as follows: "Given the 2025 deadline, after which the EDCs cannot petition the Board for Last Resort locations, the goal of this program is purely to jumpstart EV adoption in underserved areas."[7]

THE JULY 21 PROPOSAL

The July 21 Notice proposes to delay the time when an EDC may request Board approval to designate an Area of Last Resort, in which under certain conditions the EDC may own or operate EVSE. Under the current terms of the EDCs' Board-approved EV programs, an EDC may request Board permission to designate an Area of Last Resort if private investment does not show interest in the area after a certain time (12 months in Overburdened Communities and 18 months elsewhere). The July 21 Notice proposes to extend those times, by 12 months in Overburdened Communities and 18 months elsewhere, i.e., to a total of 24 and 36 months respectively. With the proposed extensions, if private EVSE investment has not shown interest in an area within 24 months in an Overburdened Community or within 36 months elsewhere, the EDC may petition for an Area of Last Resort designation.

The July 21 Notice states that it responds to two developments with nationwide implications: 1) the slow start of the EDCs' EV programs, which Staff attributes to supply chain issues that have delayed the delivery and installation of EVSE, especially EV chargers; and 2) anticipated billions of dollars in federal funds for public EV charging through the NEVI

[6] MFR Order, p. 22.
[7] MFR Order, pp. 21-22.

Program. NEVI funds will assist the states in deploying EVSE and establish an interconnected network to facilitate data collection, access and reliability.[8]

The extensions proposed in the July 21 Notice would apply to the EV programs that the Board has approved for three of the four EDCs in New Jersey: ACE, PSE&G and RECO. As noted in the July 21 Notice, JCP&L's Board-approved EV program does not contain a Last Resort subprogram or an Overburdened Communities subprogram. Accordingly, JCP&L may not request Board approval to designate an Area of Last Resort under any existing or proposed time frame.

Upon Board approval, the remaining three EDCs may declare an Area of Last Resort where, with certain conditions, the EDC itself may own or operate EVSE. The EDC may then request cost recovery of its EVSE investments from ratepayers.[9]

DISCUSSION

The July 21 Notice proposes delays in designating an Area of Last Resort in response to two issues. The first reason articulated by the Board in support of the proposed delays, the EDCs' EV programs have started slowly due to supply chain problems, is supported by the EDCs' own reports to the Board. The EDCs' EV programs have not been active long enough to demonstrate whether there have been sufficient "expressions of interest" to determine whether an area is "of Last Resort." However, the proposed delays are too short to meet this goal. In fact,

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[8] National Electric Vehicle Infrastructure Program, https://www.fhwa.dot.gov/environment/nevi/. Rate Counsel and other stakeholders filed comments on the NEVI proposal with the New Jersey Department of Transportation on Jan. 10 of this year. Final Request for Information, New Jersey's National Electric Vehicle Infrastructure ("NEVI") Deployment Plan, New Jersey Department of Transportation, December 2, 2022.

[9] In the EDCs' EV proceedings before the Board, Rate Counsel opposed such "Areas of Last Resort." The designation is prima facie evidence that the private sector considers the area a poor investment. Rate Counsel considers ratepayer subsidies of bad investments in the transportation industry to be inappropriate and inconsistent with just and reasonable rates for public utility service.

the time frame to petition for an Area of Last Resort has already begun in some areas for two of the EDCs. The delays should be long enough to allow progress implementing the EDCs' EV programs and determine where the actual need is located.

The second reason articulated by the Board in support of the proposed delays, that federal funds from the NEVI program may become available and reduce the need for ratepayers to subsidize EVSE, is a welcome acknowledgement of the mounting costs to utility ratepayers of subsidizing EV-related investments. However, the proposed delays are too short to meet this goal. The delay should be long enough to allow the federal government to begin the NEVI program and provide $100 million to the State of New Jersey to subsidize public EV charging. The time period for designating an Area of Last Resort should be delayed until the State has allocated the federal funds to the EVSE locations in the New Jersey NEVI Deployment Plan. Only then can one evaluate the need to designate an Area of Last Resort. Such delay also may reduce the cost of EVSE subsidies to ratepayers, by taking advantage of federal NEVI funds rather than ratepayer funds to install EVSE.

Accordingly, Rate Counsel does not object to delaying the EDCs' time frame to request an Area of Last Resort, but believes the delays should be extended until after the EDCs make further progress implementing their EV programs and federal NEVI funds are allocated to specific EVSE projects in New Jersey. Only then can one determine whether an area is "of Last Resort" and to ensure that ratepayer subsidies are used only as a "Last Resort."

Rate Counsel recommends that the Board also consider and respond to the following issues before finalizing timeline modifications in the EDCs' EV programs:

First, Rate Counsel recommends that the Board suspend the Areas of Last Resort provision in each EDC's EV program until the amount and allocation of NEVI funds is known. Rate Counsel remains opposed to ratepayer-subsidized Areas of Last Resort, and now the availability of federal NEVI funds to invest in EVSE may reduce or eliminate the purported need for those subsidies. Moreover, this delay will allow the continued expansion of the EV market in New Jersey and concomitant private investment in EVSE. Only then can one determine the extent of public and private interest in EVSE investment. If private EVSE investment remains low despite the investment of public NEVI funds and other incentives, the Board should reconsider the appropriateness of utility ratepayers' propping up transportation infrastructure investments that the market considers undesirable. If the Board nevertheless determines to continue ratepayer-subsidized Areas of Last Resort, the deadline to petition for an Area of Last Resort should be further extended to address the concerns in the July 21 Notice.

