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May 29, 2019

VIA E-MAIL AND U.S. MAIL

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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 No. EO18101113 and GO18101112

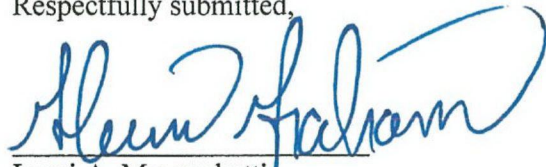
FORWARD
CASE MANAGEMENT
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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Secretary Camacho-Welch:

Enclosed please find an original and ten (10) copies of Sunrun Inc.'s Reply Brief in this matter.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF PUBLIC)	
SERVICE ELECTRIC & GAS COMPANY FOR)	DOCKET NOS.
APPROVAL OF ITS CLEAN ENERGY FUTURE-)	GO18101112
ENERGY EFFICIENCY ("CEF-EE") PROGRAM ON A)	EO18101113
REGULATED BASIS)	

REPLY BRIEF OF SUNRUN INC.

AND

CERTIFICATE OF SERVICE

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF PUBLIC)	
SERVICE ELECTRIC & GAS COMPANY FOR)	DOCKET NOS.
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ENERGY EFFICIENCY ("CEF-EE") PROGRAM ON A)	EO18101113
REGULATED BASIS)	

REPLY BRIEF OF SUNRUN INC.

Pursuant to the *Prehearing Order Setting Procedural Schedule and Ruling on Motions to Participate and Intervene*, issued January 22, 2019 by Commissioner Solomon of the New Jersey Board of Public Utilities ("Board"), Sunrun Inc. ("Sunrun") submits its reply brief in the above-referenced dockets.

I. Introduction

Numerous parties and participants in this proceeding have demonstrated that Public Service Electric & Gas Company's ("PSE&G" or "Company") unilateral approach to developing its \$2.8 billion energy efficiency proposal is flawed and should be rejected because (1) in direct contravention of the Clean Energy Act ("CEA" or "Act"), it would place *less* reliance on competitive markets by *failing* to encourage and ensure the emergence of new entrants that can foster innovations and price competition in the implementation of energy efficiency programs; (2) it fails to incorporate essential stakeholder input, and (3) it preempts the Board's work implementing the CEA.

Sunrun urges the Board to reject the Company's petition and require PSE&G to refile to conform to the Board's directives implementing the CEA. The Company's energy efficiency proposal should be the result of robust stakeholder input and include programs designed to further competition. In the alternative, if the Board approves any

part of PSE&G's petition, Sunrun urges the Board to condition approval with specific requirements to enhance the role of competitive market providers in the delivery of energy efficiency services and address other shortcomings in the Company's application.

II. Argument

A. PSE&G's Proposal Fails to Meet Statutory Requirements to Implement Energy Efficiency Programs in A Manner that Furthers Competition.

PSE&G provides no discussion in its initial brief of New Jersey statutory requirements to implement energy efficiency in a manner that furthers competition. As Sunrun and other participants and parties to this proceeding have emphasized, the CEA provides clear directives requiring the Board's implementation of energy efficiency programs to "place greater reliance on competitive markets with the explicit goal of encouraging and ensuring the emergence of new entrants that can foster innovations and price competition."¹

Indeed, Market Participants discussed at length in their initial brief the detrimental effect on competitive energy markets of PSE&G's proposal to utilize its monopoly status as a public utility and rely on ratepayer funds to subsidize the deployment and installation of energy efficiency products.² Echoing similar concerns raised by Sunrun in public comments, at the evidentiary hearing, and in its initial brief, Market Participants' initial brief provides numerous examples of how PSE&G's proposal would, if approved, undermine New Jersey's competitive electricity market, including the Company's proposals for up-front rebates, the lack of competitive processes, and the use of utility

¹ See, e.g. N.J. Stat. § 48:3-87(l)(1); BPU Docket Nos. GO18101112 & EO18101113, Initial Brief of Sunrun Inc. (May 17, 2019) ("Initial Brief of Sunrun") at 5; BPU Docket Nos. GO18101112 & EO18101113, Initial Brief of Market Participants (May 17, 2019) ("Initial Brief of Market Participants") at 7.

