



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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ENERGY AND CLEAN ENERGY

IN THE MATTER OF THE PETITION OF	)	ORDER RULING ON MOTIONS TO
ROCKLAND ELECTRIC COMPANY FOR	)	INTERVENE OR PARTICIPATE
APPROVAL OF ITS ENERGY EFFICIENCY AND	)	
PEAK DEMAND REDUCTION PROGRAMS	)	DOCKET NO. QO23120875
	)	
	)	

**Parties of Record:**

**Brian O. Lipman Esq.**, Director, New Jersey Division of Rate Counsel  
**Margaret Comes, Esq.**, Associate Counsel, Rockland Electric Company  
**John Kolesnik, Esq.**, Counsel for the Energy Efficiency Alliance of New Jersey

BY COMMISSIONER ZENON CHRISTODOULOU:

**BACKGROUND AND PROCEDURAL HISTORY**

***The New Jersey Clean Energy Act of 2018***

On May 23, 2018, Governor Murphy signed the Clean Energy Act into law ("CEA"). The CEA mandates that New Jersey's electric and gas public utilities increase their role in delivering energy efficiency ("EE") and peak demand reduction ("PDR") programs. The CEA further directs the New Jersey Board of Public Utilities ("Board") to require the electric and gas utilities to reduce customer use of electricity and natural gas in their respective service territories.

Specifically, the CEA directs the Board to require:

- (a) each electric public utility to achieve, within its territory by its customers, annual reductions of at least 2% of the average annual electricity usage in the prior three years within five years of implementation of its electric energy efficiency program; and
- (b) each natural gas public utility to achieve, within its territory by its customers, annual reductions in the use of natural gas of at least 0.75% of the average annual natural gas usage in the prior three years within five years of implementation of its gas energy efficiency program.<sup>1</sup>

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<sup>1</sup> N.J.S.A. 48:3-87.9(a).

## ***Triennium 1***

By Order dated June 10, 2020, the Board approved, pursuant to the CEA, utility programs that reduce the use of electricity and natural gas within the utilities' territories.<sup>2</sup> In the June 2020 Order, the Board directed the utilities to file three-year program petitions by September 25, 2020 for approval by the Board by May 1, 2021 and implementation from July 1, 2021 through June 30, 2024 ("Triennium 1").

By Order dated June 9, 2021, the Board approved a stipulation of settlement authorizing Rockland Electric Company ("RECO" or "Company") to implement its portfolio of EE programs.<sup>3</sup>

## ***Triennium 2***

By Order dated May 24, 2023, the Board directed each electric and gas public utility to propose, for Board approval, EE programs for the second three-year EE program period ("Triennium 2") on or before October 2, 2023, and the Board addressed certain aspects of the Triennium 2 framework.<sup>4</sup> By Order dated July 26, 2023, the Board approved the remaining aspects of the Triennium 2 framework.<sup>5</sup>

By Order dated September 27, 2023, the Board extended the filing deadline for Triennium 2 petitions from October 2, 2023 to December 1, 2023, and directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by December 8, 2023 and that entities file with the Board any responses to those motions by December 14, 2023.<sup>6</sup> By the September 2023 Order, the Board retained this matter for hearing and, pursuant

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<sup>2</sup> In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket Nos. QO19010040, QO19060748, and QO17091004, Order dated June 10, 2020 ("June 2020 Order").

<sup>3</sup> In re the Petition of Rockland Electric Company for Approval of Its Energy Efficiency and Peak Demand Reduction Programs, BPU Docket Nos. QO19010040 and EO20090623, Order dated June 9, 2021.

<sup>4</sup> In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated May 24, 2023 ("May 2023 Order").

<sup>5</sup> In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated July 26, 2023.

