



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY AND CLEAN ENERGY

IN THE MATTER OF THE PETITION OF)	ORDER RULING ON MOTIONS TO
ELIZABETHTOWN GAS COMPANY FOR APPROVAL)	INTERVENE OR PARTICIPATE
OF TRIENNIUM 2 CLEAN ENERGY PROGRAMS)	
AND ASSOCIATED COST RECOVERY PURSUANT)	
TO THE CLEAN ENERGY ACT)	DOCKET NO. QO23120869

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Dominick DiRocco, Esq., VP, Rates & Regulatory Affairs, Elizabethtown Gas Company
John Kolesnik, Esq., Counsel for the Energy Efficiency Alliance of New Jersey
Steven S. Goldenberg, Esq., Counsel for the New Jersey Large Energy Users Coalition

BY COMMISSIONER MARIAN ABDOU:

BACKGROUND AND PROCEDURAL HISTORY

The New Jersey Clean Energy Act of 2018

On May 23, 2018, Governor Murphy signed the Clean Energy Act into law ("CEA"). The CEA mandates that New Jersey's electric and gas public utilities increase their role in delivering energy efficiency ("EE") and peak demand reduction ("PDR") programs. The CEA further directs the New Jersey Board of Public Utilities ("Board") to require the electric and gas utilities to reduce customer use of electricity and natural gas in their respective service territories.

Specifically, the CEA directs the Board to require:

- (a) each electric public utility to achieve, within its territory by its customers, annual reductions of at least 2% of the average annual electricity usage in the prior three years within five years of implementation of its electric energy efficiency program; and
- (b) each natural gas public utility to achieve, within its territory by its customers, annual reductions in the use of natural gas of at least 0.75% of the average annual natural gas usage in the prior three years within five years of implementation of its gas energy efficiency program.¹

¹ N.J.S.A. 48:3-87.9(a).

Triennium 1

By Order dated June 10, 2020, the Board approved, pursuant to the CEA, utility programs that reduce the use of electricity and natural gas within the utilities' territories.² In the June 2020 Order, the Board directed the utilities to file three-year program petitions by September 25, 2020 for approval by the Board by May 1, 2021 and implementation from July 1, 2021 through June 30, 2024 ("Triennium 1").

By Order dated April 7, 2021, the Board approved a stipulation of settlement authorizing Elizabethtown Gas Company ("ETG" or "Company") to implement its portfolio of EE programs.³

² In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket Nos. QO19010040, QO19060748, and QO17091004, Order dated June 10, 2020 ("June 2020 Order").

³ In re the Petition of Elizabethtown Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act and the Establishment of a Conservation Incentive Program, BPU Docket No. GO20090619, Order dated April 7, 2021.

Triennium 2

By Order dated May 24, 2023, the Board directed each electric and gas public utility to propose, for Board approval, EE programs for the second three-year EE program period ("Triennium 2") on or before October 2, 2023, and the Board addressed certain aspects of the Triennium 2 framework.⁴ By Order dated July 26, 2023, the Board approved the remaining aspects of the Triennium 2 framework.⁵

By Order dated September 27, 2023, the Board extended the filing deadline for Triennium 2 petitions from October 2, 2023 to December 1, 2023 and directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by December 8, 2023 and that entities file with the Board any responses to those motions by December 14, 2023.⁶

By the September 2023 Order, the Board retained this matter for hearing and, pursuant to N.J.S.A. 48:2-32, designated President Guhl-Sadovy as Presiding Commissioner in this matter. By Order dated October 25, 2023, the Board delayed the start of Triennium 2 by six (6) months from July 1, 2024 until January 1, 2025.⁷ By Order dated January 10, 2024, the Board redesignated President Guhl-Sadovy as the Presiding Commissioner for the Public Service Electric and Gas Company ("PSE&G") filing, and designated myself, Commissioner Abdou, as the Presiding

⁴ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated May 24, 2023.

⁵ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated July 26, 2023.

⁶ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated September 27, 2023 ("September 2023 Order"). The September 2023 Order also directed that any entity wishing to file a motion for admission of counsel, *pro hac vice*, should do so concurrently with any motion to intervene or participate. No entity filed a motion for admission *pro hac vice* in this matter.

