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CASE MANAGEMENT
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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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File No.: 300135-70

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December 3, 2018

Via Hand Delivery and Email

Aida Camacho-Welch, Esq.
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Ave., 3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**RE: In the Matter of the Petition of Public Service Electric & Gas Company for
Approval of Its Clean Energy Future-Energy Efficiency ("CEF-EE")
Program on a Regulated Basis
BPU Docket No.: GO18101112 & EO10121113**

EO18101113

Dear Secretary Camacho-Welch:

Enclosed are an original and ten (10) copies of the Response of Direct Energy Business, LLC ("Direct Business"), Direct Energy Business Marketing, LLC ("Direct Marketing"), Direct Energy Services, LLC ("Direct Services"), and Gateway Energy Services Corporation ("Gateway"), (collectively, "Direct Energy") and Centrica Business Solutions (collectively "Intervenors") to Public Service Electric and Gas's ("PSE&G") opposition to Intervenors' Motion for Intervention. By copy of this letter, copies of this response are being forwarded on this date via email to all persons whose names appear on the attached Service List.

I also have enclosed an extra copy of this Response to be stamped "filed" and returned to this office by the courier.

Thank you for your courtesies.

Case Mgmt
List Copied Via Email &
hard copy

CET/ldr
Enclosures

Respectfully submitted,



Christopher E. Torkelson

cc: Stefanie A. Brand, Esq. (*w/encs., via email and FedEx*)
Matthew M. Weissman, Esq. (*w/encs., via email and Fedex*)
All Persons on Attached Service List (*w/encs., via email only*)

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DEC 04 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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File No.: 452218-30

December 3, 2018

Via Hand Delivery

Commissioner Dianne Solomon
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Trenton, New Jersey 08625

**Re: 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 & ~~EO18101113~~**

EO 18101113

Dear Secretary Camacho-Welch:

In accordance with N.J.A.C. 1:1-12.2(c), Direct Energy Business, LLC ("Direct Business"), Direct Energy Business Marketing, LLC ("Direct Marketing"), Direct Energy Services, LLC ("Direct Services"), Gateway Energy Services Corporation ("Gateway"), and NJR Retail Services Company ("NJR") (collectively, "Direct Energy") and Centrica Business Solutions¹ hereby submit this letter in response to the November 28, 2018² letter submitted by Public Service Electric and Gas Company ("PSEG" or "the Company") opposing the Motion to Intervene of Direct Energy and Centrica Business Solutions ("Letter in Opposition").³ As more fully described below, Direct Energy and Centrica Business Solutions respectfully request that the New Jersey Board of Public Utilities ("the Board") grant the joint Motion to Intervene of Direct Energy and Centrica Business Solutions, on the basis that Direct Energy and Centrica

¹ The Intervention filed on behalf of Direct Energy and Centrica Business Solutions on November 18, 2018 in the above-captioned proceeding also included the intervention of NJR Retail Services Company ("NJR"). PSEG has not opposed the intervention of NJR. Nevertheless, it should be noted that NJR's interests are consistent with those identified by Direct Energy and Centrica Business Solutions in this letter and in their Motion to Intervene.

² PSEG originally filed its Letter in Opposition on November 26, 2018. Pursuant to the request of Board Staff, PSEG revised its Letter in Opposition on November 28, 2018 to correct the docket number and readdress the Letter to Secretary Aida Camacho-Welch.

³ The letter also opposed the separate Motion to Intervene of Sunrun, Inc.

Business Solutions will be substantially, specifically, and directly affected by the outcome of this contested case and their interests are sufficiently different from that of any party so as to add measurably and constructively to the scope of the case. See N.J.A.C. 1:1-16.1 and 16.3.

In its Motion to Intervene, Direct Energy noted that it is one of the largest competitive retail providers of electricity, natural gas and home services in North America, with over 4 million customer relationships, multiple brands and roughly 5,000 employees. As third-party energy suppliers, all five Direct Energy intervening companies (including NJR) hold electric power and/or gas supplier licenses. Under those licenses, Direct Energy is licensed to sell natural gas and electricity to customers in PSEG's service territory.

Centrica Business Solutions, a subsidiary of Centrica plc and affiliate of Direct Energy, integrates localized energy solutions for businesses around the world that leverages its energy insights, onsite generation, and demand management capabilities. Offering innovative distributed energy solutions, Centrica Business Solutions enables organizations to improve operational efficiency, increase resilience, and drive their business vision forward.

