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May 29, 2019

Via Hand-Delivery and Electronic Mail
Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of the Petition of Public Service Electric and Gas Company For Approval of its Clean Energy Future-Energy Efficiency ("CEFEE") Program on a Regulated Basis
BPU Docket Nos. GO18101112 & EO18101113

Dear Secretary Camacho-Welch:

Enclosed please find an original and ten (10) copies of the Division of Rate Counsel's Reply Brief in connection with the above referenced matter.

Copies of the brief will be provided to all parties by electronic mail and hard copies will be provided to counsel of record. Additional hard copies can be provided upon request.

We are enclosing on additional copy of the brief. **Please stamp and date the extra copy as "filed" and return it to the courier**.

Respectfully submitted,

Stefanie A. Brand

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Director, Division of Rate Counsel

Case Mgmt
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SAB
Enclosure
c: Dianne Solomon, Commissioner (via hand-delivery)
Service List (via electronic and/or overnight mail)

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

REPLY BRIEF ON BEHALF OF THE DIVISION OF RATE COUNSEL

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Dated: May 29, 2019

Table of Content

I. INTRODUCTION

As set forth herein, Public Service Electric and Gas Company ("PSE&G", "the Company") provided nothing in its initial brief to seriously refute the arguments presented by the New Jersey Division of Rate Counsel ("Rate Counsel"). First, PSE&G has not provided a credible argument to refute the fact that its Clean Energy Future - Energy Efficiency ("CEFEE") filing was premature, presupposing policy positions and findings which have yet to be determined as part of the ongoing State Energy Master Plan[1] ("EMP") and Clean Energy Act[2] ("CEA") proceedings. Second, the Company has not provided any credible argument to support the adoption of its so-called Green Enabling Mechanism ("GEM"), which decouples its earnings from its energy unit sales. In addition to Rate Counsel, both the Staff ("Board Staff", "Staff") of the Board of Public Utilities ("Board", "BPU") and the New Jersey Large Energy Users Coalition ("NJLEUC") concur that PSE&G's filing is premature in light of the ongoing EMP and CEA proceedings, and that its GEM proposal should be rejected.[3]

Additionally, as set forth below, the record clearly refutes PSE&G's contention that its proposed CEFEE program is a broadly supported program with "undisputed and substantial" benefits. Finally, Rate Counsel addresses instances where clarifications are needed to refute certain mischaracterizations of the testimony of Rate Counsel witnesses.

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[1] Executive Order 28 (May 23, 2018).
[2] P.L. 2018, c. 17.
[3] See *NJLEUCIB* pp. 22-23, 24-40; *SIB* pp. 17-27, 52-57.

II. ARGUMENT

A. PSE&G'S AND EELC'S ARGUMENTS THAT THE BOARD SHOULD EXERCISE ITS AUTHORITY UNDER THE RGGI LAW TO APPROVE THE CEFEE PROGRAM IGNORES THE REQUIRED ANALYSES UNDER THE CEA

The Eastern Environmental Law Center ("EELC") and the Company each argue that the Board can rely on the Regional Greenhouse Gas Initiative ("RGGI") Act alone to approve the CEFEE Program without conducting the analysis required under the CEA. *EELCIB*, p. 6 and *PIB*, p. 28. The Company acknowledges that the CEA requires utilities to reduce energy use by their customers, requires the BPU to conduct a complete study to determine savings targets with peak demand reductions, establish timeframes for reductions, and adopt quantitative performance indicators. *PIB*, p. 29. Although the Board is working toward these goals, it has not yet completed those analyses to establish the required targets.

Rate Counsel agrees with EELC that the RGGI statute and the CEA should be read *in pari materia* but disagrees with EELC's interpretation of what constitutes "harmony" of the two statutes. Since the CEA plainly requires the aforementioned analyses prior to full implementation of the targets, incentives, and penalties set forth in the law, any approval of the CEFEE program prior to that implementation would be ignoring the CEA altogether. The CEA clearly mandates a process for the development and implementation of EE programs. Approving a proposal as large and as radical as this before Board policy under the CEA is established ignores the clear intent of the CEA and is therefore the opposite of an *in Pari Materia* reading of the statutes.