⁷ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket No. QO23030150, Order dated October 25, 2023 ("October 2023 Order"). The October 2023 Order also extended Triennium 1 through December 31, 2024.

Commissioner in this matter, authorized to rule on all motions that arise during the pendency of this proceeding, and modify schedules that may be set as necessary to secure a just and expeditious determination of all issues.⁸

DECEMBER 2023 PETITION

On December 1, 2023, ETG filed the requisite petition with the Board ("Petition"). In the Petition, the Company proposed a total budget of approximately \$277 million for its EE programs over a 30-month period from January 1, 2025 through June 30, 2027. The proposed programs and associated costs are summarized in the table below:

Category	Sector	Program	Total
Core	Residential	Whole Home	\$22,358,485
		Income Qualified	\$31,081,504
		EE Products	\$39,076,473
		Behavioral	\$2,480,127
	Commercial	Energy Solutions	\$32,018,475
		Prescriptive and Custom	\$22,734,951
		Direct Install	\$51,401,612
Multifamily	Multifamily	\$36,008,519	
Utility-Led		Building Decarbonization	\$5,601,952
		Demand Response	\$1,185,649
		Next Generation Savings	\$1,273,240
Other Portfolio Costs		Workforce Development	\$700,000
		Community Outreach	\$300,000
		Outside Services	\$675,000
Net Utility Transfers			\$30,300,000
Total			\$277,195,988

ETG sought authorization to recover all costs associated with the Triennium 2 Programs and to be permitted to earn a return on and of investments associated with these programs through its Energy Efficiency Program Rider ("EEP Rider") rate, set forth in Rider "E" of the Company's Tariff. ETG further proposed that lost revenues associated with these programs be recovered through its existing Conservation Incentive Program ("CIP"), set forth in Rider "G" of the Company's Tariff.

⁸ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs et al., BPU Docket Nos. QO23030150, QO23120868, QO23120869, QO23120870, QO23120871, QO23120872, QO23120874, and QO23120875, Order dated January 10, 2024 ("January 2024 Order"). By the January 2024 Order, the Board additionally redesignated Commissioner Abdou as the Presiding Commissioner for the New Jersey Natural Gas Company ("NJNG") and South Jersey Gas Company ("SJG") filings, BPU Docket Nos. QO23120868 and QO23120870.

ETG's proposed Triennium 2 Program budget is approximately \$277.2 million, which is comprised of \$258.1 million of program investment and \$19.1 million of operations and maintenance ("O&M") costs. The O&M costs primarily consist of utility administration, inspections and quality control, and evaluation costs. ETG estimated that, under its proposal, it would recover a total of approximately \$280.1 million from ratepayers and \$81.7 million from loan participants from 2025 through 2037.

ETG's proposed Triennium 2 Program revenue requirements can be divided into two (2) general components: 1) On Bill Repayment Program ("OBR Program") investments; and 2) Direct Program investments. The OBR Program investment category is comprised of the loan incentives that will be provided by the Company through the following programs: Energy Efficiency Products, Whole Home, Multifamily, Prescriptive/Custom, Direct Install, Energy Solutions, and Building Decarbonization. The Direct Program investments category is comprised of grants and energy audits, as well as other capitalizable expenditures required to implement the proposed programs. ETG states that its determination of the revenue requirements for the OBR Program investments and the Direct Program investments is consistent with previous Board approvals of ETG's EE programs.

If the Triennium 2 Programs are approved as proposed, ETG estimated that the effect of the Year 1 rate increase on the bill of a typical residential heating customer, using an average of 100 therms per month, would be an increase of \$1.26 or 1.1%.

On December 26, 2023, Board Staff ("Staff") issued ETG a letter of administrative deficiency ("Letter") identifying administratively incomplete portions of the Petition and requesting that the Company cure any deficiencies. On January 5, 2024, ETG filed an update to the Petition to cure the deficiencies identified in the Letter ("Update").