Direct Energy and Centrica Business Solutions further explained in their Motion to Intervene that Direct Energy, as a third-party supplier, and Centrica Business Solutions, as a market leader in distributed energy solutions, have a substantial and direct interest in a number of issues raised in this proceeding,⁴ including, PSEG's proposals to: 1) install smart energy thermostats, appliances, lighting, and other equipment using funds collected from ratepayers; 2) offer customers a rebate on HVAC, smart thermostats, appliances, lighting, and other equipment using funds collected from ratepayers; 3) design a plan to achieve desired demand reductions within targeted zones without initiating a competitive process and using innovative approaches designed by the market; 4) use its public utility bill to finance products and installation fees; and 5) capture customer data that is available to the Company in its monopoly role as a public utility. Further, Direct Energy and Centrica Business Solutions noted that party status is necessary so that they can adequately guard against being placed at a competitive disadvantage relative to the regulated public utility in the provision of products and services to customers that are already flourishing in the private market. Finally, Direct Energy and Centrica Business Solutions noted that, given their active participation in offering these

⁴ In its Opposition Letter, PSEG asserts that Direct Energy generally alleges that it has a substantial and direct interest in a number of issues concerning PSEG's proposal to recover costs of a Clean Energy Future – Electric Vehicle and the Energy Storage Program, issues of which are the subject of a separate proceeding. Letter in Opposition at 3. Direct Energy submits that its reference to PSEG's Clean Energy Future – Electric Vehicle and the Energy Storage Program in Paragraph 4 of its Motion to Intervene was a typographical error. The sentence should have provided, "Specifically, as a third-party supplier, Direct Energy has a substantial and direct interest in a number of issues concerning PSEG's proposal to recover costs of a Clean Energy Future – Energy Efficiency Program." Nevertheless, in Paragraph 4 and Paragraphs 22 – 27 of the Motion to Intervene of Direct Energy and Centrica Business Solutions, Direct Energy and Centrica Business Solutions discuss their substantial and direct interest in matters specific to this proceeding. Therefore, the Motion to Intervene of Direct Energy and Centrica Business Solutions should be granted.

products and services, their interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case.

In its Letter in Opposition, PSEG contends that the Motion to Intervene of Direct Energy and Centrica Business Solutions is misplaced. PSEG argues that the issues raised by Direct Energy and Centrica Business Solutions are not novel, that New Jersey's legislature and Governor have already identified the essential elements of New Jersey's energy future, and that the laws concerning energy efficiency and conservation require utility participation. Letter in Opposition at 4-5. PSEG asserts that if the Board allows Direct Energy and Centrica Business Solutions to be involved in this proceeding, their involvement should be limited to participation status. Letter in Opposition at 2.

PSEG's attempt to rely on legal arguments to support its Opposition to the Intervention of Direct Energy and Centrica Business Solutions are not relevant to whether Direct Energy and Centrica Business Solutions have met the standard for intervention in this case. Intervention is appropriate when a person or entity will be substantially and directly affected by the outcome of the contested case. N.J.A.C. 1:1-16.1. Notably, in its Letter in Opposition, PSEG does not dispute the potential harm to Direct Energy and Centrica Business Solutions if the Commission approves the Company's Clean Energy Future – Energy Efficiency Program ("EE Program"). Rather, PSEG inappropriately argues the legality of the aspects of the Company's proposal that Direct Energy and Centrica Business Solutions seek to challenge. While Direct Energy does *not* agree with PSEG's legality argument, this stage of litigation is not the appropriate time for PSEG to argue the legal merits of its proposals.⁵

As Direct Energy and Centrica Business Solutions have a direct and substantial interest in the outcome of this proceeding, they should be granted intervenor status. Specifically, if the Board approves the sub-programs proposed by PSEG, along with the cost recovery which is sought from ratepayers, PSEG would be utilizing its monopoly status as a regulated public utility to directly compete with services that are available through the private market, which would adversely affect Direct Energy and Centrica Business Solutions. Similarly, approval of PSEG's proposal to offer customers an up-front rebate on HVAC, smart thermostats, appliances, lighting, and other equipment, which would be funded through ratepayer dollars, would place other vendors, including Direct Energy and Centrica Business Solutions, at a competitive disadvantage. Further, the Board's endorsement of the Company's proposal to design a plan to achieve desired demand reductions within targeted zones may place suppliers, including Direct Energy, at a competitive disadvantage if PSEG is not required to select suppliers through a competitive process to meet demand reductions and to use technology designed by the market. Additionally, the approval of PSEG's proposal to use its status as a