Paradoxically, EELC witness Ms. Amanda Levin conceded the importance of having the Board establish policy under the CEA prior to approving the CEFEE, and even suggested that PSE&G resubmit a revised filing after the Board has spoken. *EELC-2*, p. 19. In contrast to the

argument presented by EELC in its initial brief, Ms. Levin testified:

> If the Board believes that the statewide proceeding be completed first, the Board should establish a deadline…to ensure that the momentum …of these clean energy goals remains strong[…[The Board] could hold off on ruling on the non-pilot proposed subprograms in this CEF-EE filing ahead of the deadline…If timely action is taken in the statewide proceeding, PSE&G would submit a revised filing in accordance with the Board's order in that broader proceeding. *Id.*

Yet, EELC's brief argues, contrary to its witness' testimony above, that the CEFEE matter should be decided before the Board issues relevant policy guidance.

Further, EELC takes issue with Rate Counsel witness Dr. Ezra Hausman's surrebuttal testimony at the hearing in reference to the Board's forthcoming EMP when he stated: "I don't think it's possible to say that the Company's proposal is consistent with a plan that does not yet exist."[4] EELC mischaracterizes his statement as a legal opinion. To the contrary, Dr. Hausman correctly concluded that although the CEFEE could provide some energy efficiency ("EE") benefits, he is unable to analyze the programs within the context of a policy framework since the Board is in the process of establishing that framework.[5] Dr. Hausman's statements regarding the timeliness of the Company's filing are wholly within his expertise in energy efficiency and, contrary to EELC's argument, he did not in fact offer a legal analysis or an opinion on administrative procedures. *EELCIB*, p. 4.

In sum, with regard to Dr. Hausman's testimony on the EMP, the EELC cannot credibly argue that his statements were legal opinions. Additionally, the EELC's criticism of Dr. Hausman only highlights the fact that it made arguments on both sides of whether the Board should or should not conduct analyses under the CEA prior to approving the CEFEE.

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[4] *T176:L15-17* (May 1, 2019) and *EELCIB*, p. 4-5.
[5] *T176:L15-17* (May 1, 2019)

PSE&G takes issue with Dr. Hausman's statements at the hearing regarding the timeliness of the Company's proposal with regarding to the EMP. The Company protested that "Rate Counsel's newfound reliance on the EMP is meritless." *PIB*, p. 12. Dr. Hausman's surrebuttal on the unknowable relationship between the Company's filing and forthcoming EMP was responsive to the rebuttal testimony of PSE&G witness Karen Reif, where she testified:

> The CEF-EE Program benefits outlined above are also consistent with the Administration's upcoming Energy Master Plan ("EMP") due in June 2019, two goals of which are "growing New Jersey's clean energy economy" and "reducing the state's carbon footprint". Moreover, one of the working groups for the new EMP is focused on "Reducing Energy Consumption." *PS-4*, p. 6.

Dr. Hausman's discussion of the CEFEE and the EMP in his surrebuttal testimony simply responds to Ms. Reif's rebuttal on the subject.

B. THE RECORD DOES NOT SUPPORT PSE&G'S ASSERTION THAT THE CEFEE PROPOSAL IS A BROADLY-SUPPORTED PROGRAM THAT OFFERS "UNDISPUTED AND SUBSTANTIAL" BENEFITS.

PSE&G argues at pages 15 through 21 of its initial brief that the proposed CEFEE program, as a result if its "undisputed and substantial" benefits, has attracted "significant and diverse" public support. The record does not support these assertions. The benefits of the Company's proposal are not "undisputed," and support for the Company's program is not as uniform as PSE&G is attempting to suggest.

1. **The Record Does Not Reflect "Undisputed" Benefits From the Proposed Program and PSE&G Has Not Met Its Burden of Showing that its Proposal is Just and Reasonable.**

At page 21 of its initial brief, PSE&G attempts to suggest that the design of its 22 proposed CEFEE subprograms is virtually unchallenged in the record. Specifically, PSE&G states the following:

> Yet Rate Counsel, the only party in the proceeding to submit testimony opposing the Program, only mustered two sentences in Dr. Hausman's 38-page direct testimony critiquing the CEF-EE Program design, and that criticism focuses on one pilot program within one of the C&I subprograms.

