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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

VIA OVERNIGHT MAIL

May 17, 2019

Aida Camacho-Welch, Secretary of the Board
Board of Public Utilities
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BOSTON
HARTFORD
STAMFORD
NEW YORK
NEWARK
EAST BRUNSWICK
PHILADELPHIA
WILMINGTON
WASHINGTON, DC

Re: 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 Nos: GO18101112 and EO18101113

Dear Secretary Camacho-Welch:

We represent Participant, Lime Energy Co., in the above-referenced matter. Enclosed for are 10 courtesy copies of the Post-Hearing Brief of Lime Energy, submitted electronically to the Board and the service list for each docket on Friday, May 17, 2019.

Very truly yours,

Nathan Howe (dmc)

Nathan Howe

Enclosures

Case Mgmt
list Copied

ME1 30465766v.1

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES

In the Matter of the Petition of	:		
Public Service Electric and Gas	:		
Company for Approval of its Clean	:	**BPU Docket Nos.:**	**GO18101112**
Energy Future-Energy Efficiency	:		**EO18101113**
Program on a Regulated Basis	:		

POST-HEARING BRIEF OF LIME ENERGY CO.

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I. INTRODUCTION

1. Lime Energy Co. ("Lime Energy") submits this brief pursuant to the Prehearing Order entered on January 22, 2019 in this proceeding, by Presiding Commissioner Dianne Solomon of the New Jersey Board of Public Utilities ("Board"), granting Lime Energy participant status.[1] The Prehearing Order recognized Lime Energy's experience in energy efficiency solutions provided to New Jersey commercial customers, and granted permission for Lime Energy to submit a post-hearing brief so as to provide constructive input with respect to the salient issues addressed in this proceeding.[2]

2. Lime Energy supports Public Service Electric and Gas Company ("PSE&G")'s Clean Energy Future-Energy Efficiency ("CEF-EE") program,[3] and posits that the proposal should be approved and implemented. Proposals such as CEF-EE are necessary to attain the ambitious targets established by the Clean Energy Act ("CEA"),[4] now enacted over a year ago. As an industry leader, Lime Energy believes that many of the features of the CEF-EE have been designed to comport with industry best practices, and will substantially improve upon the legacy Office of Clean Energy ("OCE")-administered energy efficiency programs that first paved the way toward a clean energy future. Further, decoupling utility revenues from consumption volumes whether through the proposed Green Energy Mechanism ("GEM") as proposed by PSE&G,[5] or through some other means, will help to realize customer benefits available in the

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[1] *In the Matter of the Petition of Public Serv. Elec. & Gas Co. for Approval of its Clean Energy Future-Energy Efficiency Program on a Regulated Basis*, BPU Docket. Nos. GO18101112 & EO18101113, Prehearing Order at p. 18 (Jan. 22, 2019) ("Prehearing Order").

[2] *Id.*

[3] *In the Matter of the Petition of Public Serv. Elec. & Gas Co. for Approval of its Clean Energy Future-Energy Efficiency Program on a Regulated Basis*, BPU Docket. Nos. GO18101112 & EO18101113, PSE&G Petition (filed Oct. 11, 2018) ("Petition").

[4] An Act Concerning Clean Energy, N.J. Pub. L. 2018, c. 17 (May 23, 2018).

[5] The GEM was initially proposed in PSE&G's base rate case, *In the Matter of the Petition of Public Serv. Elec. & Gas Co. for Approval of an Increase in Electric and Gas Rates and for Changes in Tariffs for Electric and Gas*

energy efficiency marketplace as current consumption-based rate structures act as barriers that undermine progress toward reduction targets.

II. DESCRIPTION OF PARTICIPANT LIME ENERGY

3. Lime Energy is a leader in commercial energy efficiency delivery, with a principle place of business in Newark, New Jersey. Lime Energy possesses extensive local and national experience in providing energy efficiency solutions. Lime Energy proudly specializes in serving the hardest to reach small business customers, who often struggle to take advantage of energy saving opportunities. In 2018, Lime Energy joined a family of companies within the Willdan Group Inc. ("Willdan"), among the nation's leading energy and utility services implementers with headquarters in Anaheim, California, and other affiliates that conduct energy efficiency service operations from offices in Edison, New Jersey. The collective New Jersey based and national experience of Lime Energy, and its parent Willdan, informs its support of the CEF-EE as a strong proposal reflective of energy efficiency industry best practices.

