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BOARD OF PUBLIC UTILITIES

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TRENTON, NJ

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MAIL RECEIVED

November 28, 2018

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of its
Clean Energy Future-Energy Efficiency Program on a Regulated Basis
BPU Docket No. GO18101112 & EO18101113

VIA E-MAIL AND OVERNIGHT DELIVERY

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Fl., Suite 314
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Dear Secretary Camacho-Welch:

In accordance with *N.J.A.C.* 1:1-12.2(b), Public Service Electric and Gas Company ("PSE&G" or the "Company") hereby submits this letter in opposition to the November 16, 2018 Motions to Intervene of Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, and Gateway Energy Services Corporation ("Direct Energy") and Centrica Business Solutions ("CBS") (collectively, the "DE Movants"), and Sunrun, Inc. ("Sunrun"). PSE&G is enclosing an original and two copies of this letter response. Kindly stamp one of those copies filed and return in the enclosed self-addressed envelope. Copies of this filing are being served on the attached service list by regular and electronic mail.

As more fully described below, PSE&G respectfully requests that the Board of Public Utilities (the "BPU" or the "Board") deny the DE Movants' and Sunrun's Motions to Intervene.¹ PSE&G further submits that the interests of the DE Movants and Sunrun fail to even meet the

¹ PSE&G has no objection to any other intervention or participation motion filed in this proceeding.

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threshold to permit participation as an alternative to intervenor status. If, however, the Board is inclined to allow DE Movants' and Sunrun's involvement in the current proceeding, that involvement should be limited to participation status.

Background

On October 11, 2018, PSE&G filed a Petition in this proceeding seeking approval of the Board to implement its Clean Energy Future – Energy Efficiency Program (the “ CEF-EE Program” or the “Program”) pursuant to N.J.S.A. 48:3-98.1(a)(1) & (b), the Clean Energy Law, P.L. 2018, c. 17, § 3(a) and (e)(1), and Section 13 of P.L. 2007, c. 340 (the “RGGI Law”), codified in part as N.J.S.A. 48:3-98.1(a)(1). The CEF-EE Program consists of 22 subprograms whereby the Company implements and manages select, highly advanced approaches to energy efficiency.

By Order dated October 29, 2018, the Board decided to retain jurisdiction over this filing, designated Commissioner Solomon as the presiding officer, and set a November 16, 2018 deadline for motions to intervene or participate to be filed. The DE Movants and Sunrun each filed motions to intervene on November 16, 2018.

Standards Applicable to Motions for Intervention

Rule *N.J.A.C.* 1:1-16.1(a) states that any “person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.” Rule *N.J.A.C.* 1:1-16.3(a) provides that the following factors shall be considered when ruling upon a motion to intervene:

- (i) the nature and extent of the movant's interests in the outcome of the case;
- (ii) whether or not the movant's interest is sufficiently different than that of any party so as to add measurably and constructively to the scope of the case;

- (iii) the prospect of confusion or undue delay arising from movant's inclusion; and
- (iv) other appropriate matters.

Under *N.J.A.C.* 1:1-16.5, every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate. Pursuant to *N.J.A.C.* 1:1-16.6, a "participant" must have a significant interest in the outcome of the case and—in ruling on a request to participate—the trier of fact is required to determine whether the participant's interest "is likely to add constructively to the case without causing undue delay or confusion." Under *N.J.A.C.* 1:1-16(c), participation is limited to: (i) the right to argue orally, (ii) the right to file a statement or brief, or (iii) the right to file exceptions to the initial decision with the agency head, or (iv) all of the above.

The DE Movants and Sunrun Have Failed to Meet the Standards for Intervention or Participation in this Proceeding and Consideration of their Issues Will Only Delay the Proceeding and Cause Confusion

Neither the DE Movants or Sunrun were initially parties to this proceeding, nor do they have a statutory right to intervene here. Only upon demonstrating that they "will be substantially, specifically and directly affected" can they be afforded intervention status. *N.J.A.C.* 1:1-16.1.

