



STATE OF NEW JERSEY
Board of Public Utilities
 44 South Clinton Avenue, 1st Floor
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CLEAN ENERGY AND ENERGY

IN THE MATTER OF THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR APPROVAL OF A PORTFOLIO OF ENERGY EFFICIENCY, BUILDING DECARBONIZATION AND DEMAND RESPONSE PROGRAMS, A COST RECOVERY MECHANISM, AND OTHER RELATED RELIEF PURSUANT TO THE CLEAN ENERGY ACT FOR THE PERIOD JANUARY 2025 THROUGH JUNE 2027 (TRIENNIUM 2))	PREHEARING ORDER SETTING PROCEDURAL SCHEDULE AND EXTENDING 180 DAY REVIEW PERIOD
)	DOCKET NO. QO23120871

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Philip J. Passanante, Esq., Assistant General Counsel, Atlantic City Electric 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 ZENON CHRISTODOULOU:

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

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 27, 2021, the Board approved a stipulation of settlement authorizing Atlantic City Electric ("ACE" or "Company") to implement its portfolio of EE programs.³

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

¹ N.J.S.A. 48:3-87.9(a).

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 Atlantic City Electric Company for Approval of an Energy Efficiency Program, Cost Recovery Mechanism, and Other Related Relief for Plan Years One Through Three, BPU Docket Nos. QO19010040 and EO20090621, Order dated April 27, 2021.

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 ("May 2023 Order").

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.

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 myself, Commissioner Christodoulou, as Presiding 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. 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

DECEMBER 2023 PETITION

On December 1, 2023, ACE filed a petition with the Board proposing to invest approximately \$526.06 million in its EE programs over a 30-month period from January 1, 2025 through June 30, 2027 (“Petition”). The proposed programs and associated costs are summarized in the table below:

Category	Sector	Program	Total
Core	Residential	Whole Home	\$61,950,000
		Income Qualified	\$37,440,000
		EE Products	\$64,900,000
		Behavioral	\$2,680,000
	Commercial	Energy Solutions	\$60,210,000
		Prescriptive and Custom	\$66,240,000
		Direct Install	\$76,010,000
Multifamily	Multifamily	\$78,740,000	
Utility-Led	Commercial	Business Energy Manager	\$3,140,000
	Cross	Next Generation Savings	\$3,830,000
		Building Decarbonization	\$44,000,000
	Demand Response	Direct Load Control	\$19,690,000
		Time of Use Rate	\$3,600,000
		Flexible Load Management	\$1,100,000
	Portfolio	Statewide Coordinator	\$500,000
		Workforce Development	\$1,730,000
		Community Outreach	\$300,000
			Total

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”).

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.

In addition to proposed investments and expenses, the Company also proposed that it be allowed to recover expenditures in its territory for its fuel source based on the expenditures it makes, as well as the costs billed by overlapping utilities in delivery of coordinated projects. The Company's proposed cost recovery model included an estimated \$131.9 million in reimbursements from overlapping gas utilities related to expenditures modeled by the Company that would benefit partner utilities' customers.

In addition to approval of the plan to implement the EE programs, the Company requested approval of a cost recovery mechanism whereby it would recover the costs of Triennium 2 through its existing Energy Efficiency Program Cost Recovery Mechanism included within the existing "Rider Regional Greenhouse Gas Initiative" ("RGGI") portion of its tariff. The Company requested authority to use deferred accounting to capture the incremental capital investment costs and incremental operations and maintenance ("O&M") costs associated with, or created by, the proposed EE programs. Specifically, ACE's incremental capital investment costs would be capitalized as a regulatory asset and amortized over a 10-year period.

As authorized in the May 2023 Order, ACE proposed to calculate a return on the unamortized balance of the EE programs' capital investment regulatory asset using the Company's authorized rate of return approved in ACE's most recent base rate case. The incremental O&M costs would be expensed and included using the cost recovery mechanism model for recovery on an annual basis. Additionally, ACE proposed that any differences between the forecasted monthly revenue requirement and the actual monthly EE-related sales revenue be tracked as a deferred balance – either a regulatory asset or regulatory liability. ACE requested that monthly interest be applied to any over- or under-recovery deferral balances based on the Company's short-term debt rate which is associated with the monthly weighted average of commercial paper issued. If no short-term debt is outstanding, ACE would use the rate on equivalent temporary cash investments. The interest would not exceed ACE's overall rate of return authorized by the Board in the Company's most recent base rate case. Additionally, the calculation would be based on the net-of-tax beginning and ending average monthly balance. The Company proposed to continue accruing simple interest with an annual roll-in at the end of each reconciliation period.