III. LEGAL ANALYSIS

A. The CEF-EE is a Timely and Necessary Measure to Implement the CEA Energy Efficiency Targets, the CEA Imposes No Moratorium on Utility Filings.

4. It is undisputed by all parties that the New Jersey legislature has prescribed ambitious – but achievable – energy efficiency targets, requiring annual reductions of electricity consumption of 2%, and gas of 0.75% for each utility, within five years of program implementation.[6] In total, the legislation will quadruple the current annual rate of investment toward energy efficiency solutions within New Jersey. PSE&G estimates that once fully implemented, its CEF-EE

Service, B.P.U.N.J. No. 16 Electric and B.P.U.N.J. No. 16 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, BPU Docket Nos. ER18010029 and GR18010030; OAL Docket No. PUC01151-2018N (filed Jan. 12, 2018).

[6] *See* N.J.S.A. 48:3-87.9(a).

program will produce electric savings of 1.8% per year, and gas savings of 0.8%, both within 10% of the overall targets.[7]

5. With nearly a year having already passed since enactment of the CEA on May 23, 2018, the energy efficiency programs contemplated thereunder have not yet materialized, and there is no benefit to postponing progress toward achieving these energy savings mandates. Those seeking delay of the proposal rely heavily upon additional administrative guidance, such as the Energy Master Plan, Market Potential Study, Quantitative Performance Indicators ("QPIs"), and recommendations of the stakeholder-comprised Advisory Group, all as required under the CEA as reasons to delay, while these directives will assist in strengthening energy efficiency initiatives, they should not serve as a reason to delay CEF-EE implementation when taking into full consideration the language and objectives of the CEA.[8] When read in conjunction with the existing provisions of N.J.S.A. 48:3-98.1(a)(1), a component of the "RGGI Law,"[9] which explicitly permits utilities to file and seek approval of regulated energy efficiency programs, the statutory framework confers to utilities the ability to submit requests to implement regulated energy efficiency programs, notwithstanding the pending directives contained within the CEA.

6. To the extent that others have expressed a preference to delay approval until the Board has issued its Market Potential Study and QPIs, and the Advisory Group has issued its recommendations, Lime Energy is concerned that this view is unsupported by the statutory framework following enactment of the CEA, and would run counter to the expediency that is central to that legislation.

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[7] Petition at ¶ 20.

[8] *See, e.g.*, Transcript dated May 1, 2019, E. Hausman Surrebuttal Testimony at 184:23 to 185:2, 188:10-16, and 191:4-14.

[9] An Act Concerning the Reduction of Greenhouse Gas Emissions, P.L. 2007, c. 340 (Jan. 13, 2008) ("RGGI Law").

7. The suggestion that the CEF-EE proposal is premature is premised on certain directives the CEA requires the Board to perform, including: (1) adoption of an energy efficiency program "in order to ensure investment in cost-effective energy efficiency measures, ensure universal access to energy efficiency measures, and serve the needs of low-income communities"[10] as well as to meet the target efficiency thresholds, (2) to "conduct and complete a study to determine the energy savings targets . . . of each electric public utility and gas public utility and the timeframe for achieving the reductions," (the Market Potential Study) as well as "adopt QPIs,"[11] and (3) to establish an "Advisory Group" as part of its stakeholder process, that will "provide recommendations to the board for improvements to the programs."[12] All of which are required to be completed within one year of enactment, on May 23, 2019, less than a week away.[13]

8. None of these directives to the Board in any way abrogate, limit, or impose a moratorium on PSE&G's ability to propose and implement an energy efficiency program on a regulated basis under the pre-existing statutory provisions of the RGGI Law at N.J.S.A. 48:3-98.1(a)(1). Under the plain language of that statute:

> [A]n electric public utility or a gas public utility may provide and invest in energy efficiency and conservation programs in its respective service territory on a regulated basis pursuant to this section, regardless of whether the energy efficiency or conservation program involves facilities on the utility side or customer side of the point of interconnection.[14]

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[10] N.J.S.A. 48:3-87(g) and (h).

