



Agenda Date: 2/27/19  
Agenda Item: 8I

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
**www.nj.gov/bpu/**

**ENERGY AND**  
**CLEAN ENERGY**

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC & GAS COMPANY FOR APPROVAL OF ITS CLEAN ENERGY FUTURE-ENERGY EFFICIENCY ("CEF-EE") PROGRAM ON A REGULATED BASIS	)	ORDER ON REQUESTS FOR INTERLOCUTORY REVIEW AND MOTION TO INTERVENE
	)	DOCKET NOS. GO18101112 & EO10121113
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**Parties of Record:**

**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**Matthew M. Weissman, Esq.**, PSEG Services Company

**Aaron Kleinbaum, Esq.**, Eastern Environmental Law Center

**Steven S. Goldenberg, Esq.**, Giordano, Halloran & Ciesla, P.C. for New Jersey Large Energy Users Coalition

**BY THE BOARD:**

This matter is before the New Jersey Board of Public Utilities ("Board" or "BPU") by way of motions filed by Direct Energy and Sunrun seeking interlocutory review of Commissioner Diane Solomon's January 22, 2019 Order ("Prehearing Order") pursuant to N.J.A.C. 1:1-14.10 and 1:14-14.4. In the Prehearing Order, Commissioner Solomon denied Direct Energy's and Sunrun's motions to intervene and granted both parties participant status. For the reasons noted herein, the Board grants interlocutory review and affirms Commissioner Solomon's decision. The Board also considers the motion to intervene by the Keystone Energy Efficiency Alliance and grants it intervenor status.

**BACKGROUND AND PROCEDURAL HISTORY**

On October 11, 2018, PSE&G filed the instant petition with the Board, seeking approval to implement twenty-two sub-programs, including seven residential subprograms, seven commercial and industrial ("C&I") subprograms, and eight pilot subprograms (collectively, "2018 EE Programs"). The total proposed investment for the 2018 EE Programs is approximately \$2.8 billion, including \$2.5 billion for investment and approximately \$283 million in operating and expenses over the proposed six-year term of the program. PSE&G proposes to recover the

costs associated with the 2018 EE Programs via a new CEF-EE Program component ("CEF-EEC") of the Company's electric and gas Green Programs Recovery Charge ("GPRC"), which would be filed annually after the proposed initial period. In addition, the Company proposes a mechanism for recovering lost revenues, called the Green Enabling Mechanism ("GEM") and requests Board approval of this mechanism.

On October 29, 2018, the Board designated Commissioner Dianne Solomon as the Presiding Commissioner, who is authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

### **Direct Energy Motion to Intervene**

On November 16, 2018, Direct Energy, representing five affiliated third party energy supplier companies ("TPSs") — including Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Direct Energy Services, LLC; and Gateway Energy Services Corporation — as well as Centrica Business Solutions, an affiliate offering distributed energy solutions (collectively, "Direct Energy"), moved to intervene on the grounds that the energy efficiency programs proposed by PSE&G would provide products and services already being offered in the competitive market, which would adversely affect Direct Energy as participants in that market. Approval of the 2018 EE Programs, they contended, would place them and similarly situated suppliers and vendors at a competitive disadvantage because PSE&G could subsidize its products and services with ratepayer funds; provide on-bill financing that competitive businesses cannot; and use customer data to which competitors did not have access to offer value-added services that are better provided by the competitive market. Moreover, the movants objected to the potential for PSE&G to favor some vendors and suppliers over others, as well as the perceived risk that PSE&G's proposed programs might achieve demand reductions without using a competitive process or using innovative approaches designed by the market.

PSE&G filed a letter objecting to Direct Energy's motion to intervene on November 28, 2018, arguing that Direct Energy's anti-competitive claims constituted a misplaced attempt to "rehash" their policy arguments against utility involvement in an inappropriate forum.