ACE estimated that, if the Board approves the Petition, a typical residential Basic Generation Service customer using 643 kWh per month would see a bill increase of \$0.57, or 0.39 percent, for the year of July 2024 to June 2025, including Program Year 4 of the Triennium 2 EE programs and the Triennium 1 programs extension. Accordingly, ACE estimated that the total bill impact for a typical residential customer would be \$1.31, or 0.89 percent, from \$146.49 to \$147.80, for Fiscal Year 2025.

On December 28, 2023, Board Staff ("Staff") issued ACE 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, ACE filed an update to the Petition to cure the deficiencies identified in the Letter ("Update"). N.J.S.A. 48:3-98.1(b) provides the Board with 180 days to approve, modify, or deny the Company's requested recovery of costs for the Program. As such, the 180-day review period for this matter commenced on January 5, 2024.

By Order dated January 10, 2024, 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.⁸ 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.

By Order dated February 26, 2024, after considering all Motions to Intervene or Participate in this matter and responses to the Motions, I granted intervenor status to the New Jersey Large Energy Users' Coalition ("NJLEUC") and the Energy Efficiency Alliance of New Jersey ("EEA-NJ"), and participant status to Convergent Energy and Power; Enerwise Global Technologies, Inc. d/b/a CPower; Uplight, Inc.; Google, LLC; and the joint utilities: ETG, Jersey Central Power & Light Company, NJNG, PSE&G, Rockland Electric Company, and SJG.⁹

Based upon the status of current settlement discussions, the parties to this matter have agreed that an extension of the 180-day review period is appropriate. Accordingly, on March 19, 2024, the parties to this matter submitted a stipulation of settlement agreeing to extend the 180-day review period to October 15, 2024 ("Stipulation").

N.J.S.A. 48:2-21.3 allows any public utility to file with the Board a written stipulation waiving the effective date of any tariff or rate, subject to the Board's approval. In this case, the parties to this proceeding have agreed to an extension until October 15, 2024. No party has opposed the Stipulation or the extension of the review period. As such, after review of the Stipulation, I **HEREBY FIND** the Stipulation to be reasonable, in the public interest, and in accordance with the law. Accordingly, I **HEREBY APPROVE** the attached Stipulation in its entirety, **HEREBY INCORPORATE** its terms and conditions as though fully set forth herein and **HEREBY EXTEND** the review period until October 15, 2024.

I have reviewed the proposed procedural schedule, which has been agreed to by the parties to this matter. I **HEREBY ISSUE** the following Prehearing Order, along with the procedural schedule, attached as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

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 President Guhl-Sadovy as the presiding commissioner for the Public Service Electric and Gas Company ("PSE&G") filing, BPU Docket No. QO23120874, and Commissioner Abdou as the presiding commissioner for the Elizabethtown Gas Company ("ETG"), New Jersey Natural Gas Company ("NJNG"), and South Jersey Gas Company ("SJG") filings, BPU Docket Nos. QO23120869, QO23120868, and QO23120870.

⁹ In re the Petition of Atlantic City Electric Company for Approval of a Portfolio of Energy Efficiency, Building Decarbonization and Demand Response Programs, a Cost Recovery Mechanism, and Other Related Relief Pursuant to the Clean Energy Act for the Period January 2025 Through June 2027 (Triennium 2), BPU Docket No. QO23120871, Order dated February 26, 2024.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED

A. Nature of Proceedings

On December 1, 2023, ACE filed the Petition proposing to invest approximately \$526.06 million in its EE programs over a 30-month period from January 1, 2025 through June 30, 2027.

In addition to proposed investments and expenses, the Company also proposed that it be allowed to recover expenditures in its territory for its fuel source based on the expenditures it makes, as well as the costs billed by overlapping utilities in delivery of coordinated projects. The Company's proposed cost recovery model included an estimated \$131.9 million in reimbursements from overlapping gas utilities related to expenditures modeled by the Company that would benefit partner utilities' customers.

In addition to approval of the plan to implement the EE programs, the Company requested approval of a cost recovery mechanism whereby it would recover the costs of Triennium 2 through its existing Energy Efficiency Program Cost Recovery Mechanism included within the existing RGGI portion of its tariff. The Company requested authority to use deferred accounting to capture the incremental capital investment costs and incremental O&M costs associated with, or created by, the proposed EE programs. Specifically, ACE's incremental capital investment costs would be capitalized as a regulatory asset and amortized over a 10-year period.

ACE estimated that, if the Board approves the Petition, a typical residential Basic Generation Service customer using 643 kWh per month would see a bill increase of \$0.57, or 0.39 percent, for the year of July 2024 to June 2025, including Program Year 4 of the Triennium 2 EE programs and the Triennium 1 programs extension. Accordingly, ACE estimated that the total bill impact for a typical residential customer would be \$1.31, or 0.89 percent, from \$146.49 to \$147.80, for Fiscal Year 2025.