[11] N.J.S.A. 48:3-87.9(b) and (c). QPIs are described as "reasonably achievable targets for energy usage reductions and peak demand reductions and take into account the public utility's energy efficiency measures and other non-utility energy efficiency measures including measures to support the development and implementation of building code changes, appliance efficiency standards, the Clean Energy program any other State-sponsored energy efficiency or peak reduction programs, and public utility energy efficiency programs that exist on the date of enactment." *Id.* at (c).

[12] *Id.* at (f)(1).

[13] *Id.* at 87(g) and (h); and 87.9(b), (c), and (f).

[14] *Id.*

9. When reading the directives of the CEA *in pari materia* with the utility's pre-established rights to propose such a program under the RGGI Law, it is clear that the Board's authority is designed to steer – rather than stall – proposals such as PSE&G's CEF-EE, and to enforce compliance should a utility take no action at all to meet the targets. The CEA provides no indication that any of the Market Potential Study, the QPIs, or the Advisory Group recommendations should act as critical path items to delay any utility-proposed energy efficiency programs. This straightforward interpretation is further supported by the fact that individual utilities will be subject to penalties for non-compliance,[15] and thus, utilities must also be afforded some degree of independence to design and administer their respective energy efficiency programs.

10. Nor is there any implied moratorium included in the requirement that utilities "shall establish energy efficiency programs . . . to be approved by the board *no later* than 30 days prior to the start of the energy year."[16] This provision not only reiterates that it is the utility's obligations to formulate its own energy efficiency program, it further imposes only an affirmative obligation in the event the utility *delays* in making such filing. Nothing within this section prohibits a utility from filing a proposal in advance – regardless of whether or not the Board has completed performance of its directives. As to the latter clause of this subsection, which requires the CEF-EE proposal to conform with the target requirements, QPIs or any other requirements of the "requirements" of N.J.S.A. 48:3-87.9, PSE&G would be required to file an amended proposal that is in compliance within the timeframe provided.[17]

[15] *Id.* at (e)(3).

[16] *Id.* at (d)(1).

[17] *Id.*

11. An alternative solution to resolving any issues that may arise from these later developments is not to delay or reject the CEF-EE, but rather, the Board may establish appropriate oversight through required periodic compliance filings, similar to the annual compliance filing required by the CEA, [18] or subject to modification should any later developments from the Board's advisory group or market studies prove inconsistent with the programs offered under the CEF-EE. It would serve no purpose to delay the program other than to further deprive the public of the energy efficiency cost-saving and environmental benefits that the legislature has envisioned by enacting the CEA.

12. Additionally, the Advisory Group can be formed immediately, and work alongside the implementation of the CEF-EE to observe positive and negative outcomes, and leverage this knowledge to craft and refine their recommendations into the most finely-tuned product. These lessons learned can then be incorporated into subsequent proposals that may be submitted by other New Jersey utilities in the future.

B. New Jersey's Clean Energy Initiatives Will Provide Positive Economic and Environmental Outcomes and Should Not be Stymied by Unwarranted Delay That Would Harm the Public Interest.

13. In considering a utility's request for cost recovery for any regulated program proposed pursuant to N.J.S.A. 48:3-98.1(a)(1), the Board is to render a decision only after taking into account several prescribed elements that include: (1) the potential for job creation from such programs, (2) the effect on competition for such programs, (3) existing market barriers, (4) environmental benefits, and (5) the availability of such programs in the marketplace. As discussed more fully below, the CEF-EE proposal will satisfy each of these considerations.

[18] *Id.* at (e)(1).

1. Expansion of Energy Efficiency Efforts Will Similarly Expand the New Jersey Energy Efficiency Workforce and Are Immediately Necessary To Mitigate the Crisis Posed by Climate Change.