<sup>6</sup> In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities

to N.J.S.A. 48:2-32, designated myself, Commissioner Christodoulou, as Presiding Commissioner in this matter, authorized to rule on all motions that arise during the pendency of this proceeding, and modify schedules that may be set as necessary to secure a just and expeditious determination of all issues. By Order dated October 25, 2023, the Board delayed the start of Triennium 2 by six (6) months from July 1, 2024 until January 1, 2025.<sup>7</sup>

**DECEMBER 2023 PETITION**

On December 1, 2023, RECO filed the requisite petition with the Board (“Petition”). In the Petition, the Company proposed to invest approximately \$60.9 million in its EE programs over a 30-month period from January 1, 2025 through June 30, 2027. The proposed programs and associated costs are summarized in the table below:

<b>Category</b>	<b>Sector</b>	<b>Program</b>	<b>Total</b>
Core	Residential	Whole Home	\$4,888,005
		Income Qualified	\$6,889,786
		EE Products	\$9,247,002
		Behavioral	\$600,000
	Commercial	Energy Solutions	\$1,025,000
		Prescriptive and Custom	\$13,080,911
		Direct Install	\$11,116,673
Multifamily	Multifamily	\$1,061,043	
Utility-Led		Building Decarbonization	\$4,513,100
		Peak Demand Reduction	\$1,101,600
		Next Generation Savings	\$1,400,000
Net Utility Transfers			\$5,977,272
<b>Total</b>			<b>\$60,900,392</b>

In addition to approval of the plan to implement the Triennium 2 EE and PDR programs, the Company proposed to establish a “Clean Energy Act II Program” component of its existing Regional Greenhouse Gas Initiatives (“RGGI”) Surcharge. The current Clean Energy Act Program component of the RGGI Surcharge, related to Triennium 1, would be renamed to Clean Energy Act I. The Clean Energy Act II Program component of the RGGI Surcharge would be a non-bypassable charge set annually based on the sum of: 1) the Company’s forecasted revenue requirement and any incremental operations and maintenance expenses associated with the EE and PDR programs; and 2) any prior period over- or under-recoveries, including interest. The quantity would then be divided by the forecast of the Company’s kilowatt-hour (“kWh”) deliveries

Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated September 27, 2023 (“September 2023 Order”).

<sup>7</sup> In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket No. QO23030150, Order dated October 25, 2023 (“October 2023 Order”). The October 2023 Order also extended Triennium 1 through December 31, 2024.

to all customers served under the Company's electric tariff for the annual recovery period. Any over- or under-collections of revenue would be compared to the sum of the month's revenue requirement and any incremental operations and maintenance expenses. The difference would be deferred as a regulatory asset or regulatory liability.

RECO estimated that the Triennium 2 programs component of the RGGI Surcharge's bill impact on a typical residential customer using 925 kWh per month would be an increase of \$1.66, or 0.70%, for the initial year of the EE program.

On December 28, 2023, Board Staff ("Staff") issued RECO a letter of administrative deficiency ("Letter") identifying administratively incomplete portions of the Petition and requesting that the Company cure any deficiencies. By Order dated January 10, 2024, the Board directed that any entity wishing to file a motion for leave to intervene or participate or to update a previously-filed motion for leave to intervene or participate in this proceeding shall have until seven (7) days following Staff's issuance of a letter of administrative completeness to the Company.<sup>8</sup>

On January 16, 2024, RECO filed an update to the Petition to cure the deficiencies identified in the Letter ("Update"). On January 19, 2024, Staff issued a letter of administrative completeness, noting that the Update adequately cured the deficiencies identified in the Letter and that Staff therefore determined the Petition to be administratively complete. The Board subsequently received no additional or updated motions seeking leave to intervene or participate.

## **THE MOTIONS**

### **Motions to Intervene**

#### *CPower*

On December 8, 2023, Enerwise Global Technologies, Inc. d/b/a/ CPower ("CPower") filed a Motion to Intervene in this proceeding, noting that it is the largest Virtual Power Plant provider in the United States and aggregates end-use customer demand response, distributed generation, and energy storage resources to help meet demand reduction commitments and real-time supply needs. CPower identified that it is active at the wholesale and retail levels and has worked closely with regulators in other states to develop similar EE programs. CPower further noted that it serves the PJM Interconnection, which operates a forward capacity market that helps ensure reliability within PJM. CPower asserted that its interests in the outcome of this matter are sufficiently different from that of any other party due to the breadth and potential scope of CPower's operations in New Jersey, which, through its service to PJM, serves the entire state of New Jersey, in contrast to individual public utilities which only serve portions of the state. Additionally, CPower maintained that it has unique knowledge concerning best practices in similar programs throughout the country and would provide an industry perspective which could reduce or eliminate