² See Initial Brief of Market Participants at 12-15.

bills to finance energy efficiency products.³

Moreover, Staff highlighted the arguments provided by Sunrun and Market Participants at the evidentiary hearing⁴ and concluded that “the concerns voiced by certain participants in this matter lead Staff to recommend that the Board not approve PSE&G’s proposal without more fully evaluating its impacts on the competitive conservation and EE markets.”⁵ These concerns were similarly echoed by NJLEUC in recommending the Board “carefully consider the consequences of establishing PSE&G as an ‘exclusive’ provider [of energy efficiency services]” because “[s]uch a position would provide seemingly insurmountable advantages to PSE&G that would enable it to ‘crowd out’ third parties seeking to sell competitive energy efficiency products in the company’s service territory, thereby reducing offerings available to customer and opportunities to conserve energy.”⁶

PSE&G’s failure to address the competitive market issues identified by Sunrun and other participants and parties in this proceeding cannot be resolved by PSE&G’s mischaracterization of Sunrun’s positions on its proposal as somehow supporting the Company’s proposal. PSE&G’s initial brief stating that Sunrun is “encouraged by some of the energy efficiency program concepts proposed by the Company” and that Sunrun “finds two CEF-EE pilot programs - Non-Wires Alternative and Smart Homes –

³ *Id.* at 13.

⁴ BPU Docket Nos. GO18101112 & EO18101113, Initial Brief of the Staff of the New Jersey Board of Public Utilities (May 17 2019) (“Initial Brief of Staff”) at 32-34.

⁵ *Id.* at 34.

⁶ BPU Docket Nos. GO18101112 & EO18101113, Post Hearing Brief of Intervenor New Jersey Large Energy Users Coalition (May 17, 2019) (“Initial Brief NJLEUC”) at 20.

‘commendable’ for their recognition of solar energy and energy storage”⁷ leaves out critical qualifications to those statements.

Sunrun stated at the evidentiary hearing that “[w]hile Sunrun is encouraged by some of the energy efficiency program concepts proposed by the Company, we do not support approval of the Company’s application at this time. We have significant concerns regarding the timing of the filing and fundamental program design and implementation issues.” Sunrun further stated that “while the Company’s proposed Non Wires Alternative and Smart Homes Pilots are commendable in that PSE&G at least partially recognizes some of the efficiency benefits that solar and storage can provide; these programs should be revised to ensure that they:

1) Are based on implementation models that reflect the current market landscape and leverage the expertise and cost saving opportunities from competitive market participants;

2) Integrate system peak reduction programs into the Company’s efficiency portfolio and leverage customer-sited solar and storage; and

3) Can be scaled to full sub-program implementation throughout the service territory after the Pilot term concludes.”

Sunrun does not support PSE&G’s programs as proposed because they fail to integrate fundamental program design elements necessary to further competition in the delivery of energy efficiency services, fail to leverage the benefits of solar and storage to provide energy efficiency and peak demand reduction savings, and are not based on

⁷ BPU Docket Nos. GO18101112 & EO18101113, Initial Brief on Behalf of Petitioner Public Service Electric & Gas Company (May 17, 2019) (“Initial Brief of PSE&G”) at 20-21.

implementation models scalable to full sub-program implementation that reflect the current market landscape.

As Sunrun discussed in its initial brief, numerous states have adopted cutting edge programs to integrate competitive market providers of solar and energy storage to deliver energy efficiency and peak reduction benefits.⁸ Critically, PSE&G's proposals to allow customer- and third party-owned energy storage devices to participate in its dynamic load management programs in its Long Island service territory through a "bring-your-own-device" ("BYOD") based program as Sunrun recommends for adoption in New Jersey⁹ was approved by the Long Island Power Authority on May 22, 2019.¹⁰ The Company's energy efficiency and peak reduction programs in New Jersey should be designed to integrate this and similar program models highlighted by Sunrun to ensure that energy efficiency programs in New Jersey are implemented to further competition in accordance with New Jersey statutes.

B. PSE&G's Proposal Needs Greater Stakeholder Input

PSE&G's assertion that its proposal "enjoys broad and diverse stakeholder support"¹¹ and that its proposal was "designed with the appropriate level of stakeholder engagement"¹² is an inaccurate characterization of stakeholder involvement in the development of PSE&G's proposal and the level of stakeholder participation in this

⁸ See Initial Brief of Sunrun at 16-20.