14. There is little need to belabor the crisis posed by anthropogenic carbon-induced climate change, and it is exactly with this concern at the forefront that the New Jersey legislature passed the CEA. Each day of delay amounts to additional carbon-heavy emissions, and harm to the public health and environment, not to mention more severe weather patterns that are particularly threatening to coastal state economies such as New Jersey. Time is of the essence, and the timeline established by the legislature in the CEA has already passed. Delay would only further obstruct the legislature's mandate.

15. The CEF-EE would avoid the harms caused by delay, and would serve the core aims of the recent Executive Order No. 28 and the forthcoming Energy Master Plan mandated by that order, which seek to fully decarbonize New Jersey's energy use on or before January 1, 2050.[19] Energy efficiency programs such as those within the CEF-EE would not only mitigate emissions by reducing consumption of fossil-fuel powered electricity and gas, but strengthen New Jersey's economy by delivering high-wage jobs.

16. Lime Energy employs 110 individuals in New Jersey,[20] while indirectly supporting thousands more jobs of subcontractors and within the supply chain. Beyond Lime Energy, energy efficiency jobs are estimated to number 36,206 across the State, which still pales in

[19] New Jersey Governor Philip D. Murphy, Executive Order No. 28 (May 23, 2018) (recognizing that "traditional methods of energy production that rely on the burning of fossil fuels release harmful emissions of carbon dioxide and other greenhouse gases, which in turn contribute to global climate change" and "in order to curtail serious impacts of global climate change caused by greenhouse gas emissions, New Jersey must shift away from its reliance on fossil fuels as a primary energy source and turn to clean energy sources" and requiring that the "2019 Energy Master Plan).

[20] This figure includes employees of other affiliated entities within the Willdan Group Inc. family of companies, which has offices of affiliated companies located in Edison, NJ.

comparison to the ~120,000 jobs in neighboring New York.[21] This gross discrepancy signals abundant market opportunities for both providers and customers in the State, and the carbon-reduction potential is equally significant to curb New Jersey's climate-harming emissions.[22]

17. As New Jersey's energy efficiency efforts expand, this workforce will grow in kind, which will, in turn, recirculate disposable income from these wages within New Jersey.[23] By comparison, delays to implementation would unnecessarily stall the development of this market, and maintain the status quo where these same funds are expended toward energy produced by out-of-state generators from other PJM states, many of which do not share New Jersey's clean energy goals.

2. *The CEF-EE will Improve Upon the OCE Legacy Energy Efficiency Programs, and Effectively Leverages Cooperation Between the Utility and Third-Party Providers That Will Foster a Revitalized and Competitive Market.*

18. In its filing, PSE&G has requested that it be designated as the "sole regulated provider" of energy efficiency programs within its service territory.[24] Accordingly, this designation would pass the torch from the OCE legacy programs to the CEF-EE for PSE&G customers.[25] The time is ripe for this transition, which fully recognizes and appreciates the laudable energy efficiency programs that were conceptualized and sustained by the OCE throughout the years. However,

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[21] *See* Nat'l Assoc. of State Energy Officials, Energy Futures Initiative; Energy Employment by State – 2019, available at https://www.usenergyjobs.org/. This report provides that Maryland employs 70,530 energy efficiency workers, and Pennsylvania employs 68,820 energy efficiency workers.

[22] Transcript dated May 1, 2019, K. Reif Cross-Examination Testimony at 123:10-15 ("Reif Cross") ("I would offer that we believe that to some degree we're at an advantage because we're behind . . . and when you're behind you can use benchmarks to help you leapfrog other areas and get ahead.").

[23] Petition at Att. 1, K. Reif Pre-Filed Direct Testimony dated October 11, 2018, at 11:3-13 ("Reif Direct") ("The CEF-EE Program is expected to increase employment through the creation of approximately 30,000 direct, indirect, and inducted job-years. . . . 7.91 direct job-years for every one-million dollars spent in energy efficiency in New Jersey" and "expenditures will have a 'multiplier effect' on New Jersey's economy in that the people employed through the CEF-EE Program will spend part of their wages on other goods and services in New Jersey[.]").

[24] Reif Cross at 81:12-14 ("The Company is proposing to be the sole regulated provider of EE in our service territory.").

