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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

May 29, 2019

*Via overnight mail and email*

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

Re: I/M/O 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 Nos. GO18101112 & EO18101113

FORWARD  
CASE MANAGEMENT  
2019 MAY 30 PM 12:25  
BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

Dear Secretary Camacho-Welch:

Attached please find the Reply Brief on Behalf of Intervenors, The Natural Resources Defense Council, Environment New Jersey, Sierra Club, Environmental Defense Fund, and New Jersey League of Conservation Voters.

We will send one (1) original and six (6) copies of this brief by overnight mail and serve all parties on the Service List electronically.

Sincerely yours,

Aaron Kleinbaum, Esq.  
Daniel Greenhouse, Esq.  
Eastern Environmental Law Center  
*Attorneys for Intervenors*

*Case mgmt  
H. Westland, Esq.*

Encl.

C: Service List, *via email*

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STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

REPLY BRIEF

THE NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENT NEW JERSEY,  
SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, AND NEW JERSEY LEAGUE  
OF CONSERVATION VOTERS

Email: [akleinbaum@easternenvironmental.org](mailto:akleinbaum@easternenvironmental.org)

Dated: May 29, 2019

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## ARGUMENT

The Board must approve PSE&G's EE proposal because it is consistent with the Legislative intent of both the CEA and RGGI.

As the Environmental Intervenors argued in their initial post-hearing brief in this matter, the Company's CEF-EE proposal to reduce greenhouse gas emissions is consistent with RGGI and the CEA because these statutes must be construed together. The Board is "obligated to make every effort to harmonize [separate statutes] even if they are in apparent conflict."<sup>1</sup> Similarly, the Board "has an affirmative duty to reconcile [the separate statutes], so as to give effect to both expressions of the lawmakers' will."<sup>2</sup> RGGI and the CEA must be read in pari materia, or "construed together as a 'unitary and harmonious whole.'"<sup>3</sup> When these laws are properly construed, it is clear

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<sup>1</sup> St. Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 14 (2005) (The Supreme Court held that two statutes were not in conflict with each other and were to be read in pari materia, regarding the critical designation of an institution as a specialty acute care children's hospital) (emphasis added and internal citations omitted).

<sup>2</sup> Am. Fire & Cas. Co. v. New Jersey Div. of Taxation, 189 N.J. 65, 79-80 (2006) (The Supreme Court harmonized a number of statutes to determine the amount of taxes paid by foreign insurers) (emphasis added).

<sup>3</sup> Marino v. Marino, 200 N.J. 315, 330 (2009) (The Supreme Court decided that two statutes governing burial did not concern the same object (one of the laws being only about disinterment) and, therefore, held that in a dispute between the decedent's surviving children and widow, the decedent's expressed wishes that his children retain control over his estate properly guided his burial location).

that the Board is fully authorized to now consider and approve the proposed programs to reduce greenhouse gas emissions.

- a. The CEA expressly cross-references and builds upon RGGI's foundation, which must not be ignored by the Board in this matter.

Rate Counsel argued that PSE&G's instant proposal "... is now irrelevant since state law requires energy reduction without regard for whether the Company performs it willingly or not." See page 40 of Initial Brief on Behalf of the Division of Rate Counsel. In addition, Rate Counsel argued that the CEA "eliminates the Company's stated need for the GEM." Id. at page 39. But Rate Counsel's arguments are not based on sound principles of construing legislative intent and the Board must reject them.

Rate Counsel failed to support its arguments with any legitimate legal analysis because it did not consider the principles of interpreting the legislative intent. There is simply no basis, evidence or proof relied on by Rate Counsel to show that the CEA overrides, repeals or conflicts with the legislative intent of RGGI. Rate Counsel assumed that the CEA makes RGGI moot.

The CEA does not contain any statement, or even any implication, that removes the Board's authority which the Legislature delegated to it in RGGI. To the contrary, the CEA builds upon and relies heavily upon the structural foundation set forth in RGGI. Therefore, Rate Counsel's erroneous assumptions should be rejected by the Board in this matter.

- b. Board Staff's mistaken reliance on Dr. Hausman's opinion that PSE&G is "placing the cart before the horse" must be rejected because it ignores the Legislative intent of both the CEA and RGGI.