⁹ *Id.* at 18-19.

¹⁰ Long Island Power Authority, Approval of Modifications to LIPA's Tariff For Electric Service to Enable Energy Storage Systems to Participate in Dynamic Load Management (May 22, 2019) *available at* <https://www.lipower.org/wp-content/uploads/2019/05/3.-Approval-Tariff-Changes-for-Energy-Storage-Systems-to-participate-in-DLM.pdf>.

¹¹ Initial Brief of PSE&G at 2.

¹² *Id.* at 31.

proceeding. These claims also ignore the fact that the Company's filing circumvents the CEA-mandated stakeholder process to inform the very energy efficiency targets and program designs that the CEA intends for PSE&G and other utilities to adopt.

PSE&G's assertion that its proposal was "designed with the appropriate level of stakeholder involvement" can only be true if the Company believes that excluding the Board and interested stakeholders from its program designs is the "appropriate level" of stakeholder involvement. As NJLEUC discusses in its initial brief "Ms. Reif's testimony at hearing underscored that PSE&G alone developed the CEF-EE program on its own terms, by its own employees and experts, and without input from the Board, the OCE, Rate Counsel, or any New Jersey trade allies, competitors or customer potentially affected by the Company's proposal."¹³ NJLEUC summarized that "there can be no question that the CEF-EE program is not the result of the detailed study and stakeholder processes directed by the CEA, and is not supported by any of the CEA's mandated reports, studies or analyses . . . Indeed, several of these processes and reports, including the quantitative performance indicators, have yet to be finalized."¹⁴

Moreover, PSE&G's argument that the CEF-EE Program should be approved because its "enjoys widespread public stakeholder support"¹⁵ is a misleading characterization of support for its proposal given the positions of numerous stakeholders in this proceeding. PSE&G's strong opposition to stakeholder intervention in this proceeding further highlights the Company's untenable position that its proposal is the result of the "appropriate level" of stakeholder involvement and that it enjoys broad

¹³ Initial Brief NJLEUC at 15.

¹⁴ *Id.*

¹⁵ Initial Brief of PSE&G at 15.

stakeholder support. Sunrun and other participants that offer competitive market services that are impacted by PSE&G's proposal expressed strong opposition to numerous aspects of the Company's proposal;¹⁶ but were denied the opportunity to participate in discovery, submit pre-filed testimony, conduct cross-examination and introduce exhibits at hearing.¹⁷

For example, as demonstrated by Sunrun in public comments and its initial brief, and by Market Participants in their initial brief, preventing Sunrun and Market Participants from meaningfully representing their interests in this proceeding has resulted in an evidentiary record that reflects a lack of critical stakeholder involvement. As Sunrun emphasized in its initial brief, "the extremely limited ability for stakeholders to meaningfully participate and represent their interests in this proceeding further highlights the need to allow the stakeholder process in the Board's proceedings implementing the Act to conclude."¹⁸ The Board should follow the directives of the CEA to allow for important stakeholder processes to inform the development of the State's energy efficiency and peak reduction targets and require PSE&G to develop energy efficiency plans that reflect the outcome of these processes and the Board's findings and directives implementing the CEA.

C. PSE&G Has Failed to Demonstrate that Its \$2.8 Billion Energy Efficiency Proposal Is Consistent with the Board's Implementation of the Clean Energy Act.

The Company has not, and cannot, demonstrate that its proposal is consistent with

¹⁶ See, e.g., Initial Brief of Sunrun Inc.; Initial Brief Market Participants.

¹⁷ Initial Brief of Market Participants at 4 (discussing the limitations of participant status in the proceeding that denied participants "the opportunity to participate in discovery, to submit preserved testimony and to actively participate in the evidentiary hearings through conducting cross examination and introducing exhibits").

¹⁸ Initial Brief of Sunrun at 4.

the CEA because the Board has not yet issued its findings or directives implementing the Act. PSE&G's assertions that the timing of its proposal is "clearly . . . aligned perfectly with the CEA"¹⁹ and that its proposal is "necessary" to meet the requirements of the CEA²⁰ are unsupported and flatly contradicted by numerous parties and participants in this proceeding.