Responding on December 3, 2018 Direct Energy reiterated their claims of a direct and substantial interest in several of PSE&G's proposed programs, as well as the threat to their interests if the Board approves the 2018 EE Programs. Direct Energy maintained that they need the opportunity to propound discovery and cross examine witnesses in order to develop a record that will ensure that their interests are protected.

On December 6, 2018 Direct Energy filed a supplemental motion to intervene, requesting the addition of two companies, Just Energy Group Inc. ("Just Energy") and NRG Energy, Inc. ("NRG"). On December 17, 2018 PSE&G filed a letter in opposition to the motion, asserting primarily that the movants made contradictory statements: first, that the additional companies' interests were aligned with those of Direct Energy, and second, that those companies would make unique contributions to the record. On December 19, 2018 Direct Energy, Just Energy, and NRG responded and stood by their contention that the interests of NRG, as a demand-side and energy efficiency business, and Just Energy, as the parent of multiple licensed third-party suppliers in the state, are aligned with those of Direct Energy.

### **Sunrun Motion to Intervene**

On November 16, 2018, Sunrun Inc. ("Sunrun"), describing itself as the largest residential solar, storage, and energy services provider in the country, moved to intervene on the grounds that it has a direct, substantial, and unique interest in the energy efficiency programs proposed by PSE&G because several of those programs (Smart Homes, Volt Var, and Non-Wires Alternative Pilot Sub-programs) incorporate residential solar and energy storage components. Its residential solar and storage business in PSE&G's territory, Sunrun contended, makes its interest in the proceeding distinct from that of any other entity. Sunrun represented itself as a leader in residential DER deployment. More specifically, it referenced a solar-plus-storage device, offered in several states, that Sunrun stated has internet and wi-fi capabilities allowing consumers to monitor and reduce energy usage.

On November 28, 2018, PSE&G filed a letter of opposition to Sunrun's motion to intervene and asserted that Sunrun had failed to assert a proper basis for intervention, relying instead on a general assertion that the proceeding's outcome will have an impact on the residential energy storage and residential energy market in PSE&G's territory. Similarly, Petitioner dismissed Sunrun's statement that it could make a significant contribution to the development of a full record as a vague general claim that failed to meet the standard for intervention. PSE&G contended that Sunrun had not demonstrated that the device referenced in its motion is offered within PSE&G's service territory or that Sunrun had plans to offer the device in its territory.

In its response filed on December 3, 2018, Sunrun alleged that PSE&G's stated reason for opposing Sunrun's motion to intervene was only a cover for its desire to exclude a leading residential solar and storage company from meaningful participation in the proceeding. Sunrun argued that the Board needed Sunrun as a party to fully examine alternative, "less costly" methods of advancing energy efficiency to the PSE&G proposal to expend billions of ratepayer dollars. Sunrun also rejected PSE&G's characterization of its grounds for intervention as being overly vague, noting that its motion referenced its unique perspective as a developer of residential solar and storage in the Petitioner's service territory.

### **Keystone Energy Efficiency Alliance Motion to Intervene**

On November 16, 2018, Keystone Energy Efficiency Alliance ("KEEA") filed a motion to intervene. KEEA, a nonprofit, tax exempt 501(c)(6) corporation composed of approximately fifty energy efficiency businesses working in Pennsylvania and New Jersey, moved to intervene on the ground that since its members manufacture, design, and implement energy efficiency programs in buildings across New Jersey, including in the Petitioner's service territory, the Petitioner's proposed programs would directly affect the utilization of their services and products. KEEA also represented that its interests in the proceeding are unique and not adequately represented by any other party; that its members could offer valuable perspectives on the design and implementation of the proposed programs; and that its intervention would not cause confusion or undue delay since it would coordinate its representation with similarly situated parties to the extent that it deems such coordination appropriate. The Board received no objections to KEEA's motion.

### **Prehearing Order**

On January 22, 2019, after consideration of these arguments, Commissioner Solomon issued the prehearing order in this matter in which, among other matters, she issued decisions on Direct Energy's and Sunrun's motions for intervention.