B. Issues to be Resolved

1. The cost effectiveness and cost efficiency of the proposed programs, including but not limited to:
 - a. Whether the utility pursued additional state and federal funding for its EE and building decarbonization programs to defray burdens on ratepayers; and
 - b. Whether the total budget dollar amount in the building decarbonization programs proposed by all utilities combined exceeds the Board's recommended total budget;
2. The compliance of the proposed program offerings with the Board's requirements, including but not limited to:
 - a. Whether the utility's filing proposes similar EE programs that can be consistently implemented across all utility territories; and
 - b. Whether the utility's proposed building decarbonization programs are in compliance with the Board's guidelines; and
3. The reasonableness and lawfulness of the proposed cost recovery mechanism, including but not limited to:

- a. Whether the utility's proposed program properly accounts for jointly planned and coordinated budgets with other partner utilities.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING

As authorized by N.J.S.A. 10:4-9.3, public hearings will be held virtually after publication of notice in newspapers of general circulation in ACE's service territory. The dates, times, and locations of the public hearings are to be determined.

4. SCHEDULE OF HEARING DATES, TIME, AND PLACE

Evidentiary hearings are tentatively scheduled for August 22 and 23, 2024 at a time and location to be determined based upon the availability of the parties and myself.

5. STIPULATIONS

The Company, Staff, the New Jersey Division of Rate Counsel ("Rate Counsel"), EEA-NJ, and NJLEUC have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

The parties to this matter have also agreed that extension of the 180-day review period is appropriate and have entered into a stipulation to extend the review period to October 15, 2024 to allow more time for review of ACE's Petition by the Board.

6. SETTLEMENT

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. **AMENDMENTS TO PLEADINGS**

On January 5, 2024, ACE filed a supplement to its Petition to cure certain administrative deficiencies.

8. **DISCOVERY AND DATE FOR COMPLETION**

The time limits for discovery shall be as provided in Exhibit A or in accordance with N.J.A.C. 1:1-10.4.

9. **ORDER OF PROOFS**

ACE has the burden of proof. The hearings will be conducted by topic in the following order:

First – ACE

Second – Rate Counsel

Third – EEA-NJ

Fourth – NJLEUC

Fifth – Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE**

None at this time.

12. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES**

ACE will present the following witnesses: Nathanael Gillespie, Susan Marinelli, and Shengrong Chen, ACE; Brendon Baatz, Gabel Associates

Rate Counsel will present the following witnesses: David Dismukes, Acadian Consulting Group; Elizabeth A. Stanton, Applied Economics Clinic; Ralph Smith, Larken & Associates PPLC

Rate Counsel or other parties may identify additional witnesses as necessary for purposes of testimony.

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. MOTIONS

All pending motions to intervene and/or participate have been addressed.

14. SPECIAL MATTERS

None at this time.

The parties are **HEREBY DIRECTED** to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

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:

4/12/24

BY:



DR. ZENON CHRISTODOULOU

IN THE MATTER OF THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR APPROVAL OF A PORTFOLIO OF ENERGY EFFICIENCY, BUILDING DECARBONIZATION AND DEMAND RESPONSE PROGRAMS, A COST RECOVERY MECHANISM, AND OTHER RELATED RELIEF PURSUANT TO THE CLEAN ENERGY ACT FOR THE PERIOD JANUARY 2025 THROUGH JUNE 2027 (TRIENNIUM 2)

DOCKET NO. QO23120871

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EXHIBIT A: PROCEDURAL SCHEDULE

DOCKET NO. QO23120871

Motions to Intervene/Participate	January 19, 2024
Responses to Intervention/Participation	January 25, 2024
Discovery Requests on Initial Testimony+	February 9, 2024
Responses to Discovery on Initial Testimony	February 23, 2024
Additional Discovery Requests	March 11, 2024
Additional Round Discovery Answers	March 25, 2024
Settlement Conference	April 10, 2024
Public Hearings++	TBD in April–May
Intervenor/Respondent Testimony	May 9, 2024
Discovery on Intervenor/Respondent Testimony	May 23, 2024
Responses to Discovery on Intervenor/Respondent Testimony	June 7, 2024
Rebuttal Testimony	June 24, 2024
Discovery on Rebuttal Testimony	July 5, 2024
Answers to Rebuttal Discovery	July 15, 2024
Settlement Conference (if necessary)	July 18, 2024
Evidentiary Hearings with oral surrebuttal+++	August 22–23, 2024
Initial Briefs	September 9, 2024
Reply Briefs	September 23, 2024
Final Board Action	TBD

+ Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C. 1:1-10.4. The aforementioned dates are subject to modification by the Presiding Commissioner. The parties on the service list will be notified accordingly.

++ Subject to the Presiding Commissioner's availability.

+++ The Parties may request oral rejoinder. The Presiding Commissioner will confirm this request prior to evidentiary hearings.