In the January 2024 Order, the Board directed that any entity wishing to file a motion for leave to intervene or participate, or to update a previously-filed motion for leave to intervene or participate, in this proceeding shall have until seven (7) days following Staff's issuance of a letter of administrative completeness to the Company.⁹

On January 12, 2024, Staff issued a letter of administrative completeness, noting that the Update adequately cured the deficiencies identified in the Letter and that Staff therefore determined the Petition to be administratively complete. The Board subsequently received no additional or updated motions seeking leave to intervene or participate.

THE MOTIONS

Motions to Intervene

New Jersey Large Energy Users Coalition

On December 7, 2023, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a Motion to Intervene in this proceeding, which indicated that it is an association whose members include large natural gas distribution customers served by ETG. NJLEUC asserted that it has a significant

⁹ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs et al., BPU Docket Nos. QO23030150, QO23120868, QO23120869, QO23120870, QO23120871, QO23120872, QO23120874, and QO23120875, Order dated January 10, 2024.

interest in the outcome of this proceeding because ETG proposed a cost recovery mechanism for the Triennium II Program initiative through the existing EEP Rider rate mechanism. NJLEUC noted that its interests are significantly different from any other party because it has unique insight regarding the potential costs to large usage-based customers and the impact these costs would have on New Jersey's business community, economy, and tax base. NJLEUC further noted that it will endeavor to work cooperatively with other parties in this proceeding to ensure administrative efficiency.

Energy Efficiency Alliance of New Jersey

On December 8, 2023, the Energy Efficiency Alliance of New Jersey ("EEA-NJ") filed a Motion to Intervene in this proceeding, noting that it is a 501(c)(6) trade association that, together with the Keystone Energy Efficiency Alliance, represents more than 60 business members. EEA-NJ noted that these members manufacture, design, and implement EE improvements in buildings across Pennsylvania and New Jersey on behalf of regulated utilities, the State of New Jersey, and ratepayers. EEA-NJ asserted that the proposed programs would directly affect the utilization of their services and products. EEA-NJ also represented that its interests in this proceeding are unique and not adequately represented by any other party, and that its members can offer valuable perspectives on the design and implementation of the proposed programs. Finally, EEA-NJ noted that its intervention will not cause confusion or undue delay because it will coordinate its representation with similarly situated parties to the extent that it deems such coordination appropriate.

Motions to Participate

ACE, JCP&L, NJNG, RECO, PSE&G, and SJG

On December 8, 2023, Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), NJNG, Rockland Electric Company ("RECO"), PSE&G, and SJG (collectively, "Joint Movants") submitted a Joint Motion to Participate in this matter. The Joint Movants stated that they are public utility corporations incorporated in New Jersey and engaged in the transmission, distribution, and sale of electricity or gas for residential, commercial, and industrial purposes in New Jersey. The Joint Movants claimed a significant interest in the outcome of this proceeding because the substantive policy and procedural requirements established in this proceeding are likely to have a precedential effect on proceedings involving the other utilities. The Joint Movants further noted that their interest as investor-owned electric or gas utilities serving retail customers are materially different from that of ETG and the other parties. Finally, the Joint Movants stated that their participation would not cause delay or confusion because they would each abide by any schedule set for the proceeding.

Uplight, Inc.

On December 8, 2023, Uplight, Inc. ("Uplight") filed a Motion to Participate in this proceeding, noting that it is a technology provider to more than 80 electric and gas utilities across North America, including within New Jersey. Uplight's software provides customer engagement and demand management solutions to assist in achieving energy and carbon reduction goals. Uplight asserted that its experience maintaining similar energy efficiency programs nationwide would provide a tangible benefit to this proceeding. Additionally, Uplight indicated that it already participates in EE programs within New Jersey and, therefore, has an interest in the outcome of this proceeding. Uplight stated that its participation would not cause undue delay or confusion

because it would coordinate its representation with similarly situated parties to the extent that it finds such coordination feasible.

RESPONSES

ETG

On December 14, 2023, ETG submitted a letter responding to the Motions to Intervene or Participate. By its letter response, ETG indicated that it did not oppose the Motions to Participate filed by Uplight and the Joint Movants. Additionally, ETG indicated it did not oppose the Motions to Intervene filed by EEA-NJ and NJLEUC.