(a) **DE Movants**

Direct Energy generally alleges that it has a substantial and direct interest in a number of unspecified issues concerning PSE&G's proposal to recover costs of a Clean Energy Future - Electric Vehicle and the Energy Storage Program ("CEF-EVES"). Direct Energy Movants' Motion at ¶4. Electric Vehicles and the Energy Storage Program are not the subject of this matter. The Company has filed a petition in a separate proceeding (I/M/O Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future – Electric Vehicle

and Energy Storage Program, BPU Docket No. EO18101111) that involves electric vehicles and energy storage.² Direct Energy's attempt to inject issues regarding electric vehicles and energy storage in the current proceeding is misplaced and would likely create confusion or cause undue delay—grounds for denial of participation status under *N.J.A.C.* 1:1-16.6.

CBS claims as a market leader in distributed energy solutions—including solar, combined heat and power, energy efficiency, energy insight, demand response, power generation and energy storage—it has a substantial and direct interest in several issues regarding PSE&G's proposal to use ratepayer funds to support programs that it is offering in the private market. DE Movants' Motion at ¶¶ 4, 21. Likewise, Direct Energy asserts that it has a substantial and direct interest in the current matter as it already offers, through its affiliates and through partners, certain “smart” energy products (i.e. Hive Active Thermostat and Hive Active Light Bulbs) and energy efficiency solutions services (i.e. electric system design, install and repairs, HVAC solutions, and home energy audit services) proposed by the Company in its filing. At the heart of their Motion is a bald assertion that DE Movants' businesses will be adversely affected if the Board approves the Company's EE program. Effectively, DE Movants claim that Board approval would allow PSE&G to use “its monopoly status as a regulated public utility” to gain advantage and unfairly compete with DE Movants' product and service offerings. *Id.* at ¶ 22.

DE Movants' allegations regarding the potential for harm to their competitive interest by affording an unfair competitive advantage to the Company are not novel. DE Movants have not only raised this claim in all three CEF dockets, but Direct Energy has raised this argument in

² By this assertion, the Company is in no way endorsing the validity of a Motion to Intervene or Participate by Direct Energy Movants in the CEF-EVES matter. In fact, the Company has also filed an opposition to the Direct Energy Movants' Motion for Intervention in the CEF-EVES docket.

various PSE&G matters—including the last iteration of the Company’s energy efficiency filing.³ What DE Movants fail to acknowledge however is the fact that the legislature and Governor have already identified the essential elements of New Jersey’s energy future. This future specifically includes public utility involvement in conservation and energy efficiency industries. Indeed, the Legislature declared that public utility involvement and competition in the conservation and energy efficiency industries *are essential to maximize efficiencies*. See *N.J.S.A. 26:2C-45*.

Additionally, Section 13 of the RGGI Law states that an electric or gas public utility may, among other things, provide and invest in energy efficiency and conservation programs in its service territory on a regulated basis. The law also identifies such energy efficiency and conservation programs as eligible for rate treatment approved by the Board—including a return on equity, or other incentives or rate mechanisms. *N.J.S.A. 48:3-98.1(b)*. Lastly, the Clean Energy Law, which Governor Murphy signed into law on May 23, 2018, requires each utility to implement energy efficiency measures to reduce electricity usage by 2% and natural gas usage by 0.75%, and requires that a utility shall include in an annual petition for cost recovery the revenue impact of sales losses resulting from the implementation of those measures.⁴

The laws concerning energy efficiency and conservation have progressed from allowing utility involvement in such efforts to requiring utility participation. So while the Direct Energy Movants believe the energy efficiency and conservation market is a mature and flourishing private market⁵ that needs to be guarded against utility entry, the Legislature and Governor of New Jersey say otherwise—calling for utility involvement to spur progression in the energy

³ In The Matter of the Petition of Public Service Electric and Gas Company for Approval of its Energy Efficiency 2017 Program and Recovery of Associated Costs (“EE 2017 Program”), BPU Docket No. EO17030196.

⁴ P.L. 2018, c. 17, § 3(a) and (e)(1).

