

March 4, 2024

Honorable Irene Jones  
Office of Administrative Law Judge  
33 Washington Street  
Newark, NJ 07102

**VIA ELECTRONIC FILING**

**Re: In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 17 Electric and B.P.U.N.J. No. 17 Gas, and for Changes in Depreciation Rates, Pursuant to N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief;**

**OAL Docket No. PUC 926-24  
BPU Docket Nos. ER23120924 and GR23120925**

Dear Judge Jones:

Please find enclosed for filing with the Office of Administrative Law ("OAL") Walmart Inc.'s Reply in Support of its Motion to Intervene in the above-referenced case.

By copy of this letter, copies of the referenced documents are being forwarded this date via electronic mail to all persons on the distribution list.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC



Steven W. Lee (NJ Bar No. 324262020)

*Counsel for Walmart Inc.*

SWL/sds

Enclosures

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

<b>IN THE MATTER OF THE PETITION OF</b>	)	
<b>PUBLIC SERVICE ELECTRIC AND GAS</b>	)	
<b>COMPANY FOR APPROVAL OF AN</b>	)	
<b>INCREASE IN ELECTRIC AND GAS RATES</b>	)	<b>BPU DOCKET NOS.</b>
<b>AND FOR CHANGES IN THE TARIFFS FOR</b>	)	<b>ER23120924 AND</b>
<b>ELECTRIC AND GAS SERVICE, B.P.U.N.J.</b>	)	<b>GR23120925</b>
<b>NO. 17 ELECTRIC AND B.P.U.N.J. NO. 17</b>	)	
<b>GAS, AND FOR CHANGES IN</b>	)	<b>OAL DOCKET NO.</b>
<b>DEPRECIATION RATES, PURSUANT TO</b>	)	<b>PUC 00926-24</b>
<b>N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 AND</b>	)	
<b>N.J.S.A. 48:2-21.1, AND FOR OTHER</b>	)	
<b>APPROPRIATE RELIEF</b>	)	

**WALMART INC.'S REPLY IN SUPPORT OF ITS MOTION TO INTERVENE**

Walmart Inc. ("Walmart") hereby replies to the Public Service Electric and Gas Company's ("PSE&G" or "Company") opposition to its Motion to Intervene in the above-referenced proceedings. In support of its Reply, Walmart states as follows:

1. On February 14, 2024, Walmart filed with the Board of Public Utilities ("BPU" or "Board") a Motion to Intervene in this proceeding ("Motion to Intervene").
2. On February 27, 2024, PSE&G filed a Letter in response to the various intervention requests filed by other parties, including Walmart ("Letter in Opposition"). In that Letter in Opposition, PSE&G indicated that it opposes Walmart's intervention on the grounds that "the only basis Walmart states in support of intervention is that it is a large commercial customer with multiple locations in PSE&G's service area" which the Company states is "not unique to Walmart." Letter in Opposition, p. 2. PSE&G additionally states that Walmart's interests "are adequately represented in this matter by both the New Jersey Division of Rate Counsel ["Rate Counsel"] and possibly by [New Jersey Large Energy Users Coalition ("NJLEUC")] whose intervention PSE&G does not oppose." *Id.* Lastly, PSE&G alleges that Walmart's intervention "could also cause

confusion and delay, as the lone perspective of a single large customer could conflict with the broader interests of commercial customers as a class that are better represented by Rate Counsel and NJLEUC." *Id.*

3. PSE&G has also cited a ruling by the BPU in Docket No. QO23120874, issued less than a week ago on February 26, 2024, that alleges to deny an unnamed party's intervention "*partially* on the grounds that 'purely economic' interests . . . 'do not implicate a legally protected right under N.J.S.A. Title 48 and do not warrant intervention.'" *Id.* (emphasis added). Walmart is not privy to that proceeding, and the quoted decision of the Board is not publicly available at the cited docket; Walmart therefore must accept at face value PSE&G's assertion of the contents of this Order. That said, Walmart notes that PSE&G has not described or stated what other conditions also *partially* contributed to the Board's denial of the subject intervention and therefore is unable to respond in detail to PSE&G's allegation in this regard. Absent such full information, Walmart asserts the following in support of its intervention as a full party to this case.

4. The standards for intervention in a BPU rate proceeding are clearly articulated. Specifically, Section 1:1-16.3 of the New Jersey Administrative Code provides:

(a) In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

(b) In cases where one of the parties is a State agency authorized by law to represent the public interest in a case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

(c) Notwithstanding (a) above, persons statutorily permitted to intervene shall be granted intervention.