[25] *Id.* at 141:10-14 ("It's our intention to sub – to launch our programs and transition the programs that the OCE currently runs through the plan, the transition plan that we laid out[.]").

with the passage of time and experience, it has become evident that there is substantial opportunity for improvement, and ways to better serve the public while recapturing New Jersey's stature as a leader in energy efficiency achievement.[26] Thus the CEF-EE will remove market barriers and increase competition for new and existing market participants.

19. Lime Energy has encountered a key constraint with the administration of the legacy programs. The nature of these programs are year-to-year, leading to financial uncertainties in program budgets, subject to fluctuations of the State of New Jersey's annual financial plan process. Utility-administered program budgets, such as those in the CEF-EE submission, are established on a multi-year basis, creating more stability for the customer-facing contractor community and the workers they employ by providing extended time horizons that allows more accurate hiring decisions and reduced turnover.

20. And if the CEF-EE proposal is approved, while PSE&G will be the sole *regulated* provider, it will not act as the *only* provider of energy efficiency services.[27] Indeed, it instead will act as a "market maker" by implementing open-access data systems that supply third-party vendors with the tools to target customers who stand to benefit the most from energy efficiency installations. Providers such as Lime Energy are then able to safely and securely use this information to develop propensity models that identify areas for targeted outreach in order to

[26] *Id.* at 111:2-7 (noting that PSE&G's "best in class" benchmarking analysis indicated that "New Jersey, unfortunately today, is not considered best in class in most [energy efficiency] programs"), and 115:13-18 (citing analysis performed by Energy Resources and Solutions in 2016 that noted OCE "doesn't typically do the [cost-benefit] measurement and verification that the utilities do today. So as a result, we don't know what the cost benefit is for each individual project"), and 138:4-12 (The same study revealed "that New Jersey CEP is generally less cost effective than peer programs, and that compared to other EE portfolios, New Jersey has a typical-sized budget, but achieves fewer energy savings that most, resulting in higher cost for energy units saved than many other programs with very similar portfolios.").

[27] Reif Cross at 83:21 to 84:4 ("Once again, our proposal is to be the only regulated provider. That doesn't mean that there can't be other providers as there can be today. Today people can provide EE services in a competitive environment, and we see no reason why that won't continue. In fact, hopefully this – the focus and the change in culture about EE that we will drive will increase competition for all players and demand.") and at 85:14-23 (referring to "upgraded" procurement practices that PSE&G has implemented to procure energy efficiency provider partners).

identify customers who could most benefit from the program, driving down acquisition costs, and improving both performance and cost-effectiveness. Lime Energy will compete to bring best practices and scale delivery of services to all customer segments.

21. Based on Lime Energy's extensive, well-rounded experience from operations within many other states, Lime Energy can state with confidence that the ability to leverage this information, coupled with "white labeling" by including the utility's logo on marketing materials, clothing, and ID badges, and reaps the highest investment returns for energy efficiency programs by streamlining costs while increasing saturation. Lime Energy is not alone in this view.[28] The ability of third-party providers such as Lime Energy to act in concert with the utility reassures customers that energy efficiency services are legitimately beneficial to them, and this is conducive to their dedicating earnest thought into whether efficiency services could effectively reduce utility bills.

22. As for the CEF-EE programs that would promote equitable outcomes from disadvantaged, low-income, and minority customers, Lime Energy recognizes the importance of ensuring these communities are served, and are able to participate in program benefits.[29] Having performed over 2,700 energy efficiency retrofits under the legacy OCE Direct Install Program, Lime Energy is well-equipped to continue delivering results for these communities. Lime Energy also speaks from experience in voicing its approval for the CEF-EE, which will create opportunities for deep market penetration that greatly expands services targeted to these underserved and often struggling small commercial enterprises that are the backbone to the New Jersey economy.

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[28] Transcript dated May 2, 2019, D. Hansen Cross-Examination Testimony at 50:23 to 51:6 ("Hansen Cross") (referring to a prior assignment where a "third party administrator of energy efficiency programs" related that "utility involvement was actually important to them being able to successfully promote programs.").