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<sup>8</sup> In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs et al., BPU Docket Nos. QO23030150, QO23120868, QO23120869, QO23120870, QO23120871, QO23120872, QO23120874, and QO23120875, Order dated January 10, 2024 ("January 2024 Order"). By the January 2024 Order, the Board additionally redesignated President Guhl-Sadovy as the presiding commissioner for the Public Service Electric and Gas Company ("PSE&G") filing, BPU Docket No. QO23120874, and Commissioner Abdou as the presiding commissioner for the Elizabethtown Gas Company ("ETG"), New Jersey Natural Gas Company ("NJNG"), and South Jersey Gas Company ("SJG") filings, BPU Docket Nos. QO23120869, QO23120868, and QO23120870.

unforeseen issues with which Staff, the New Jersey Division of Rate Counsel (“Rate Counsel”), and the utilities may not be familiar. CPower certified that it will abide by the schedule for this proceeding and that consequently, its intervention in this matter will not unduly delay or otherwise disrupt this proceeding. CPower requested that, in the alternative, its Motion to Intervene be treated as a Motion to Participate.

*Energy Efficiency Alliance of New Jersey*

On December 8, 2023, the Energy Efficiency Alliance of New Jersey (“EEA-NJ”) filed a Motion to Intervene in this proceeding, noting that it is a 501(c)(6) trade association that, together with the Keystone Energy Efficiency Alliance, represents over 60 business members. EEA-NJ noted that these members manufacture, design, and implement EE improvements in buildings across Pennsylvania and New Jersey on behalf of regulated utilities, the State of New Jersey, and ratepayers. EEA-NJ asserted that the proposed programs would directly affect the utilization of their services and products. EEA-NJ also represented that its interests in this proceeding are unique and not adequately represented by any other party, and that its members can offer valuable perspectives on the design and implementation of the proposed programs. Finally, EEA-NJ noted that its intervention will not cause confusion or undue delay because it will coordinate its representation with similarly situated parties to the extent that it deems such coordination appropriate.

Motions to Participate

*ACE, ETG, JCP&L, NJNG, SJG, and PSE&G*

On December 8, 2023, Atlantic City Electric Company (“ACE”), ETG, Jersey Central Power & Light Company (“JCP&L”), NJNG, SJG, and PSE&G (collectively “Joint Movants”) submitted a joint motion to participate in this matter. The Joint Movants stated that they are public utility corporations incorporated in New Jersey and engaged in the transmission, distribution, and sale of electricity or gas for residential, commercial, and industrial purposes in New Jersey. The Joint Movants claimed a significant interest in the outcome of this proceeding because the substantive policy and procedural requirements established in this proceeding are likely to have a precedential effect on proceedings involving the other Utilities. The Joint Movants further noted that their interest as investor-owned electric or gas utilities serving retail customers are materially different from that of RECO and the other parties. Finally, the Joint Movants also stated that their participation would not cause delay or confusion because they would each abide by any schedule set for the proceeding.

**RESPONSES**

*RECO*

On December 14, 2023, RECO submitted a letter responding to the Motions to Intervene or Participate. By its letter response, RECO indicated that it did not oppose the Joint Movants’ Motion to Participate. Additionally, RECO indicated it did not oppose EEA-NJ’s Motion to Intervene.

RECO opposed CPower’s Motion to Intervene, arguing it should be denied or, in the alternative, be treated as a Motion to Participate because CPower will not be substantially impacted by the outcome of this proceeding because it asserts “only a general interest” in the matter and that CPower failed to demonstrate that it would be substantially, specifically, and directly affected by the outcome.

### *Rate Counsel*

On December 14, 2023, Rate Counsel submitted a letter responding to the filed Motions to Intervene or Participate. By its letter response, Rate Counsel indicated that it does not oppose the Joint Movants' Motions to Participate.

Rate Counsel opposed EEA-NJ's Motion to Intervene, arguing that, while EEA-NJ has potential economic interest in successful implementation of RECO's programs, it failed to assert a legally protected right under N.J.S.A. Title 48 to receive work from RECO. Rate Counsel further stated that it does not oppose participant status for EEA-NJ instead.