The Presiding Commissioner acknowledged that Direct Energy sought to offer its perspective in light of the fact that its energy efficiency offerings in the competitive market gave it a significant interest in this proceeding. However, after weighing this interest with the Board's need to meet its statutory obligations in a timely manner, she concluded that "admitting each entity that has presented this argument would tend to produce delay or disruption in the proceeding, while distinguishing amongst them such that some participants in the energy efficiency market are found to have an interest justifying intervention while others do not will likely prove problematic." Consequently, the Presiding Commissioner found that Direct Energy had not made a showing that its interest in this matter warranted granting it intervenor status, given the need for prompt and expeditious administrative proceedings, and she denied their motion for intervention. Pursuant to N.J.A.C. 1:1-6.5 the Presiding Commissioner granted Direct Energy participant status in this proceeding.

The Presiding Commissioner acknowledged that Sunrun's experience and expertise in offering residential solar, storage, and energy services gives it a significant interest in the outcome of this proceeding that is different from that of other parties. The Presiding Commissioner also recognized that Sunrun seeks to add its own specific perspective, which could add to the development of the record in this matter. After weighing these factors, as well as the Board's need to meet its statutory obligations in a timely manner, the Presiding Commissioner found that Sunrun had not made a showing that its interest in this matter warranted granting it intervenor status, given the need for prompt and expeditious administrative proceedings, and she denied the motion. Pursuant to N.J.A.C. 1:1-6.5 the Presiding Commissioner granted Direct Energy participant status in this proceeding.

KEEA's motion to intervene was not filed by an attorney authorized to practice in New Jersey and so, without a motion by KEEA pursuant to N.J.A.C. 1:1-5.2, the Presiding Commissioner did not consider KEEA's motion in the Prehearing Order.

### **Direct Energy's Request for Interlocutory Review**

On January 29, 2019, Direct Energy filed a request for interlocutory review of the Prehearing Order insofar as it denied Direct Energy's motion to intervene. Direct Energy argues that the Presiding Commissioner erred in denying their motion by finding that the need for a prompt and expeditious administrative proceeding outweighed the movants' significant interest in and unique perspective on the 2018 EE Programs.

On February 1, 2019, PSE&G filed its opposition to the request, asserting that the Presiding Commissioner appropriately balanced the factors for intervention to reach a well-reasoned and appropriate conclusion that Direct Energy should be granted participant status and asserted that none of the arguments warrant the reversal of the Presiding Commissioner's Order.

### **Sunrun's Request for Interlocutory Review and Motion for Reconsideration**

On January 29, 2019 Sunrun filed a motion for reconsideration of the ruling denying Sunrun intervenor status. Sunrun contends that the Presiding Commissioner erred in her application of N.J.A.C. 1:1-16.3(a) because she did not properly consider Sunrun's important interest in the outcome of the proceeding or fully appreciate the value Sunrun's involvement could add to the record. As a result, Sunrun argues that the denial of its motion to intervene was arbitrary and capricious.

On February 5, 2019 Sunrun filed a request for interlocutory review in which it reiterates its substantive arguments and notes, "The issues raised and relief requested in this Motion for Interlocutory Review are the same as those raised and requested in Sunrun's Motion for Reconsideration." Noting that it had filed its motion for reconsideration on January 29, 2019, Sunrun stated that it withdrew that motion and asked the Board to consider the request for interlocutory review as timely filed. Ibid.

On February 8, 2019, PSE&G submitted a letter of opposition to Sunrun's request, asserting that the Presiding Commissioner appropriately balanced the factors for intervention to reach a well-reasoned and appropriate conclusion that Sunrun should be granted participant status. PSE&G also argues that none of Sunrun's arguments warrant the reversal of the Presiding Commissioner's decision.

### **KEEA's Motion to Intervene**

On February 8, 2019, KEEA notified the Board that, as of the same date, it was represented by an attorney authorized to practice in New Jersey.