[29] Reif Cross at 126:1-7 ("[W]e wanted to make sure that we have programs that can reach all customers with a – we made sure we had a focus on hard-to-reach customers that typically don't have the ability to take advantage of energy efficiency, small businesses, local governments, multi-family, and low income.").

23. Likewise, if the CEF-EE is to gain approval and succeed the OCE legacy programs, it would be appropriate for the Board to entertain PSE&G's invitation to re-evaluate and either reduce, remove, or reallocate the energy efficiency program component of the Societal Benefits Charge within the PSE&G service territory.[30]

C. PSE&G's Decoupling GEM Mechanism Removes Disincentives to Reducing Energy Consumption and Aligns Shareholder Interests with the Public Interest.

24. Lime Energy also supports PSE&G's proposed GEM decoupling mechanism as a critical component modernizing PSE&G's rate design to confront current challenges of reducing consumption and increasing distributed generation resources by decoupling revenues from consumption volume. Rate decoupling is not only explicitly encouraged and permitted by N.J.S.A. 48:3-98.1(b),[31] it is also fundamental to advancing energy efficiency programs in all leading jurisdictions, removing the disincentive for utilities that might otherwise promote reliable, efficient, and low-cost clean energy systems. Rate decoupling would not only protect against lost revenues from the CEA programs, but other energy efficiency programs at the federal level as whether, and further supporting cooperation of utilities with these initiatives at all levels.[32]

25. As stated by Mr. David Hansen at the hearing:

> [W]hat decoupling is trying to do is solve this disincentive problem while largely leaving existing rates intact and having just relatively small adjustments around the volumetric rates to remove the disincentive and make the utility whole.[33]

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[30] *See* Reif Direct at 20:7-11, Reif Cross at 139:23 to 140:1 ("[O]ne of the tasks is determine reallocation of SBC funding, which we're proposing start nine months following approval.").

[31] "All electric public utility and gas public utility investment in energy efficiency and conservation programs . . . may be eligible for rate treatment approved by the board, including a return on equity, or other incentives or rate mechanisms that ***decouple utility revenue from sales of electricity and gas***." N.J.S.A. 48:3-98.1(b) (emphasis added).

[32] Hansen Cross at 50:14-20.

[33] *Id.* at 14:7-12.

26. Under a decoupled rate, the utility is afforded an "allowed amount of revenue per customer" but does not "guarantee a rate of return," similar to traditional rate methodologies that provide a utility with the opportunity to earn a fair return on investment.[34]

27. With this market barrier removed, a utility would be "more accommodating to third parties promoting conservation" in addition to "distributed generation or battery storage."[35] In other words, rate decoupling provides for utilities to at least be neutral toward exactly the types of energy investments that New Jersey seeks to accelerate through enactment of the CEA, and moreover, to satisfy a large percentage of the 100% clean energy target established by Executive Order No. 28 by 2050. Other incentives and benefits such as customer satisfaction could even drive utilities to be encouraging of these investments.[36]

28. Nor should the Board rely solely on the investment incentives and penalties envisioned by the CEA to force the utilities into compliance. Any such incentives will inevitably compete with countervailing disincentives of lost consumption and revenues. And the constant threat of penalties for non-compliance will frustrate the goal of fostering a conducive environment for collaboration between utilities and third-party providers. It is better to lead with a carrot than the stick, and this is of particular importance when collaboration and partnerships between utilities and competitive third-party providers is vital to the program's success. While penalties may be an important component of the energy efficiency programs, they should provide only an additional layer of security ensuring that the targets are met.

29. Lime Energy's and Willdan's experience and results underscore the positive impact decoupling has on utility investment in energy efficiency delivery. Lime Energy and Willdan

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[34] *Id.* at 14:21-25.

[35] *Id.* at 17:11-18.

[36] *Id.* at 18:3-9.

IV. CONCLUSION

Lime Energy respectfully requests that the Board approve PSE&G's CEF-EE proposal, which will not only improve upon existing energy efficiency initiatives and provide the next step toward attaining the remarkable energy efficiency targets established by the CEA, but also strengthen the energy efficiency marketplace.

Respectfully submitted,

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