PSE&G states that "clearly the timing of the CEF-EE Program, including the year-long transition period described in Ms. Reif's supplemental testimony, is aligned perfectly with the CEA and the State's energy efficiency goals, because the filing will be before the BPU for approval promptly after issuance of the initial study and when energy efficiency momentum in the state is at its peak."²¹

As Rate Counsel discusses at length in its initial brief, PSE&G's proposal is premature precisely because it is before the Board prior to the issuance of the CEA mandated studies and therefore "does not consider the savings targets, incentives and penalties established by the CEA, which have yet to be determined by the Board."²² Rate Counsel correctly characterizes PSE&G's proposal as presupposing "what its specific energy savings and demand reduction targets will be under the CEA, without any deference to the Board's anticipated determinations regarding individual utility targets, incentives and penalties under the CEA."²³ Sunrun agrees with Rate Counsel that "[a]bsent a review PSE&G's CEF-EE filing in the context of the findings mandated by the CEA, the Board has no basis upon which to consider the reasonableness of PSE&G's

¹⁹ See, e.g., Initial Brief of PSE&G at 29.

²⁰ See, e.g., *id.* at 7; 24; 41.

²¹ *Id.* at 29.

²² BPU Docket Nos. GO18101112 & EO18101113, Initial Brief on Behalf of Division of Rate Counsel (May 17, 2019) ("Initial Brief of Rate Counsel") at 18.

²³ *Id.* at 16.

CEF-EE's subprograms, costs and ratemaking treatment."²⁴

Staff aptly summarizes the timing of PSE&G's petition as "plac[ing] the cart before the horse."²⁵ Like Rate Counsel, Staff's initial brief details why the Board's work implementing the CEA and developing the Energy Master Plan ("EMP") must precede the development of utility energy efficiency programs. Staff flatly refutes PSE&G's contention because certain CEA implementation activities will be completed approximately six weeks prior to a Board decision on PSE&G's proposal, the Board will have "ample opportunity to take the EE Market Potential Study conclusions into account before issuing an Order on the CEF-EE filing."²⁶ As Staff emphasizes "when the Board's need to review the recommended reduction targets and QPIs in the [CEA-mandated] EE Market Potential Study and then to coordinate that analysis with its review of PSE&G's proposal are taken into account, it becomes clear that six weeks are grossly inadequate."²⁷ Sunrun agrees with Staff that PSE&G (and other energy utilities) must "follow the State's lead in establishing a comprehensive energy plan; review the State's strategic plan; and then dedicate sufficient time to develop EE programs that align with the State's strategic plan."²⁸

The fact that the Company filed its petition prior to the Board issuing its findings and directives implementing the CEA, by definition, means that the Company cannot demonstrate that its proposal meets fundamental requirements of the CEA because the Board has not issued its findings and directives for PSE&G to implement its energy

²⁴ *Id.* at 18.

²⁵ Initial Brief of Staff at 21.

²⁶ *Id.* at 22 (*citing* 1T at T76:9-12).

²⁷ *Id.* at 22.

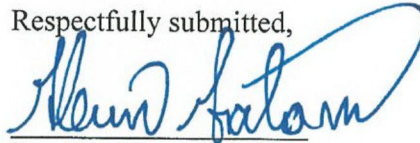
²⁸ *Id.*

efficiency programs.

III. Conclusion

Numerous parties and participants representing significant stakeholder interests in the outcome of this proceeding oppose PSE&G's petition and demonstrate that PSE&G's petition is seriously flawed. Sunrun urges the Board to reject the Company's petition and require PSE&G to refile it following the Board's findings and directives in implementing CEA. In the event that the Board determines that PSE&G's proposal warrants approval, Sunrun strongly urges the Board to ensure the approved programs are implemented to preserve and enhance competitive markets, particularly in the delivery and management of customer-sited solar and storage by requiring program design revisions to incorporate third-party participation models, such as Sunrun's proposed BYOD model, as discussed in Sunrun's public comments and initial brief.

Respectfully submitted,



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Dated: May 29, 2019

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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)
)

DOCKET NO.
EO18101113

CERTIFICATE OF SERVICE

I, Blake Elder, hereby certify that I have this day caused a copy of the foregoing document to be served upon the official service list for **EO18101113**, attached hereto, by electronic mail to all persons with a valid email address. I further certify that on this date eleven copies of this document have been sent for filing to the Board of Public Utilities.

Dated: May 29, 2019.

/s/ Blake Elder

Blake Elder

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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

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