PIB, p. 21. PSE&G's characterization is incorrect. Both in his prefiled testimony and at the evidentiary hearing, Dr. Hausman explained that PSE&G's entire CEFEE program lacks a proper foundation. The evidence in the record on this subject is discussed at length in Section IV.A of Rate Counsel's initial brief and in Section II.A above, and will not be repeated here. Suffice it to say that, in the absence of the determinations of policies and goals pursuant to the CEA, the entire structure of PSE&G's program is impossible to evaluate. Contrary to PSE&G's assertion, the CEFEE program design is fundamentally flawed because it is not built on the foundation mandated by the CEA.

Further, it is important to bear in mind that the burden of proof is on PSE&G to prove that its proposed program is reasonable. As explained in detail in Rate Counsel's initial brief, PSE&G's own evidence highlights a significant issue with PSE&G's program design—it allocates a disproportionate share of program costs to ratepayers who do not receive all of the benefits. *RCIB,* p.30-35. This issue simply is not addressed in PSE&G's evidentiary presentation. Designing programs to achieve the best "bang for the buck" for the ratepayers providing the

funding should be a central consideration in designing an energy efficiency program. The record does not reflect that the skewed allocation of benefits that were shown in the Company's own cost-benefit analyses ("CBA") were a serious concern for PSE&G.

PSE&G's various arguments that the purported benefits of the program are "undisputed" likewise are not supported by the record. PSE&G's initial brief suggests that two propositions are undisputed: (1) that the CEFEE program is cost-beneficial (*PIB,* p. 44-52) and (2) that the Office of Clean Energy's ("OCE") EE programs are not cost-effective (*PIB,* p. 26-27). Neither statement is supported by the record.

With regard to the first statement, Rate Counsel's initial brief explains at length why both the CBAs that were submitted with the filing and the adjusted versions filed with the Company's rebuttal testimony are not credible. *RCIB,* p. 24-30. For this reason alone, PSE&G has not carried its burden of demonstrating the cost-effectiveness of it proposal. Further, the BPU Staff's initial brief highlights a glaring deficiency in the Company's CBAs - the Company has characterized eight subprograms with a total budget of approximately $169.5 million in proposed spending as "pilot" programs, apparently to avoid the requirement to perform CBAs for these subprograms. *SIB,* p. 35. With this large gap in the Company's CBAs, the record is not sufficient to support a finding by the Board that PSE&G's proposed program is cost-effective.

With regard to the second statement, PSE&G's criticisms of OCE's program is based on two analyses performed by Energy & Resource Solutions ("ERS"), a 2016 independent evaluation report ("2016 ERS Report"), and a 2015 benchmarking analysis ("2015 ERS

Report").[6] Based on these two reports, PSE&G argues that "the available data indicates that "the OCE programs are not cost-effective." *PIB,* p. 26-27. The ERS analyses do not support this conclusion. Both reports concluded that OCE's costs of achieving a given amount of energy savings were higher relative to other programs. 2016 ERS Report, p. 94-95; 2015 ERS Report, p. 6. However, neither contains any CBAs and, accordingly, neither supports a conclusion that costs of the OCE programs are higher than the benefits. The converse is also true. The record contains no estimates of the costs per unit of energy savings that would result from PSE&G's proposed program. Thus, the record does not support a conclusion that PSE&G's proposed programs would be any less costly than OCE's Clean Energy Program ("CEP").

Furthermore, the ERS reports do not provide an "apples to apples" comparison with PSE&G's proposed programs. As PSE&G noted in Ms. Reif's rebuttal testimony, the ERS reports are based on actual results. *PS-4*, p. 15. The CBAs submitted by PSE&G in support of its proposals are prospective analyses based on the projected performance of the proposed subprograms. *See, PS-2,* p. 11-13. There is no evidence in the record of the results of actual performance of any of the energy efficiency programs offered by PSE&G to date. Thus, there is no basis in the record for cost-effectiveness actually achieved by PSE&G compared to the OCE's CEP.