Reserving judgment on the length of the delay and indeed on the need for ratepayer-subsidized Areas of Last Resort would also provide the Board with flexibility to respond to developing market conditions in such a nascent market. Participants in the EV charging market in New Jersey, including the EDCs, do not yet have sufficient experience, either before or since the Covid-19 pandemic, to know what "normal" EVSE market conditions are for establishing EV charging. While some supply chain problems may be abating, demand is increasing as EV charging ramps up nationwide. In addition, other states have begun to adjust their EV incentive programs to sharpen their focus on advancing certain goals that are similar to those in New Jersey's Energy Master Plan, such as fuel efficiency.[10] The EDCs' EV programs are starting in a

[10] E.g., Lisa Prevost, "Vermont wants to win over the state's biggest gas-guzzlers with new EV incentives," Energy News Network, July 27, 2023, available at

changing new world for the transportation industry. The Board should maintain flexibility to further extend the start of the Areas of Last Resort timeline in response to additional changes that arise during this transition.

Second, the proposed delays are too short to respond to the issues identified in the July 21 Notice. Even with the proposed delays, some of those Area of Last Resort time frames have already begun for two of the three EDCs.[11] With the proposed delays in effect, the EDCs may petition for an Area of Last Resort designation no sooner than these dates: for PSE&G, January 30, 2023 in an Overburdened Community or January 30, 2024 elsewhere; for ACE, February 25, 2023 in an Overburdened Community or February 25, 2024 elsewhere; and for RECO, October 12, 2024 in an Overburdened Community or October 12, 2025 elsewhere. As a result, the ability to request an Area of Last Resort in an Overburdened Community has already begun for PSE&G and ACE. However the July 21 Notice itself indicates that all of the EDC EV programs have gotten off to a slow start, and New Jersey has not yet received any NEVI funds. Accordingly, Rate Counsel recommends delaying the start of the time period to petition for an Area of Last Resort until the EDCs show more progress implementing their EV programs and the amount and allocation of NEVI funds is known. This includes delaying the times that have already begun.

Third, Rate Counsel requests that the Board clarify whether the July 21 Notice leaves in place the December 31, 2025 deadline after which the EDCs may not petition the Board to designate Last Resort locations. If the proposed delays are applied to the current time frames in the EDCs' EV programs, each EDC may petition the Board to designate an Area of Last Resort

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https://energynews.us/2023/07/27/vermont-wants-to-win-over-the-states-biggest-gas-guzzlers-with-new-ev-incentives/?utm_medium=email.

[11] Those dates are calculated from the date the Board approved each EDC's EV program, which are: January 30, 2021 for PSE&G; February 25, 2021 for ACE; and October 12, 2022 for RECO.

starting on different times but ending on the same date. That does not seem consistent with the market-wide EVSE supply chain issues or the nationwide allocation of NEVI funding, both of which are equally applicable to all three EDCs.

As stated in the MFR Order, the 2025 deadline reflects that the goal of establishing the EV programs is "purely to jumpstart EV adoption in underserved areas."[12] That goal supports a short window for Areas of Last Resort. Accordingly, if the Board decides to keep the Area of Last Resort provision in the EDCs' EV programs, Rate Counsel recommends designating a short time period not exceeding one year. Rate Counsel also recommends setting the same window for all the EDCs.

Fourth, all three EDCs' EV programs have started slowly due to supply chain problems that affect the EVSE industry.[13] Although these problems may be less acute today, they are market-wide; therefore, it is reasonable to anticipate that all three EDCs will face similar issues with the same EVSE market participants. However, each EDC's EV program currently has different dates for the start of the time period to propose an Area of Last Resort. Those dates differ only because of the order in which each EDC happened to file its EV program petition and the length of negotiations to resolve each proposal. Divergent dates introduce inconsistency and potential confusion with implementing the nationwide NEVI plan, allocating federal NEVI funds, and gauging EVSE usage by EV owners and the interest shown by EVSE investors. There does not appear to be any advantage to those currently divergent time frames. Given the slow start of the EDCs' EV programs, there seems to be little risk of any additional expense or undue prejudice to the EDCs from such uniformity. Rate Counsel recommends that the Board set uniform dates during which the EDCs may propose Areas of Last Resort, by delaying the

[12] MFR Order, p. 22.
[13] July 21 Notice, p. 2.

start of this time period until the same date for all three EDCs. As noted above, that time period should be short, and start when the EDCs show more progress implementing their EV programs and NEVI funds are allocated for EVSE in New Jersey.

Fifth, Rate Counsel recommends that the Board should not impose or establish a Last Resort program for JCP&L, which does not have such a provision in its current EV program.

Summary of Recommendations

1. Rate Counsel recommends that the Board suspend the Areas of Last Resort provision in each EDC's EV program until the amount and allocation of NEVI funds is known. In the alternative, if the Board nevertheless determines to continue ratepayer-subsidized Areas of Last Resort, the deadline to petition for an Area of Last Resort should be further extended to address the concerns in the July 21 Notice.

2. Rate Counsel recommends delaying the start of the time period to petition for an Area of Last Resort until the EDCs show more progress implementing their EV programs and the amount and allocation of NEVI funds is known.

3. Rate Counsel recommends designating a new and uniform deadline by which the EDCs may petition for an Area of Last Resort, to allow a short time period for such petitions.

4. Rate Counsel recommends that the Board set the same uniform date after which any of the EDCs may petition for an Area of Last Resort.

5. Rate Counsel recommends that the Board should not impose or establish a Last Resort program for JCP&L.

Thank you for the opportunity to provide these comments.