## **DISCUSSION AND FINDINGS**

### **Interlocutory Review**

Pursuant to N.J.A.C. 1:14-14.4(a), a rule of special applicability that supplements N.J.A.C. 1:1-14.10, the Board shall determine whether it will conduct an interlocutory review either ten days after receiving the request for such review or at the Board's next regularly scheduled open meeting after expiration of the ten day period, whichever comes later. If the Board accepts the request, it shall enter a decision within twenty days of granting review. N.J.A.C. 1:14-14.4(b). In this Order, the Board memorializes both its consideration and its ruling upon that request at the next regularly scheduled meeting, February 27, 2019.<sup>1</sup>

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<sup>1</sup> While the New Jersey Administrative Code speaks in terms of reviewing an initial decision by an Administrative Law Judge, in this instance, review of a Presiding Commissioner's ruling is sought. The same principle of review by the agency head applies, and the Board will consider this request accordingly. See, e.g., In re Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Docket Nos. EO13020155 & GO13020156 (September 18, 2013) ("September 18 Order"), in which the Board granted interlocutory review to two environmental organizations that challenged an individual commissioner's determination that they were not entitled to intervene in proceedings convened to consider upgrades to New Jersey's utility infrastructure in response to large-scale weather events.

The Board has acknowledged in previous Orders that an order or ruling of an Administrative Law Judge ("ALJ") may be reviewed on an interlocutory basis by an agency head at the request of a party. N.J.A.C. 1:1-14.10(a). September 18 Order at 10. However, the New Jersey Supreme Court has noted that the power of an agency head to review ALJ orders on an interlocutory basis should be exercised sparingly and be granted "only in the interest of justice or for good cause shown." In re Uniform Administrative Procedure Rules, 90 N.J. 85 (1982) at 100. The court further stated:

In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case.

[Ibid.]

Because interlocutory review has a direct impact on the status of the parties to this matter, as well as the presentation of evidence, the Board **HEREBY GRANTS** Direct Energy's and Sunrun's<sup>2</sup> requests for interlocutory review.

Turning to the merits of each request, in deciding a motion for intervention, 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;
- a. 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;
2. The prospect for confusion and delay arising from inclusion of the party; and
3. Other appropriate matters.

Alternatively, motions for intervention shall be treated as requests for permission to participate pursuant to N.J.A.C. 1:1-16.5 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. N.J.A.C. 1:1-16.6(c). 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 has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor establish that it would be substantially, specifically, and directly affected by the outcome of the proceeding and that its interest is sufficiently different from that of the other parties so as to add measurably and constructively to the scope of the case. See, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

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<sup>2</sup> As requested, the Board considers Sunrun's Request for Interlocutory Review as timely filed, in light of its withdrawn motion for reconsideration.

## Direct Energy

Direct Energy argues that the Board's statutory obligation to act within 180 days of the filing is not a lawful reason for placing a limitation on the number of parties who may intervene or for denying intervention by a party that has met all of the requisite standards. Direct Energy also argues that the Presiding Commissioner's Order is inconsistent with recent Board action granting Direct Energy intervenor status in PSE&G's 2017 energy efficiency proceeding ("EE 2017 Program"). Further, Direct Energy alleges that denial to them of the rights of a party to submit testimony and cross-examination infringed on Direct Energy's constitutional right to due process of law. Overall, Direct Energy emphasizes how important it is for the Board to gain the perspective from PSE&G's competitors as it considers the impacts of the 2018 EE Programs on competition.

As described above, Direct Energy argues for intervenor status on the ground that approval of the 2018 EE Programs would place them and similarly situated suppliers and vendors at a competitive disadvantage.

PSE&G contends that acknowledging that Direct Energy have a "significant interest" in a matter did not in and of itself require granting intervention, noting that the standard for participation speaks of a significant interest. The Petitioner also maintains that the Prehearing Order appropriately weighed the possibility of confusion and delay against Direct Energy's interest and states that PSE&G's most recent energy efficiency filing, in which the Board granted Direct Energy intervenor status, can be distinguished from the present filing in several ways: the scope of the filing, the number of would-be intervenors, the response of PSE&G to the motion, and the limited nature of the intervention granted in the EE 2017 Program.