N.J.A.C. § 1:1-16.3. Walmart's Motion to Intervene satisfies these requirements over PSE&G's cynical objections.

5. Despite the Company's claim that the only basis Walmart stated in support of intervention is that it "is a large commercial customer with multiple locations in PSE&G's service area," Walmart's Motion to Intervene also unequivocally noted that Walmart is a "national retailer of goods and services throughout the United States," that it "employs 25,091" Walmart associates in New Jersey, that it "spends approximately \$15.3 billion for merchandise and services with suppliers in the state of New Jersey," and that this relationship with suppliers "supports approximately 98,161 supplier jobs in the state of New Jersey." Motion to Intervene, ¶ 3. PSE&G does not take exception to any of these statements but rather simply chooses to ignore them.

6. Based on the information contained in its Motion to Intervene, Walmart's interest in this proceeding clearly exceeds a "purely economic" interest. While the economic interest in the Company's rate filing is certainly substantial, Walmart's interest also relates to the number of jobs that Walmart's presence in New Jersey creates as well as the manner that Walmart's continued presence impacts the public interest in New Jersey. While those interests are certainly connected to the economics of doing business in the PSE&G service area (an interest that is implicitly affected by the rates that Walmart pays for utility services), they are also unique to Walmart's individual status as a major employer and supporter of New Jersey business.

7. Upon review of the Motion to Intervene of NJLEUC, which PSE&G curiously does *not* oppose, it appears that NJLEUC has raised interests that are primarily of an economic nature, though NJLEUC also notes that its members "employ thousands of New Jersey residents" and "are a bedrock of the State's business community and pay substantial state taxes." NJLEUC Motion to Intervene, ¶ 3. NJLEUC's intervention request also noted the impact that high energy costs have on its members' competitive investment decisions, particularly those that are "national in focus." *Id.* Walmart does not dispute any of these facts, and wholly agrees that NJLEUC is an appropriate

party to the extant case on these grounds. The same standard should apply to Walmart's intervention request.

8. Furthermore, as clearly stated by Walmart in its Motion to Intervene, Walmart is uniquely situated as a national retailer of goods and services. As such, Walmart is a consumer of utility services throughout the United States and has the opportunity to bring a unique national perspective before the Board in this proceeding. Indeed, Walmart has been an active participant in utility rate proceedings in 43 U.S. jurisdictions. Walmart fully intends to bring that national perspective to the factual record before the BPU. This will "add measurably and constructively to the scope of the case," as required for consideration by the Board under N.J.A.C. § 1:1-16.3 in evaluating Walmart's Motion to Intervene. N.J.A.C. § 1:1-16.3(a).

9. Regarding PSE&G's assertion that Walmart's interests are adequately represented by Rate Counsel and NJLEUC, Walmart fundamentally disagrees. With respect to NJLEUC, while Walmart may indeed be a large customer, as a *commercial customer* its individual facilities primarily take service from the Company under rates and conditions of service that differ broadly from NJLEUC's members. As a commercial customer, Walmart's facilities take service primarily under commercial or secondary voltage large power rate schedules, whereas NJLEUC's members presumptively take service under the Company's higher voltage *industrial* rates. NJLEUC may advocate for positions in this case that benefit those rate schedules and classes, as it should, but those positions may adversely impact the rate classes of which Walmart is a member – and *vice versa*. Both Walmart and NJLEUC need to be able to respond to such adverse positions; neither can be expected to represent the interests of the other. Additionally, as announced in 2023, Walmart intends to build its own electric vehicle ("EV") fast-charging network at thousands of

Walmart and Sam's Club locations across the U.S. over the next few years.<sup>1</sup> PSE&G has proposals in the docket that implicate Direct Current Fast Charging rates. NJLEUC has not indicated that any of its members share this interest, and Walmart is further differentiated as a customer that manages rates and balances the interests of both its retail stores as well as forthcoming EV chargers.

10. Walmart understands PSE&G's assertion that Rate Counsel may adequately represent Walmart's interests, but again must fervently disagree. Rate Counsel is charged by the New Jersey Legislature, "to the maximum extent possible" with "ensuring adequate representation of the interest of those customers whose interest would otherwise be inadequately represented in matters within the jurisdiction of the Division of Rate Counsel." NJ Rev Stat § 52:27EE-49 (2020); *see also* New Jersey Division of Rate Counsel website at: <https://www.nj.gov/rpa/about/>. That legislative mandate does not equate to standing in the position of *all* customers irrespective of, and certainly not to the exclusion of, those customers who are able to be adequately represented. Walmart is adequately represented in this case and does not require Rate Counsel to advocate for its interests.