Rate Counsel opposed CPower's Motion to Intervene, arguing that CPower's interests in this proceeding are primarily to gain business in New Jersey and such interests do not constitute a legally protected right under N.J.S.A. Title 48. Rate Counsel noted that it does not oppose CPower's request in the alternative for status as a participant in this proceeding.

### *EEA-NJ*

On December 20, 2023, EEA-NJ submitted a letter reply to Rate Counsel's opposition, noting that it will be substantially, specifically, and directly affected by the outcome of this case, despite having no legally protected right to intervene under N.J.S.A. Title 48. EEA-NJ further argued that Rate Counsel did not adequately explain why EEA-NJ would not be substantially, specifically, and directly affected by the outcome of this case and that EEA-NJ was granted intervenor status in numerous Triennium 1 proceedings because the Board found it would be directly affected by their outcomes.

EEA-NJ further argued that its interests differ from those of any other party because, as an EE trade organization, it can add directly and measurably to this proceeding through its member organizations' direct, extensive knowledge of the establishment and execution of State- and utility-run EE programs. EEA-NJ further noted that it has continually been a "constructive and unique presence in the Board's numerous stakeholder meetings often offering comments" and due to its historical involvement in EE proceedings in New Jersey should be granted intervenor status.

### **DISCUSSION AND FINDINGS**

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or

confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board noted in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record that involves consideration of a diversity of interests must be weighed against the requirement of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct, and different from that of the other parties so as to add measurably and constructively to the scope of the case.<sup>9</sup>

### Motions to Intervene

Regarding EEA-NJ's Motion to Intervene, Rate Counsel indicated that it opposes granting intervenor status because EEA-NJ failed to demonstrate either a statutory right to intervene or a legally protected right to intervene under N.J.S.A. Title 48 to receive work from RECO. However, EEA-NJ represents more than 60 business members directly involved in the planning and implementation of EE programs in New Jersey. Additionally, EEA-NJ constructively participated in numerous Triennium 1 proceedings and has a direct interest in the outcome of this matter because its constituent members specifically design and implement EE programs throughout New Jersey. EEA-NJ is expected to add constructively to this proceeding via input gleaned from its extensive experience with EE programs specific to New Jersey. As such, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that EEA-NJ will be substantially, specifically, and directly affected by the outcome of this proceeding and will add measurably and constructively to the case without causing undue delay or confusion. I **HEREBY FIND** that EEA-NJ has met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** EEA-NJ's Motion to Intervene pursuant to the authority granted to me by the Board in the September 2023 Order.

According to its motion, CPower is the largest Virtual Power Plant provider in the United States, aggregating end-use customer demand response, distributed generation, and energy storage resources to manage demand-side flexibility and demand reduction throughout the United States. Specific to New Jersey, CPower serves the PJM Interconnection, using its demand response to provide transmission and distribution benefits to PJM which CPower indicated it would like to bring to New Jersey. I am not persuaded that CPower's interests are sufficiently distinct from that of the other parties to merit intervenor status. CPower did not offer any explanation as to how its interest, as a company operating within the PJM Interconnection, is substantially different from that of other parties to this proceeding or how the outcome of this case will significantly impact CPower other than to provide business opportunities within New Jersey akin to those it already has in New York. As such, I **FIND** that CPower has not made a showing that its interests in this matter warrant granting its Motion to Intervene, given the need for prompt and expeditious administrative proceedings. Accordingly, I **HEREBY DENY** CPower's Motion to Intervene. Pursuant to N.J.A.C. 1:1-16.5, I will treat this Motion, in the alternative, as a Motion to Participate. Considered under this standard, I **FIND** that CPower has a significant interest in this proceeding and that, as a participant, CPower is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** CPower participant status, limited to the right to argue orally and file a statement or brief as set forth in N.J.A.C. 1:1-16.6(c)(1) and (2).

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<sup>9</sup> See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

Joint Motion to Participate

With regard to the Joint Motion to Participate filed by the Joint Movants, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the Joint Movants' participation in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the Joint Motion to participate filed on behalf of ACE, ETG, JCP&L, NJNG, PSE&G, and SJG, limited to the right to argue orally and file a statement or brief as set forth in N.J.A.C. 1:1-16.6(c)(1) and (2).

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 2/26/2024

BY:



DR. ZENON CHRISTODOULOU  
COMMISSIONER



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

DOCKET NO. QO23120875

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