It is not the responsibility of Rate Counsel or any other party to prove that PSE&G's programs are not cost-effective. It is PSE&G's burden to prove that its proposed expenditure of $2.8 billion reflect the principles of "efficient and economical operation" that apply to all utility

[6] Process Evaluation Study prepared for the New Jersey Clean Energy Program (Jan. 2016), available at: http://www.njcleanenergy.com/files/file/Library/NJCEP%20Process%20Evaluation%20Final%20Report%20and%20Memo%2002152017.pdf; Review and Benchmarking of the New Jersey Clean Energy Program prepared for the New Jersey Board of Public Utilities (Feb. 24, 2015), available at: http://www.njcleanenergy.com/files/file/Library/ERS%20Benchmark%20and%20Program%20Review_v3.pdf.

expenditures. Public Service Coordinated Transport v. State, 5 N.J. 197, 225 (1950). For the above reasons, in addition to the reasons explain in Rate Counsel's initial brief, PSE&G has not met this burden, and the proposed CEFEE program should be rejected.

2. The Company Should Be Directed to Test Lower Incentive Levels for the Residential Efficient Products Sub-Program.

If the Board decides to allow all or part of the Company's proposal, any subprograms approved by the Board should be subject to conditions requiring the Company to take prompt and effective action to assure that energy and peak demand savings are being achieved as economically as possible for the Company's ratepayers. Any approved program should include ongoing analyses of the proper levels of incentives to be provided to participating parties, with the objective of providing sufficient, but not excessive, subsidies.

For example, Rate Counsel notes that the Company's existing "Smart Thermostat" subprogram, which the Board Staff is recommending be extended, could be structured to include tests of lower incentive levels. The Smart Thermostat program is operated as an online marketplace. *PS-2,* Attachment 2, p. 9 of 224. This online format should facilitate adjustments to the terms and conditions offered to participants, such as the amounts of rebates and interest charged for financing. Similar requirements could apply if this program is extended to other products and services, as proposed by PSE&G. *Id.*

3. The Record Shows Support for PSE&G's Proposal by a Select Group of Potential Beneficiaries, But Not by Ratepayers as a Whole or Potential Competitors.

The Company's claim that its proposal enjoys "significant and diverse public support" (*PIB,* p, 16) is based on a selective interpretation of the record. PSE&G is relying on a select group of supporters, namely, those who stand to share in the hundreds of millions of dollars in

ratepayer-funded subsidies PSE&G proposes to distribute through the CEFEE program. *PIB,* p. 16-21.

PSE&G's brief virtually ignores two segments of the public that have expressed opposition to PSE&G"s proposal. The first is the ratepayers who would have to pay for the program. Rate Counsel may be "the only party" offering testimony opposing the proposed program (*PIB,* p. 3), but it represents millions of utility ratepayers including PSE&G's 2.2 million electric and 1.8 million gas ratepayers. NJLEUC also appeared as a single party, but represents many of PSE&G's largest ratepayers.

Another important constituency is potential EE competitors, represented by Participants Direct Energy and Sunrun. PSE&G has cited Sunrun's conceptual support of a two of the proposed "pilot" programs, but does not mention the significant concerns Sunrun has raised about the prematurity of the filing, the lack of proper definition of the proposed program, and the adverse impact of PSE&G's proposal on the competitive market for energy efficiency services. *T40:L11 to T46:L23* (May 1, 2019).

Sunrun's initial brief highlights PSE&G's failure to consider the interests of potential competitors, despite statutory directives that require the Board to consider the impact of energy efficiency programs on competition. As noted by Sunrun, under applicable statues, energy efficiency programs "should be implemented to further competition," N.J.S.A. 26:2C-45, and market - based mechanisms are to "remain a part of this State's energy efficiency strategy," N.J.S.A. 48:3-50. Further, in determining a utility's requests for recovery of the costs of energy efficiency programs, the Board is required to consider, among other factors, the effect of the

utility's program on competition, and the availability of such programs in the marketplace. N.J.S.A. 48:3-98.1(b). *Sunrun IB,* p. 5-6.

