

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No. A-1229-20T1

IN THE MATTER OF THE VERIFIED  
PETITION OF THE RETAIL ENERGY  
SUPPLY ASSOCIATION SEEKING  
WITHDRAWAL OF THE BOARD STAFF'S  
CEASE AND DESIST AND REFUND  
INSTRUCTIONS LETTER AND  
DECLARATION THAT THIRD PARTY  
SUPPLIERS CAN PASS THROUGH RPS  
COSTS UNDER THE CLEAN ENERGY  
ACT, P.L. 2018, C.17.

Civil Action

On Appeal from the New Jersey  
Board of Public Utilities

BPU Docket No. EO19020226

**AMENDED CERTIFICATION OF MURRAY E. BEVAN  
IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION**

I, MURRAY E. BEVAN, hereby certify as follows:

1. I am a partner at the firm of Bevan, Mosca & Giuditta, P.C. and counsel to Appellant Retail Energy Supply Association ("RESA").

2. I submit this Amended Certification,<sup>1</sup> based upon my personal knowledge and review of the relevant documents, in support of RESA's Motion for Summary Disposition.

3. Attached hereto as **Exhibit A** is a true and accurate copy of RESA's Verified Petition submitted to the New Jersey Board of Public Utilities ("BPU"), Docket No. EO19020226 (the "Petition").

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<sup>1</sup>This document is identical to the previously filed Certification except that the last two exhibits had been inadvertently omitted on the previously filed version.

4. Attached hereto as **Exhibit B** is a true and accurate copy of a January 22, 2019 letter from the BPU directed to "Each New Jersey Licensed Third Party Supplier" and entitled "Cease and Desist Refund Instruction."

5. Attached hereto as **Exhibit C** is a true and accurate copy of my January 25, 2019 letter responding to the January 22, 2019 Cease and Desist.

6. On February 6, 2019, BPU Energy Division Director Stacy Peterson contacted RESA counsel by phone and stated that BPU Staff would not withdraw the Cease and Desist.

7. Attached hereto as **Exhibit D** is a true and accurate copy of Freepoint Energy Solutions, LLC's letter filed on or about February 15, 2019 in the underlying matter before the BPU.

8. Attached hereto as **Exhibit E** is a true and accurate copy of Talen Energy Marketing, LLC's Motion to Intervene filed on or about February 21, 2019 in the underlying matter before the BPU.

9. Attached hereto as **Exhibit F** is a true and accurate copy of the Division of Rate Counsel's letter filed on or about March 8, 2019 in the underlying matter before the BPU.

10. After the next BPU Board Meeting on March 13, 2020, BPU Chief Counsel Noreen Giblin informed me that BPU staff hoped to have the Petition on the March 29, 2019 BPU Agenda.

11. Attached hereto as **Exhibit G** is a true and accurate copy of the BPU's posted Agenda for its March 29, 2019 Board Meeting.

12. Attached hereto as **Exhibit H** is a true and accurate copy of a letter dated March 27, 2019 from New Jersey State Senator Bob Smith, sponsor of the CEA and Chairman of the Senate Environment & Energy Committee, to Ms. Peterson at the BPU.

13. Attached hereto as **Exhibit I** is a true and accurate copy of the BPU's posted Minutes for its March 29, 2019 Board Meeting.

14. Attached hereto as **Exhibit J** is a true and accurate copy of my letter dated May 22, 2019 and filed in the underlying matter before the BPU.

15. The BPU did not respond to that letter, did not address the Petition at the next meeting, and to date has never decided the Petition.

16. On October 16, 2020 in the Board's Newly Docketed Matters I noticed the following docket had been opened by the Board: IN THE MATTER OF THE CEASE AND DESIST AND REFUND INSTRUCTIONS LETTER OF JANUARY 22, 2019 TO THIRD PARTY SUPPLIERS, 10/14/2020, Docket No. EO20100654.

17. I spoke with the Board's Chief Counsel Abe Silverman on October 19, 2020 and expressed my surprise at seeing the newly docketed matter. Mr. Silverman said the Board Staff were

working on a settlement with a third-party supplier to resolve its violation of the cease and desist letter. I again requested the Board act on RESA February 14, 2019 Petition to withdraw the letter.

18. Instead of acting on the Petition, the Board placed the EO20100654 matter on its December 2 Agenda for Executive Session consideration.

19. Attached hereto as **Exhibit K** is a true and accurate copy of a letter from the BPU to all New Jersey Third Party Suppliers (including RESA members) dated December 2, 2020.