In its moving papers to the Board, Direct Energy asserts more than once that the Prehearing Order acknowledged that Direct Energy had met the standard for intervention. This contention lacks merit. The rule governing requests for intervention specifies four factors to be weighed. N.J.A.C. 1:1-16.3(a). One of the factors is "[t]he prospect for confusion and delay arising from inclusion of the party." The Presiding Commissioner found that Direct Energy's participation, together with that of the multiple entities seeking intervention on the basis of similar interests, would tend to produce confusion and delay. The rule also requires the agency head to consider "other appropriate factors." The Board has determined that one such factor is the position taken by the Petitioner in the underlying matter toward the motion. In the matter under review, PSE&G has objected to intervention, to participation, and to the instant request.

The Prehearing Order, which summarizes the arguments of Direct Energy and PSE&G in some detail, evidences the Presiding Commissioner's careful consideration of Direct Energy's claims. As noted in the request for review, that Order acknowledges the existence of Direct Energy's interest as a participant in the energy efficiency market as well as its unique perspective. However, Direct Energy wrongly characterizes the sole basis of the denial as concern over the number of entities seeking intervention for similar reasons. The Prehearing Order expressly rejects the claim that Direct Energy's interest as a market participant is substantial enough to warrant intervention. The scope of the 2018 EE Programs is such as to make it likely that, if implemented as proposed, they would affect many energy efficiency businesses in PSE&G's service territory. Each of these entities has concerns that are specific, or "unique," to itself. Direct Energy, as a set of specific businesses, has its own specific concerns that can be characterized as "unique" in that sense. However, Direct Energy's interests, like those of the other energy services entities, do not on their own merit intervenor status.

Moreover, as noted by the Presiding Commissioner, these concerns must be weighed against the Board's need to meet its statutory obligations in a timely manner. Direct Energy asserts that "the Board is obligated to grant intervenor status to entities who meet the requirements set forth in the regulations while also managing the docket to fulfill its duties under the statute for the issuance of a timely adjudication." This statement is inaccurate. First, as discussed above, Direct Energy has not met the standards for intervention. In addition, the Board may not admit a party upon the assumption that the Board will nonetheless be able to fulfill its statutory obligation to act upon this petition within 180 days. Administrative efficiency must also be taken into account. For that very reason, N.J.A.C. 1:1-16.3(a) requires weighing the various factors it enumerates rather than providing a single test.

Direct Energy asserts that the Prehearing Order is inconsistent with the Board's grant of intervenor status to Direct Energy in PSE&G's "EE 2017 Program," in which Direct Energy argues that its intervention was based on the same issues raised in this proceeding and that there are no distinctions between that proceeding and this one.<sup>3</sup> Direct Energy is correct in its assertion that the 180-day timeframe for making a decision applies to both matters and also in stating that it is making the same argument regarding potential competitive disadvantage in this proceeding as it did in the EE 2017 Program. However, the two proceedings are distinguishable in at least four material respects. First, in the EE 2017 Program filing, PSE&G sought approval to invest \$95.3 million over two years to continue three sub-programs with modifications and to implement two new sub-programs. By contrast, in the current filing, PSE&G seeks approval for \$2.8 billion over six years to implement twenty-two sub-programs. Second, in the 2017 proceeding, Direct Energy was one of only two entities, each with diverse interests, that requested intervention; in the current proceeding, nine entities, most with similar competitive concerns, requested intervention. Third, in the 2017 proceeding, PSE&G stated no objection to Direct Energy's intervention but proposed a limited intervention; in the current proceeding, PSE&G opposes Direct Energy's intervention. Fourth, in the 2017 proceeding, the Board granted Direct Energy intervention but limited it to the two new pilot sub-programs, consistent with PSE&G's proposal. In summary, given the differences in the scope of the two petitions and the number of motions to intervene, as well as the Petitioner's objection to Direct Energy's intervention in this matter, the Board does not find persuasive Direct Energy's argument that the Board's previous grant of limited intervention requires the Board to grant intervention in the current proceeding.