The record does not support PSE&G's claim to a "diverse" group of supporters. While the proposal is supported by entities that stand to benefit there is no evidence of a similar level of support from the residents and business that would pay for the program, or from potential competitors in the EE marketplace.

C. THE COMPANY HAS NOT MET ITS BURDEN OF PROOF TO SHOW THAT THE GEM IS NECESSSARY

1. Contrary to Arguments Made by the Company and EELC, a Decoupling Mechanism Does Not Directly Correlate with Greater Energy Efficiency Savings

The Company and EELC argue that states with the highest energy efficiency savings almost always have approved revenue decoupling mechanisms. *PIB*, pp.57-58 and *EELCIB*, p. 13. With regard to state rankings of energy efficiency savings, the Company noted that "with respect to electric utilities, the top nine states, and 17 of the top 20 states...also have approved decoupling rate structures"[7] inferring that decoupling has a correlation to the amount of energy savings. On surrebuttal, Rate Counsel witness Dr. David Dismukes stated that:

> Just making a pass of just correlation doesn't mean causality...just because you have decoupling, doesn't necessarily mean you're going to have high energy efficiency...[M]any of those states [with high energy efficiency savings] also tend to have the highest electricity rates in the country as well, so the opportunity for energy efficiency is going to be higher there relative to other places, so there's something that hasn't been controlled for in terms of comparing states that do and don't have decoupling. *T133:L12-24* (May 2, 2019).

In making a false correlation between decoupling and energy efficiency savings, the Company and EELC are not accounting for other factors, such as commodity price, which can

[7] *Id.* p. 58

also influence energy efficiency results. Company witness Dr. Hansen's rebuttal testimony referenced a chart showing the five states with the highest electricity energy savings in 2017: Vermont, Rhode Island, Massachusetts, California, and Connecticut. *PS-9,* Sch. DGH-1. Dr. Hansen also stated that each of those states had decoupling in place. *Id.* According to the U.S. Energy Information Administration ("EIA"),[8] each of those five states also have a significantly higher average electricity price than the state of New Jersey. In 2017, New Jersey had an average residential price of 15.69 cents per kilowatt hour whereas the average residential price per kilowatt hour for each of the aforementioned states ranged from the lowest at 17.65 cents in Vermont to 20.31 cents in Connecticut.[9]

The same is true for states with the highest gas energy efficiency savings shown on Dr. Hansen's chart.[10] In 2017, seven out of the ten top ranking states for gas energy efficiency also had a higher average dollar price per MCF for residential natural gas.[11] According to the EIA, in 2017 New Jersey had an average natural gas price of $9.14 per MCF, whereas seven out the top ten ranking energy efficiency states for gas had prices higher than New Jersey ranging from $10.59 per MCF in Oregon to the two highest states of Vermont at $14.12 per MCF and Hawaii at $38.88 per MCF.[12] Additionally, it should be noted that the District of Columbia is ranked number eight on Dr. Hansen's list of energy efficiency savings and it does not have a decoupling mechanism in place and its average price of natural gas is higher than the average in New Jersey.[13]

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[8] https://www.eia.gov/electricity/monthly/archive/february2018.pdf (last visited 5/23/19)
[9] *Id.*
[10] *PS-9*, Schedule DGH-2.
[11] https://www.eia.gov/dnav/ng/ng_pri_sum_dcu_SNJ_a.htm (last visited 5/23/19). The information cited can be obtained by searching for the residential price per state.
[12] *Id.*
[13] *Id.* and *PS-9,* Schedule DGH-2

Another factor to consider which Dr. Dismukes raised at hearing is that, in general, states that adopt strong energy efficiency measures may also be more likely to adopt other progressive mechanisms such as demand side management, renewable portfolio standards ("RPS"), and retail choice. *T133:L25-T134:L10* (May 2, 2019). Therefore, in addition to price, there are other factors at work that can influence energy efficiency savings and the entire energy profile of a state.