20. Attached hereto as **Exhibit L** is a true and accurate copy of the BPU's posted Agenda for its December 2, 2020 Board Meeting.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**BEVAN, MOSCA & GIUDITTA, P.C.**  
Attorneys for Appellant

By: s/ Murray E. Bevan  
Murray E. Bevan

Dated: January 8, 2021

# Exhibit A

**B.M. BEVAN, MOSCA & GIUDITTA, P.C.**

ATTORNEYS AT LAW

CASE MANAGEMENT

FEB 15 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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MURRAY E. BEVAN  
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February 14, 2019

RECEIVED  
MAIL ROOM  
FEB 15 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

**VIA FEDERAL EXPRESS AND EMAIL**

Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
board.secretary@bpu.nj.gov  
aida.camach@bpu.nj.gov

ED 19020226

**Re: *In the Matter of the Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under The Clean Energy Act, P.L. 2018, c. 17***

Dear Secretary Camacho-Welch:

Enclosed for filing are an original and ten (10) copies of the Verified Petition of the Retail Energy Supply Association ("RESA") Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under The Clean Energy Act, P.L. 2018, c. 17.

Also enclosed is a check in the amount of \$25.00 for the requisite filing fee. Please contact me if you have any questions regarding this petition.

Respectfully submitted,

Murray E. Bevan

Enclosures

Cc: Service List

Cms  
Legal  
DAG  
RPA

Energy

RECEIVED  
CASE MANAGEMENT

**BEVAN, MOSCA & GIUDITTA**  
A Professional Corporation  
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(908) 753-8300

FEB 15 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

RECEIVED  
MAIL ROOM

FEB 15 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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

_____ )	
In the Matter of the Verified Petition of the )	<b>VERIFIED PETITION</b>
Retail Energy Supply Association Seeking )	<b>SEEKING EXPEDITED</b>
Withdrawal of Board Staff's Cease and Desist )	<b>FORMAL HEARING AND</b>
and Refund Instructions Letter and )	<b>ORDER</b>
Declaration that Third Party Suppliers Can )	
Pass Through RPS Costs Under )	Docket No. _____
The Clean Energy Act, P.L. 2018, c. 17 )	
_____ )	

**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

1. This is a Verified Petition Seeking an Expedited Formal Hearing and Order ("Petition") filed pursuant to N.J.A.C. § 14:1-1 et seq. under the rules of practice of the Board of Public Utilities ("Board") by the Retail Energy Supply Association<sup>1</sup> ("RESA" or "Petitioner").

2. This Petition seeks to enjoin the Board of Public Utilities ("Board") from contravening the Clean Energy Act ("CEA"), P.L. 2018., c. 17 by authorizing and/or allowing the issuance of "Cease and Desist" letters that place obligations on Third Party Suppliers ("Suppliers") that are contrary to the express language and intent of the CEA, and which authorization and/or

<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

issuance is inconsistent with both Board Orders and the Board's due process obligations under the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1 to -15.

3. Because the Cease and Desist purports to place immediate obligations on Suppliers, RESA hereby requests that the Board grant an Expedited Hearing on this Verified Petition and stay the Cease and Desist until this matter can be resolved.

### BACKGROUND

4. RESA is a broad and diverse group of retail energy suppliers that share a common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than do regulated utility providers. RESA members offer retail electric and gas service to residential, commercial, and industrial customers in New Jersey, throughout PJM, and in other competitive markets across North America.

5. On May 23, 2018, Governor Murphy signed the CEA into law. This sweeping legislation requires the Board to implement a number of clean and efficient energy measures. Of critical importance, the Act increased the renewable portfolio standard ("RPS") requirements for Suppliers and Basic Generation Service ("BGS") providers ("Providers").

6. Recognizing that Suppliers and Providers would not be able to price these increased RPS obligations into contracts entered before the CEA was passed, the CEA provides mechanisms for both Suppliers and Providers to manage existing contracts. In the case of Providers, the CEA exempts existing contracts from the increased RPS requirements and requires that new Provider contracts account for the exempted increase. N.J.S.A. 48:3-87(d)(3)(c). By contrast, the CEA includes language in the same subsection that permits Suppliers to pass through the RPS cost



increases to customers as a “change required by operation of law,” regardless of other contrary law or Board regulations. In pertinent part, the CEA provides:

**Notwithstanding any rule or regulation to the contrary, the board shall recognize these new solar purchase obligations as a change required by operation of law** and implement the provisions of this subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.

N.J.S.A. 48:3-87(d)(3)(c) (emphasis added).