In support of its argument that its involvement is critical, Direct Energy cites to an Appellate Division ruling wherein the Court made several statements that Direct Energy asserts support its case. Independent Energy Producers of New Jersey v. New Jersey Department of Environmental Protection and Energy, 275 N.J. Super. 46 (1994), certif. denied, 139 N.J. 187 (1994) ("IEP Ruling"). Direct Energy quotes, for instance, the comment that in administrative proceedings "business entities competing with the [Petitioner] may be the only institutions with sufficient private interest in harmony with the public concern of the consumer." Id. at 56 [citations omitted]. Direct Energy's reliance, however, is misplaced. The IEP Ruling addressed a matter in which IEP was the only entity other than the potential permittee and the relevant State agency to be involved. In the matter under review, there are at least three parties that represent the public interest. The New Jersey Division of Rate Counsel ("Rate Counsel") represents the interests of all ratepayers and will advocate for "the public concern of the consumer," ibid.; the New Jersey Large Energy Users Coalition ("NJLEUC") represents a

<sup>3</sup> In re the Petition of Public Service Electric & Gas for Approval of its 2017 Energy Efficiency Program and Recovery of Associated Costs, BPU Docket No. EO17030196 (May 18, 2018).

coalition of commercial and industrial ratepayers, which have the largest individual stakes in the cost of the 2018 EE Programs; and the Eastern Environmental Law Center ("EELC") represents the interests of New Jersey member residents regarding environmental concerns, including cleaner air and the mitigation of global warming. The Board notes that NJLEUC was the only ratepayer coalition to seek intervention and EELC the only representative of specifically environmental concerns. Each of these perspectives will be included in the record, so the Board does not view this case as one in which business competitors are the only entities aligned with the public concern of the consumer. Unlike the specific facts of the IEP Ruling, in this matter the Board may deny an individual business competitor without running the risk that an administrative determination that is favorable to the Petitioner will take on a "conclusive character," to the possible detriment of the public interest. Ibid.

Direct Energy also makes a constitutional argument, alleging that denying it the chance to pursue its issues as a party would amount to deprivation of property within the meaning of the Fourteenth Amendment." Direct Energy provides no legal support for this proposition but moves on to reference "a doctrine of fundamental fairness that [New Jersey courts have held] provides protections beyond those guaranteed by the United States and New Jersey Constitutions." In Direct Energy's opinion, denial of its motion to intervene would be "the epitome of 'a fundamental deficiency in procedure.'" The Board concurs with Direct Energy that "fundamental fairness" is applicable in administrative proceedings. However, the Board rejects Direct Energy's contention that denial of their motion for intervention contravenes fundamental fairness or constitutes a violation of their right to due process. Direct Energy attempts to argue that if they cannot intervene in this matter they will have been deprived of notice and an opportunity to be heard. The record of their intervention motion, however, does not bear out this claim. Direct Energy filed multiple briefs, laying out their claims to intervention before the Presiding Commissioner, and have carried these arguments to the Board. Moreover, Direct Energy will have the opportunity to submit oral and written comments on the 2018 EE Programs at any or all of the six public hearings scheduled in this proceeding, provide oral comments at the evidentiary hearings, and submit post-hearing briefs.

Consequently, the Board FINDS that the nature and extent of Direct Energy's interest does not warrant intervenor status. The Board further FINDS that Direct Energy's inclusion will not add measurably and constructively to the record in this proceeding so as to outweigh the other considerations of the Board in this matter. The Board HEREBY AFFIRMS the Presiding Commissioner's denial of Direct Energy's motion to intervene.