⁵ DE Movants’ Motion at ¶¶ 18, 28.

efficiency and conservation space. Direct Energy Movants' attempt to rehash their policy arguments in this proceeding are misplaced, and would serve nothing more than to distract the parties from the actual issues at hand—i.e. whether PSE&G's proposed EE program, including rate treatment, is reasonable, in the public interest, and in accordance with law. As such, Direct Energy Movants' Intervention should be denied. *See N.J.A.C. 1:1-16.3(a)* ("the prospect of confusion or undue delay arising from the movant's inclusion" weighs against intervention).

(b) Sunrun

Sunrun claims that as a leader in residential DER deployment it has a substantial interest in utility capital investment plans, including the consideration of the Non-Wires Alternative ("NWA") solutions and other DER based programs, such as the Smart Home and Volt-Var pilots included in the Company's proposed EE Program. However, Sunrun fails to assert any proper basis for intervention in this case and instead relies on a general assertion that the outcome of this proceeding will directly and substantially impact the energy storage and renewable energy market in PSE&G's service territory, including the residential solar and energy storage market. Sunrun Motion at ¶4. Not once does Sunrun mention that the proceeding will affect it directly and substantially.

While Sunrun mentions that it offers a solar-plus-storage service ("BrightBox") in "several states," it does not specifically mention the availability of this service or actual plans to offer said service in PSE&G's service territory. Sunrun also touts its experience as the largest residential solar and energy storage provider in the country as a basis for intervention. According to Sunrun, it "can contribute significantly to the development of a full and robust record on the important proposals offered by PSE&G in this proceeding." *Id.* at ¶ 9. Without more, these general claims are vague, and fall far short of the requirement that a proposed

intervenor show that it “will be substantially, specifically or directly affected” by the proceeding. For this reason, Sunrun’s Motion for Intervention must be denied.

In addition to the aforementioned claims of substantial interest, Sunrun attempts to inject an issue into the proceeding that has not been introduced or contemplated by the Company’s EE filing. Specifically, Sunrun requests the Board “explore opportunities for deploying residential behind-the-meter battery storage through the development of tariff structures that that will enable more customers to utilize battery storage and share the benefits of the technology with all ratepayers, such as bring-your-own-device (“BYOD”) tariffs in conjunction with PSE&G’s proposed pilot offerings.” This approach, according to Sunrun, “makes customers true partners with the utility in the effort to reduce costs, shift peak consumption, enhance grid resiliency, and facilitate the integration of renewable generation resources on the grid...” *Id.* at ¶10. As in the case of Direct Energy Movants’ Intervention, injection of this issue in this case is misplaced, and would serve nothing more than to distract the parties from the actual issues at hand. Further, nowhere in Sunrun’s Motion did it allege that it is a ratepayer of PSE&G such that it has a reasonable basis upon which to champion a BYOD tariff. And, even if Sunrun had made an assertion that it is a ratepayer of PSE&G, the interests of all ratepayers are more than adequately represented by the New Jersey Division of Rate Counsel (“Rate Counsel”). Sunrun’s interests would therefore be aligned with Rate Counsel’s and are not sufficiently distinct to allow for its intervention. As such Sunrun’s Motion for Intervention should be denied.

Conclusion

Neither the Direct Movants or Sunrun have demonstrated that they should be afforded intervenor status in this proceeding. Neither party has demonstrated that it will be substantially, specifically, and directly affected by the BPU’s resolution of the issues presented in this proceeding, and their Motions demonstrate that they will seek to raise issues that would serve

only to confuse and/or delay this proceeding. Accordingly, PSE&G respectfully requests that the motion for intervention be denied. PSE&G does not object to the Movants becoming participants in the matter pursuant to *N.J.A.C.* 1:1-16.5. However, if Sunrun is granted participant status, the Company requests that such involvement be limited to only the issues concerning the NWA, Smart Homes and Volt-Var pilots identified by Sunrun in its Motion.

Respectfully submitted,

By:



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Dated: November 28, 2018

cc: Commissioner Dianne Solomon
Service List (via e-mail)

Certification of Service

I hereby certify that on this date a copy of the foregoing response was served by electronic service on all parties set forth on the attached service list. I further certify that on this date two copies of this answer in opposition has been sent via overnight delivery for filing to the Board of Public Utilities.



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Dated: November 28, 2018

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