Rate Counsel

On December 14, 2023, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted a letter responding to the filed Motions to Intervene or Participate. By its letter response, Rate Counsel indicated that it did not oppose the Motions to Participate filed by the Joint Movants and Uplight. Additionally, Rate Counsel indicated that it did not oppose NJLEUC's Motion to Intervene.

Rate Counsel opposed EEA-NJ's Motion to Intervene, arguing that, while EEA-NJ has potential economic interest in successful implementation of ETG's programs, it failed to assert a legally protected right under N.J.S.A. Title 48 to receive work from ETG. Rate Counsel further stated that it did not oppose participant status for EEA-NJ instead.

EEA-NJ

On December 20, 2023, EEA-NJ submitted a letter reply to Rate Counsel's opposition, noting that it will be substantially, specifically, and directly affected by the outcome of this case, despite having no legally protected right to intervene under N.J.S.A. Title 48. EEA-NJ further argued that Rate Counsel did not adequately explain why EEA-NJ would not be substantially, specifically, and directly affected by the outcome of this case and that EEA-NJ was granted intervenor status in numerous Triennium 1 proceedings because the Board found it would be directly affected by their outcomes.

EEA-NJ further argued that its interests differ from those of any other party because, as an EE trade organization, it can add directly and measurably to this proceeding through its member organizations' direct, extensive knowledge of the establishment and execution of State- and utility-run EE programs. EEA-NJ further noted that it has continually been a "constructive and unique presence in the Board's numerous stakeholder meetings often offering comments" and due to its historical involvement in EE proceedings in New Jersey should be granted intervenor status.

DISCUSSION AND FINDINGS

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;

3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board noted in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record that involves consideration of a diversity of interests must be weighed against the requirement of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct, and different from that of the other parties so as to add measurably and constructively to the scope of the case.¹⁰

Motions to Intervene

After consideration of the papers, and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that NJLEUC will be directly affected by the outcome of this proceeding and will add measurably and constructively to the case without causing undue delay or confusion. I **FURTHER FIND** that NJLEUC has met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** NJLEUC's Motion to Intervene, pursuant to the authority granted to me by the Board under the January 2024 Order.

Regarding EEA-NJ's Motion to Intervene, Rate Counsel indicated that it opposed granting intervenor status because EEA-NJ failed to demonstrate either a statutory right to intervene or a legally protected right to intervene under N.J.S.A. Title 48 to receive work from ETG. However, EEA-NJ represents more than 60 business members directly involved in the planning and implementation of EE programs in New Jersey. Additionally, EEA-NJ constructively participated in numerous Triennium 1 proceedings and has a direct interest in the outcome of this matter because its constituent members specifically design and implement EE programs throughout New Jersey. EEA-NJ is expected to add constructively to this proceeding via input gleaned from its extensive experience with EE programs specific to New Jersey. As such, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that EEA-NJ will be directly affected by the outcome of this proceeding and will add measurably and constructively to the case without causing undue delay or confusion. I **FURTHER FIND** that EEA-NJ has met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** EEA-NJ's Motion to Intervene.

Motions to Participate

With regard to the Joint Motion to Participate filed by the Joint Movants, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the Joint Movants' participation in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the Joint Motion to Participate filed on behalf of ACE, JCP&L, NJNG, PSE&G, SJG, and

¹⁰ See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

RECO, limited to the right to argue orally and file a statement or brief as set forth in N.J.A.C. 1:1-16.6(c)(1) and (2).

Concerning the Motion to Participate filed by Uplight, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that Uplight's participation in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** Uplight's Motion to Participate in this proceeding, limited to the right to argue orally and file a statement or brief as set forth in N.J.A.C. 1:1-16.6(c)(1) and (2).

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: *2/26/24*

BY:



MARIAN ABDOU
COMMISSIONER

IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY FOR APPROVAL OF TRIENNium 2
CLEAN ENERGY PROGRAMS AND ASSOCIATED COST RECOVERY PURSUANT TO THE CLEAN ENERGY
ACT

DOCKET NO. QO23120869

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