As a result of these variations, the Company cannot reasonably draw a direct correlation between decoupling and higher energy efficiency savings. A state's energy policy and the average energy price matter and demonstrates that each state starts from a different perspective when measuring energy efficiency savings. Customers in states where the prices are significantly higher may have a greater incentive or tendency to conserve and that conservation could be completely unrelated to energy efficiency programs initiated by the state or the utilities. Additionally, where prices are higher, as Dr. Dismukes testified, there is simply more opportunity for savings.[14] Therefore, the Company's view that decoupling will automatically lead to greater energy efficiency is myopic. It does not account for the myriad of other factors which can influence energy efficiency outcomes.

Interesting, both EELC and Google, LLC, each supporters of the GEM, admitted in their initial briefs that decoupling is not a panacea.[15] Google pointed to Ms. Levin's direct testimony which admitted that "[d]ecoupling does not provide the utility with an incentive to pursue additional or all cost-effective efficiency, it just eliminates the disincentive a utility has

[14] *T133:L20-22* (May 2, 2019).
[15] *EELCIB*, p. 13, *GoogleIB*, p. 15.

to pursue cost-effective measures."[16] Therefore, if decoupling only breaks down a barrier, but it does not build a bridge to energy efficiency, this seems counterintuitive to EELC's and the Company's argument that decoupling is the most direct route toward energy efficiency.

2. Adoptions of Decoupling in Other States Have No Bearing on Whether the Board Should Reject the GEM

In its initial brief, the Company cites Ms. Levin's rebuttal testimony regarding the number of other states that have a decoupling mechanism in place to emphasize that it is not a surprise that other organizations have shown support for the GEM[17] and apparently to suggest a national inclination toward decoupling. In reality, in the United States, only about 23% of investor-owned electric utilities and 17% of investor-owned gas utilities have decoupling or a similar mechanism in place.[18] It should be noted that there are also public utility commissions who have specifically rejected decoupling in recent years. Commissions, in addition to the New Jersey BPU, that have rejected decoupling since 2012 include: the District of Columbia,[19] Nebraska,[20] and Montana.[21]

As noted in Rate Counsel's initial brief, New Jersey is unique in that it is one of four states that permit a return on energy efficiency[22] and therefore some of the purported "disincentives" that exist elsewhere may not be present in New Jersey. Additionally, New

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[16] *GoogleIB,* p. 15 and *EELC-1*, p. 9.
[17] *PIB*, p. 58
[18] Direct Testimony of Dr. David Dismukes, p. 6 filed Aug. 6, 2018, IMO the Petition of PSE&G for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs For Electric and Gas Service, BPU NJ No. 16 Electric and BPU NJ 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. 48:2-2-21.1 and for Other Appropriate Relief, BPU Docket Nos. ER18010029 and GR18010030 at: https://nj.gov/rpa/docs/ER18010029-and-GR18010030-PSE&G-BRC-2018-RC-Initial-Testimony-of-David-Dismukes-and-Schedules%20.pdf
[19] https://dcpsc.org/CMSPages/GetFile.aspx?guid=547eda28-2a36-4737-b323-16184e63f184 (last visited 5/23/19).
[20] http://www.nebraska.gov/psc/orders/natgas/NG-0067.7.pdf (last visited 5/23/19).
[21] http://psc2.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2014-6-53_7375a.pdf (last visited 5/23/19).
[22] *RCIB,* p. 42.

Jersey has a unique set of legislative mandates under the RGGI Statute and the CEA which encourage and incentivize utilities toward energy efficiency without the need for decoupling. Contrary to what EELC and the Company have argued, decoupling has not taken hold nationally and even if it had, it does not mean the GEM is appropriate here.

3. Dr. Dismukes Did Not Agree that Without Decoupling PSE&G Will Have a Negative Impact on its Allowed ROE and the Company's Assertions to the Contrary are a Gross Mischaracterization of Dr. Dismukes' Testimony. The Company Also Mischaracterizes Dr. Dismukes' Discovery Response.