⁵ Moreover, while Direct Energy may have (or previously had) similar interests in other PSEG proceedings before the Board, Direct Energy's and Centrica Business Solutions' interests here are unique to the programs newly proposed by PSEG in this case. As such, Direct Energy and Centrica Business Solutions are not seeking to "rehash" issues that have already been established.

public utility to promote certain installation services would provide those vendors with a competitive advantage over other entities, including Direct Energy and Centrica Business Solutions. Moreover, allowing PSEG to use its public utility bill to finance the products and the installation fees would place Direct Energy at a competitive disadvantage since it does not have a direct billing relationship with customers. Finally, permitting PSEG to capture customer data that is available to the Company in its public utility role and use it to provide value-added services to consumers, including home energy audits, would adversely affect other market participants, including Direct Energy, particularly when such services are more appropriately offered by the market. Direct Energy and Centrica Business Solutions also have a concern about the potential ability of PSEG to share this data with preferred vendors to the exclusion of other market participants, without any authorization or other privacy and security protocols in place.

Additionally, the permitted intervention of Direct Energy in PSEG's 2017 Energy Efficiency Program and Recovery of Associated Costs proceeding supports the participation of Direct Energy and Centrica Business Solutions as intervenors in this case. *See In the Matter of the Petition of Public Service Electric & Gas for Approval of its 2017 Energy Efficiency Program and Recovery of Associated Costs*, Docket No. EO17030196 ("EE 2017 Program"). Specifically, in the *EE 2017 Program*, in granting Direct Energy's Motion to Intervene, Commissioner Joseph L. Fiordaliso held that "the Smart Thermostat and the Residential Data Analytics pilot programs identified by Direct Energy, if approved, have the potential to directly affect Direct Energy through its affiliated companies in the smart thermostat market." *EE 2017 Program*, Order Approving Procedural Schedule and Granting Motions to Intervene and Admission Pro Hac Vice (May 18, 2017). Similarly, here, Direct Energy and Centrica Business Solutions, as entities offering similar products and services as those proposed by PSEG, may be affected as competitors in the market.

Contrary to PSEG's claims, Direct Energy's interest in this proceeding directly speak to the issue of whether PSEG's proposed EE program, including rate treatment, is reasonable, in the public interest, and in accordance with law. *See* Letter in Opposition at 6. Additionally, Direct Energy's and Centrica Business Solutions' intervention would not confuse the issues. Rather, Direct Energy's and Centrica Business Solutions' intervention would ensure that a more complete record is developed about matters affecting the competitive market. Also, as Direct Energy and Centrica Business Solutions are fully prepared to accept the schedule that has been established, their intervention would not delay the proceeding. In conclusion, Direct Energy and Centrica Business Solutions submit that PSEG's selective opposition to the intervention of parties who are not aligned with its views should not be condoned and respectfully requests that Your Honor grant the Motion to Intervene of Direct Energy and Centrica Business Solutions.

A grant of participant status is inadequate in that it would limit Direct Energy and Centrica Business Solutions to (i) the right to argue orally, (ii) the right to file a statement or

brief, and (iii) the right to file exceptions to the initial decision with the agency head. N.J.A.C. 1:1-16.5. Because participant status would prevent Direct Energy and Centrica Business Solutions from actively participating in all aspects of this proceeding, including discovery, submitting testimony and cross-examining witnesses during the evidentiary hearings, they would be deprived of an opportunity to fully develop the record on the issues they have identified and to protect their direct and substantial interest in the outcome of this proceeding.

Respectfully Submitted,



Christopher E. Torkelson

CET:kem

CERTIFICATION OF FILING AND SERVICE

The undersigned hereby certifies that on the date set forth below an original and ten copies of the within Response to the opposition of Public Service Electric and Gas Company ("PSE&G") to the Motion to Intervene, was sent for filing via hand delivery to the State of New Jersey, Board of Public Utilities as follows:

Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P. O. Box 350
Trenton, New Jersey 08625-0350

and that two copies of each of the aforementioned documents were served via email and FedEx upon counsel of record as follows:

Stefanie A. Brand, Esq.
The Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, New Jersey 08625

Matthew M. Weissman, Esq.
Gen. Regulatory Counsel – Rates
PSEG Service Co.
80 Park Plaza T5
Newark, New Jersey 07102

and that copies of each of the aforementioned documents were served via electronic mail to the parties identified on the attached service list.

Christopher E. Torkelson, Esq.

Dated: December 3, 2018

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 & EO10121113

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