#### **Sunrun**

Sunrun claims that the Presiding Commissioner erred in the application of N.J.A.C. 1:1-16.3(a). Sunrun argues that, since the Prehearing Order acknowledged Sunrun's significant interest and unique perspective, the Presiding Commissioner was bound by the rule to grant Sunrun's motion. In Sunrun's opinion, the determination that the need for a prompt and expeditious hearing outweighed Sunrun's significant interest and unique perspective was arbitrary and capricious.

Further, Sunrun contends that the Prehearing Order failed to consider or fully appreciate Sunrun's "demonstrated ability to contribute to the record as it relates to the Board's [statutory] obligation to ensure that energy efficiency programs are implemented to further competition[.]" As "the nation's leading residential solar and energy storage provider," Sunrun asserts that its contributions to the record would allow the Board to properly evaluate the subprograms related to residential solar and energy storage. Without those contributions, Sunrun implies, the Board

will not be able to determine whether cost-effective competitive alternatives are available and whether improvements can be made, and may not consider the impacts of the subprograms on competitive markets, existing market barriers, environmental benefits, and the availability of such programs in the marketplace.

In support of this contention, Sunrun points to proceedings before two other state utility agencies. Sunrun claims that it was "instrumental" in causing one pilot storage program to be included in a New Hampshire utility's offering and, moreover, the New Hampshire Public Utilities Commissioner characterized the inclusion of a Sunrun program as a "critical improvement" upon the original proposal.<sup>4</sup> Sunrun also points to its role in a 2018 PSE&G Long Island proceeding. According to Sunrun, the New York State Department of Public Service ("NYSDPS") endorsed certain proposals regarding a solar and storage program that mirrored recommendations made by Sunrun.

In its letter of opposition to Sunrun's motion, PSE&G asserts that the Presiding Commissioner's conclusion was proper given that Sunrun is a residential solar and energy storage provider, while Petitioner's filing is to an overwhelming extent an energy efficiency filing that must conclude within an expedited timeframe. PSE&G acknowledges that a few of the pilots in the 2018 EE Programs filing, including the Volt Var, Non-Wires Alternative, and Smart Homes pilots, make reference to solar or energy storage, but PSE&G states that the energy storage and solar energy components of these pilots represent a small portion of the pilot subprogram design and are an even smaller portion when compared to the 2018 EE Programs as a whole. In addition, PSE&G argues that, consistent with recent Board precedent, although Sunrun was found to have a significant economic interest in the proceeding that is tied to competition, this interest was not substantial enough to warrant intervention in light of the need for a prompt and expeditious resolution of the filing.

PSE&G also distinguishes Sunrun's involvement in two out-of-state proceedings from the current proceeding, noting that Sunrun's intervention in the New Hampshire proceeding was limited to battery storage issues and that the filing took a year to conclude, and that Sunrun submitted written comments on the NYSDPS matter without having intervenor status.

The Board is not persuaded by Sunrun's arguments that the Presiding Commissioner erred in her application of the factors for intervention or that she failed to consider or fully appreciate Sunrun's ability or potential to contribute to the record. The scope of the 2018 EE Programs is such that, if implemented as proposed, these programs would likely affect many energy and efficiency service entities in PSE&G's territory. However, the fact of a possible impact on a business's services and/or products does not alone constitute an interest as to warrant intervenor status. Were that the case, any entity that perceived itself as either a potential partner or a competitor would have grounds to become an intervenor.

Neither is the Board swayed by Sunrun's claims that the record will be deficient in the absence of Sunrun's contributions on those subprograms involving residential solar and energy storage. The Board accepts Sunrun's representation that its participation was found helpful by the regulatory agencies in other states. However, the Board FINDS that Sunrun's potential ability as a market participant to add measurably and constructively to the instant proceeding is not outweighed by the other factors for intervention.

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<sup>4</sup> Sunrun referenced the same product/service in its motion for intervention.