11. Furthermore, Walmart has recently been an active party in two BPU rate proceedings involving Atlantic City Gas and Electric Company ("ACE") and Jersey Central Power and Light Company ("JCP&L"). *See In the Matter of the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief*, BPU Docket No. 23020091; and *In the Matter of the Verified Petition of Jersey*

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<sup>1</sup> <https://corporate.walmart.com/newsroom/2023/04/06/leading-the-charge-walmart-announces-plan-to-expand-electric-vehicle-charging-network>

*Central Power & Light Company for Review and Approval of Increases in, and Other Adjustments to, its Rates and Charges for Electric Service, and for Approval of Other Proposed Tariff Revisions in Connection Therein*, BPU Docket No. 23030144 ("JCP&L Rate Case"). In both of those cases, Walmart has raised issues that do not comport with Rate Counsel's advocacy; for example, in the JCP&L case, Rate Counsel (and, coincidentally, NJLEUC) supported and joined a comprehensive settlement that Walmart *could not join* for reasons related to those differences in interests and advocacy. JCP&L Rate Case Stipulation of Settlement, filed February 2, 2024. This is normal and absolutely expected in the course of regulatory proceedings, but serves as *prima facie* evidence that Rate Counsel (and NJLEUC) cannot fully and adequately represent Walmart's interests in this case.<sup>2</sup>

12. PSE&G's further implication that Walmart's "lone perspective of a single large customer" might "conflict with the broader interests of commercial customers as a class that are better represented by Rate Counsel and NJLEUC" is frankly specious and without any merit. Letter in Opposition, p. 2. The fact that Walmart would be the "lone perspective" of a commercial customer is itself justification for Walmart's presence as a party, as by PSE&G's own admission commercial customers are *not presently represented in the case except by Rate Counsel*. *Id.* As explained above, Rate Counsel cannot fully represent commercial customers like Walmart whose unique interests vary from those of both industrial customers (adequately represented by NJLEUC) and residential customers (certainly more than adequately represented by Rate Counsel). The Board should desire to hear Walmart's unique commercial perspective; and to the degree that Walmart's position *might* conflict with the broader commercial class, as PSE&G speculates, then

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<sup>2</sup> Walmart must also question PSE&G's assertion that Walmart's interests are adequately represented by Rate Counsel when PSE&G clearly believes that NJLEUC's interests are not so adequately represented.

Rate Counsel is surely capable of making such assertions in its role as advocate for all rate classes. But even so, PSE&G's claim that Walmart's individual interests *might* conflict with the broader commercial class interests is itself, again, evidence that Walmart *must* be able to assert its *unique perspective* in this case against claims that would infringe upon it. PSE&G simply cannot claim that Walmart is *both* adequately represented *and* simultaneously poised in opposition to that adequate representation.

13. Moreover, and most importantly, Section 1:1-16.3 of the New Jersey Administrative Code clearly states, "In cases where one of the parties is a State agency authorized by law to represent the public interest in a case, *no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.*" N.J.A.C. § 1:1-16.3(b) (emphasis added). Walmart has explained both in its Motion to Intervene and in this Reply that it maintains a unique interest that qualifies its presence in this case as a full party. If the Board finds that Walmart has adequately demonstrated this interest satisfying intervention under Subsection (a) of this provision, then Walmart's participation as full party in this case *cannot be denied* simply on the basis that Rate Counsel is a party. PSE&G's opposition to Walmart's intervention on the basis that Rate Counsel is a party is specious since it did not oppose NJLEUC's intervention on the same basis.

14. Finally, regarding PSE&G's assertion that Walmart's involvement as a full intervenor in this case "could also cause confusion and delay," Walmart notes that the Company's claim is entirely unsupported by any explanation or evidence. It is completely unfounded. As noted previously, Walmart has been an active and seasoned participant in utility regulatory proceedings in 43 U.S. jurisdictions, including two very recent rate cases in New Jersey. Walmart takes its obligations and role as a party in all cases seriously and strives to provide meaningful and



constructive input for consideration by regulatory agencies. In fact, both BPU proceedings referenced above in which Walmart was a party ended in full settlements *before any evidence from intervening parties was formally presented*. In no way did Walmart's participation in either of those proceedings cause confusion or delay in the Board's review of those settlements, even though Walmart was not a joining party to one. There simply is no evidence that Walmart's presence in this case might produce such confusion or delay, and Walmart assures the Board that it will not.

**WHEREFORE**, Walmart Inc. respectfully requests that Walmart's Motion to Intervene as a full party to this proceeding be granted.

Respectfully submitted,

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By  \_\_\_\_\_

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BPU Docket Nos. ER23120924 and GR23120925

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