The Company stated in its initial brief that "Rate Counsel witness Dismukes does not dispute that the usage reductions set forth in the CEFEE Program will have a negative impact on the Company's ability to earn its allowed ROE." *PIB*, p. 56. This is a mischaracterization of Dr. Dismukes' statement since it improperly truncates his response. During cross - examination when the Company asked whether its discovery response on lost revenues demonstrated that the Company will not earn its ROE, Dr. Dismukes stated that although the Company's discovery response showed a projected revenue loss upon implementation of the CEFEE program, "it is limited to those revenue losses ...based on this calculation. But there are mitigating factors that would dampen this impact as well." *T153:L7-13*, (May 2, 2019). In other words, Dr. Dismukes' testimony was that if other mitigating factors and company programs contributed toward an increase in revenues which were greater than any revenue losses attributable to the Company's CEFEE, then there would be no overall revenue loss to the Company and therefore no negative impact on its ability to earn its ROE.

In its initial brief, Staff agreed that the Company cannot ignore offsets to any potential revenue decrease. Staff noted:

> PSE&G's claim for recovery of their reduced sales is akin to single-issue ratemaking where the Company singles out one factor such as lost revenues

> resulting from the implementation of EE without taking into consideration all other factors of the Company's ongoing operations. While energy efficiency measures may result in lower sales volumes, the Company is ignoring the other circumstances that can lead to a substantial increase in earnings, sales, and returns. *SIB*, p. 55.

Therefore, Rate Counsel and Staff agree that any reduction in revenues due to the CEFEE may be offset by other opportunities for revenue and the Company has not proven that it will be unable to earn its ROE.

Additionally, contrary to the Company's assertion, Dr. Dismukes did provide supporting materials to support his argument that decoupling may provide a disincentive to operate efficiently.[23] In response to PS-RC-DD-43, Dr. Dismukes provided a citation to a book on economic theory regarding the relationship between institutional efficiencies and profit.[24] Additionally, he provided seven articles on the cost-plus regulatory approach regarding how it shifts a performance-related risk from utilities to ratepayers.[25] In total, Dr. Dismukes provided eight sources to support his response to PS-RC-DD-43.[26] To state that Dr. Dismukes did not provide the "data and other evidence supporting the proposition that decoupled utilities operate less efficiently" as requested in the Company's propounded discovery request is simply inaccurate. Notably, Staff also shares Dr. Dismukes' concerns in this regard and stated that: "the GEM would also eliminate any incentive for management to behave in the best interest of its customers....[and w]ith no repercussions to the Company or shareholders and revenues repaid by the ratepayers, management may spend lavishly on program expenditures." *SIB*, p. 56.

The Company further mischaracterizes' Dr. Dismukes' testimony on a Lost Revenue Adjustment Mechanism ("LRAM"). In his direct testimony, Dr. Dismukes specifically stated

[23] *PIB*, p. 54, footnote 162.
[24] See *PS-RC-DD-43*.
[25] *Id.*
[26] *Id.*

that the CEA's "treatment of lost revenues is more specific than the Company's GEM. The Clean Energy Act...language limits the recovery of lost base revenues to those that are directly attributable to the utility's activities." *RC-7* p. 30. In that section of his testimony cited by the Company, Dr. Dismukes makes no further comment upon whether an LRAM is permissible under the CEA. *Id.* In fact, later on his direct testimony, Dr. Dismukes specifically recommended the Board reject any LRAM proposal since it has not been designed or proposed. *RC-7*, p. 39-40. The Company has not set forth clear parameters of what revenues would be in a PSE&G LRAM since it has stated repeatedly all the reasons why it does not favor an LRAM. *PIB*, p. 59-60 and *PS-8*, p. 26-27. EELC has also stated that it does not favor an LRAM. *EELCIB*, p. 14. Therefore, since the CEA allows a company to ask for an LRAM but does not mandate that the Board award such a mechanism, the Company's argument is a red herring. The fact is that the Company has not met its burden to demonstrate that the GEM is necessary and it should therefore be rejected.

III. CONCLUSION

For all the foregoing reasons, Rate Counsel reiterates that PSE&G's CEFEE proposal should be denied as premature considering the ongoing Energy Master Plan and Clean Energy Act proceedings that will establish the necessary policies for future EE programs.

Respectfully submitted,

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