The Board **HEREBY AFFIRMS** the Presiding Commissioner's denial of Sunrun's motion to intervene.

### **KEEA Motion to Intervene**

The Presiding Commissioner did not consider KEEA's motion to intervene in the Prehearing Order because, at the time of the motion, KEEA was not represented by an attorney authorized to practice in New Jersey. The Board considers the motion now that KEEA is so represented. As noted above, no opposition was filed to KEEA's motion to intervene.

KEEA's membership includes a multitude of energy efficiency businesses that manufacture, design, and implement energy efficiency programs in buildings across New Jersey, including in the Petitioner's service territory. Its members include NRG Energy, Inc., which joined Direct Energy's motion to intervene; MaGrann Associates, Inc., which filed a motion to intervene and was granted participant status in this matter; Google, LLC, which was granted participant status, through its partnership with Nest; and Lime Energy Co. and Philips Lighting North America Corporation, which were granted participant status.

KEEA contends that the Petitioner's proposed programs will directly affect the utilization of its members' services and products. KEEA also represents that its interests in the proceeding are unique and not adequately represented by any other party; that its members could offer valuable perspectives on the design and implementation of the proposed programs; and that its intervention would not cause confusion or undue delay since it would coordinate its representation with similarly situated parties to the extent that it deems such coordination appropriate.

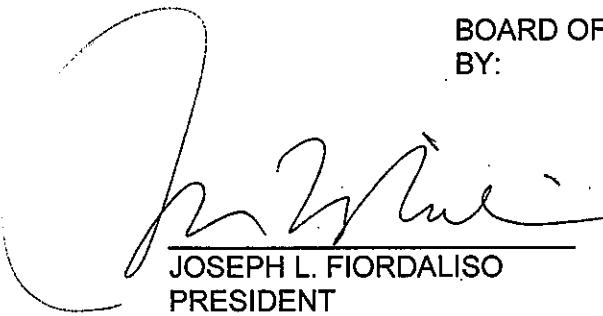
The Board **FINDS** that KEEA's membership includes multiple participants in energy efficiency markets, including business entities competing with the Petitioner, with unique interests in this proceeding because their services and products may be substantially, specifically, and directly affected by the outcome of this proceeding. The Board seeks to consider a diversity of interests in this matter, alongside the interests currently represented by the parties to this proceeding. The Board **FINDS** that, as a coalition of business interests, KEEA has the potential to contribute measurably and constructively to the development of a full and complete record, including, specifically, issues such as the potential impacts of the 2018 EE Programs, if approved, on competitive markets, existing market barriers, and the availability of such programs in the marketplace. The Board **FINDS** that, as a trade organization representing multiple companies with similar or identical concerns in this matter, KEEA's intervention does not carry the same risk of confusion and delay that would arise from including individual businesses as parties. Moreover, in weighing the nature and extent of KEEA's economic interest in the proceeding based on potential impacts on competition and changes in the energy efficiency markets, its ability to measurably and constructively assist the Board in its development of the record as a representative of multiple business members, and the need for a prompt and expeditious administrative proceeding, the Board **FINDS** that the value of KEEA's intervention outweighs the risk of confusion and delay that might arise from its inclusion as a party. Accordingly, the Board **HEREBY GRANTS** KEEA intervenor status, conditioned upon execution of the Agreement of Non-Disclosure.

The Board **HEREBY DIRECTS** Staff to post this Order on the Board's website.

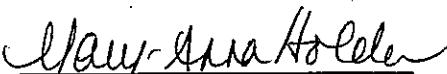
The effective date of this Order is March 9, 2019.

DATED: 2/27/19

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN

COMMISSIONER



DIANNE SOLOMON

COMMISSIONER



UPENDRA J. CHIVUKULA

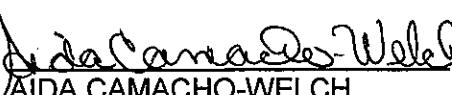
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SECRETARY

I HEREBY CERTIFY that the within  
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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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