7. The Board’s Energy Competition Rules, N.J.A.C. 14:4 et seq., govern Supplier activities in New Jersey, and include enrollment, marketing, and customer contract requirements. More particularly, with respect to Supplier customer contracts, the Board’s regulations provide:

The contract **may not include** provisions (sometimes referred to as “**material change notices**”) that permit the TPS to change material terms of the contract without the customer’s affirmative authorization **unless the change is required by operation of law**. “Material terms of a contract” include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. “Non-material” terms include those regarding the address where payments should be sent or the phone number to be used for customer inquiries. Changing the price to reflect a change in the Sales and Use Tax **or other State-mandated charge would be permitted as a change required by operation of law**.

N.J.A.C. 14:4-7.6(l) (emphasis added).<sup>2</sup>

8. In other words, the CEA requires the Board (regardless of any existing regulations to the contrary) to treat the increased solar RPS obligations as a “change required by operation of law,” and the Board’s regulations permit Suppliers to pass through any “change required by

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<sup>2</sup> The State-mandated RPS is effectively a charge to customers that is assessed through either Provider contracts or Supplier contracts.

operation of law.” It is clear that the CEA language, which exactly mirrors the language of the Board’s regulations related to this issue and contained in a subsection of the CEA addressing the issue of existing contracts, was intended to allow Suppliers to pass through costs associated with the increased RPS obligations under existing customer contracts.

9. The vast majority of Suppliers include contractual terms in their customer contracts that allow the Supplier to pass through a price increase due to a “change required by operation of law.”

10. Based on the unequivocal language from the CEA, coupled with a plain reading of the Board’s regulations, many Suppliers passed through the increased RPS costs to their customers on fixed price and other types of contracts.

**Board Staff’s “Cease and Desist and Refund Instructions” Letter**

11. On January 22, 2019, Energy Division Director Stacy Peterson issued to “Each New Jersey Licensed Third Party Supplier” a “Cease and Desist and Refund Instructions” letter (the “Cease and Desist”) (annexed hereto as “Exhibit A”). In pertinent part, the Cease and Desist opines that any Suppliers that increased the rate of their fixed or firm price contracts following passage of the CEA are in violation of the Board’s regulations, specifically N.J.A.C. 14:4-7.6(l) (cited above), as well as N.J.A.C. 14:4-7.12 which provides that a Supplier utilizing fixed or firm price contracts cannot charge a higher rate than the fixed or firm price provided in the customer’s contract.

12. The Cease and Desist directs Suppliers who have increased their “fixed” or “firm” rates to “cease and desist” charging customers a rate in excess of their original contracted rate and refund those customers the amount charged in excess. The Cease and Desist further directs

Suppliers to complete these refunds within five (5) weeks of the date of the letter and send a letter to Ms. Peterson detailing any corrective action taken by the Supplier.

13. On January 25, 2019, RESA replied to the Cease and Desist, requesting that Staff withdraw the Cease and Desist and issue a letter to Suppliers advising that those Suppliers with appropriate change in law provisions in their contracts may pass through the costs from the solar RPS increase to their customers. RESA's response is annexed hereto as "Exhibit B."

14. On February 6, 2019, Stacy Peterson contacted RESA counsel by phone and stated that Staff would not withdraw the Cease and Desist.

15. The issuance of the Cease and Desist has caused an irreparable harm to Suppliers' relationships with their customers and with their partners in the retail supply community.

16. The legal conclusion and direction in the Cease and Desist appears to be based on the erroneous presumption that the language from the CEA, "[n]otwithstanding any rule or regulation to the contrary," does not supersede comments made by the Board when enacting prior regulations.

17. This flawed interpretation is contrary to any theory of statutory interpretation.

18. Suppliers are obligated, by law, to purchase solar renewable energy certificates ("SRECs") based on a percentage of retail load served.

19. The Cease and Desist would require Suppliers to fund subsidies to the solar industry under existing contracts without any possible recourse or means to recover those costs.

20. The Board is obligated, under the clear and express terms of the CEA, to treat the

changes to the solar RPS as “a change required by operation of law.” N.J.S.A. 48:3-87(d)(3)(c).

21. The Cease and Desist is therefore inconsistent with the express language and intent of the CEA and should be immediately withdrawn.

22. The Cease and Desist was not authorized by an Order of the Board or by a rulemaking proceeding that provided an opportunity for notice and comment; it is unsupported by Board action.

23. As such, the Cease and Desist was improperly issued; and/or issued pursuant to an improper delegation of Board authority.