Board Staff mistakenly relied on Dr. Hausman's opinion that "PSE&G's proposal places the cart before the horse" and adopted the argument that "[a]pproving the CEF-EE Program now, before the EMP has been finalized, would be contrary to good public policy and, indeed, would reverse the proper order of events." See Initial Brief of the Staff of the Board of Public Utilities, at page 21. But the Board Staff's policy argument in that regard fails to give proper deference to the legislative intent expressed in both the CEA and RGGI.

The CEA and RGGI authorize the Board to consider and approve PSE&G's CEF-EE program now, with the goal of reducing greenhouse gas emissions in a timely fashion. To wait for the

EMP to be finalized would simply delay the proposed greenhouse gas emission reduction programs and would frustrate the legislative intent of the CEA and RGGI. The final EMP will likely undergo revisions and amendments. Indeed, this is evidenced by Staff's progress in the statewide energy efficiency proceeding, which likewise precedes any conclusions from the EMP process.

Critically, the CEA mandates that each utility achieve certain annual reductions "... within five years of implementation of its electric energy efficiency program," which implies that the start date of implementation is not marked at some future date and that the sooner each utility begins the sooner the State will achieve the goals of the legislation. N.J.S.A. 48:3-87.9. For these reasons, the Board should reject the Board Staff's policy argument and instead implement the legislative intent of the CEA and RGGI by approving the proposed energy efficiency measures without any delay.

- c. NJLEUC erroneously argued that the CEA "contains no reference to the GEM," and PSE&G's filing is in "blatant non-compliance with the CEA."

NJLEUC argued that PSE&G's CEF-EE proposal is "at odds with" and "in blatant non-compliance with the CEA." See Post-

Hearing Brief of Intervenor New Jersey Large Energy Users Coalition, at page 18 and 23. In addition, NJLEUC argued that "Section 13 clearly does not 'authorize' or mandate the use of a GEM-type mechanism..." Id. at page 30. However, NJLEUC failed to adequately support its arguments.

NJLEUC relied entirely on Dr. Hausman's policy opinions, with no specific citation to any legal authority. Id. at pages 22-23. In addition, NJLEUC acknowledged that Section 13 of RGGI (at N.J.S.A. 48:3-98.1(b)), as expressly cross-referenced by the CEA (at N.J.S.A. 48:3-87.9), provides for "...rate mechanisms that decouple utility revenue from sales of electricity and gas...." Post-Hearing Brief of Intervenor New Jersey Large Energy Users Coalition, at pages 25 and 30. Given that it is undisputed that GEM is a mechanism that decouples utility revenue from sales, NJLEUC's argument in this regard is unsupported by the law and the record.

NJLEUC's argument that the Board is not "authorized" to consider the proposed GEM must be seen as a failed attempt to render meaningless the words in the law. The Legislature did not employ meaningless or superfluous language in its enactments and, therefore, the words "...or rate mechanisms that decouple

utility revenue from sales..." must not be ignored.<sup>4</sup> Thus, Section 13 of RGGI authorizes the Board (in its discretion) to approve the proposed GEM.

If the Board were to approve the GEM, then the social costs of air pollution from electricity production would become internal to the cost of energy. If the negative externalities become internalized costs via GEM, then the large energy users will have to pay more of their fair share of the total costs of energy that they use. Evidently, NJLEUC objects because they do not want to bear the social costs of energy production. In the classic model of this critical environmental issue, NJLEUC plays the role of the "free riders" who enjoy the benefits of an unfair allocation of the public resources by externalizing costs and capitalizing on the market's failure to capture the negative externalities.


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<sup>4</sup> See NJDEP v. Alloway Twp., 438 N.J. Super. 501, 512 (App. Div. 2015) (The Appellate Division held that the operative language in New Jersey's Safe Dam Act, "owner or operator," cast a broad net of liability).

CONCLUSION

The Board must approve the proposed CEF-EE programs and associated cost recovery mechanisms so that the public can begin, sooner rather than later, to reap the benefits which were intended by RGGI and the CEA.

Dated: May 29, 2019

  
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Daniel Greenhouse, Esq.