#### Legal Argument

24. The conclusion that Suppliers must “cease and desist” from passing through increased charges due to the CEA appears to be based on the flawed reasoning that comments from the Board Staff override a statute that was subsequently enacted by the Senate and General Assembly of the State of New Jersey and signed into law by the Governor on May 23, 2018. The first part of N.J.S.A. 48:3-87(d)(3)(c) directs the Board to recognize and allow this pass-through, “[n]otwithstanding any rule or regulation to the contrary.” The position that this mandate from the Legislature does not somehow supersede the Board’s regulations is completely without merit.

25. The actions taken by Staff in issuing the Cease and Desist also fall woefully short of the Board’s basic administrative law obligations under the APA, pursuant to which, the Board must act with transparency through the provision of prior notice and an opportunity for comment. *See, e.g. In re Provision of Basic Generation Service for the Period Beginning June 1 2008*, 205 N.J. 339 (2011). Simply stated, the issuance of a mandate from Staff to Suppliers, without official Board

action through an Order or the provision of notice and an opportunity for public comment, is not an appropriate exercise of the Board's authority, as the letter itself was sent unsanctioned by the Board.

26. An agency such as the Board has many means to implement legislative policy, including rulemaking proceedings, contested hearings, and hybrid informal methods. However, an agency's action, and its discretionary choice of action, "are valid only when there is compliance with the provisions of the [APA], and due process requirements." *Id.* at 347 (internal citation omitted).

27. In the instant action, RESA members do not have the benefit of a Board Order which was the case in In re Provision of Basic Generation Service, *supra*, although it was still not sufficient to overcome the requirements of the APA. Nor has there been notice and an opportunity for comment, as there would be in a formal rulemaking proceeding. There is only a letter issued by Board Staff, unsupported by the CEA, and without any consideration for the due process requirements that should have been afforded to Suppliers.

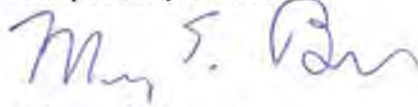
28. The Cease and Desist is inconsistent with the requirements of the CEA, which obligates the Board to treat the increased RPS requirements as a change required by operation of law.

29. If the Cease and Desist is not withdrawn, it will amount to an improper regulatory taking of Suppliers' contractual interests and rights.

30. Therefore, RESA respectfully requests an Order from the Board withdrawing the Cease and Desist and notifying Suppliers they may pass through the increased solar RPS costs required by the CEA, pursuant to the terms of their customer contracts.

31. As set forth above, RESA further requests that the Board stay the Cease and Desist until this matter is adjudicated.

Respectfully submitted,



Murray E. Bevan  
Bevan, Mosca & Giuditta, P.C.  
Counsel for the Retail Energy Supply Association  
222 Mount Airy Road  
Suite 200  
Basking Ridge, NJ 07920  
(908) 753-8300  
mbevan@bmg.law

Date: February 14, 2019

cc: Attached service list

mbevan@bmg.law

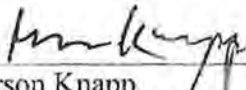
Date: February 13, 2019

cc: Attached service list

VERIFICATION

STATE OF Florida :  
: :  
CITY OF Broward :

I, Garson Knapp, hereby state that I am the New Jersey State Chair of the RETAIL ENERGY SUPPLY ASSOCIATION, the Petitioner in the foregoing Petition; that I am authorized to make this Verification on behalf of the RETAIL ENERGY SUPPLY ASSOCIATION, that the foregoing Petition was prepared under my direction and supervision; and that the statements in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Garson Knapp  
New Jersey State Chair  
RETAIL ENERGY SUPPLY ASSOCIATION

SWORN TO AND SUBSCRIBED before me on the 13<sup>th</sup> day of February, 2019.

  
\_\_\_\_\_  
Notary Public

My commission expires: June 13, 2020



Joseph L. Fiordaliso  
President

Mary-Anna Holden  
Commissioner

Dianne Solomon  
Commissioner

Upendra J. Chivukula  
Commissioner

Robert M. Gordon  
Commissioner



State of New Jersey  
Board of Public Utilities  
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P.O. Box 350  
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Stacy Peterson  
Director  
Division of Energy

Telephone: (609) 292-3960  
Fax: (609) 341-5781

**CEASE AND DESIST AND REFUND INSTRUCTION**

January 22, 2019

TO: Each New Jersey Licensed Third Party Supplier

RE: Increase to Fixed Rates – P.L. 2018, c. 17

It has come to Staff's attention that following the passage of P.L. 2018, c. 17, which increased the renewable portfolio standards, there are instances where New Jersey Third Party Suppliers ("TPSs") violated the Board's Energy Competition regulations when they charged a higher rate than the fixed price in the customer's contract. The TPSs increased their fixed rates, either by increasing the fixed rate or by adding a new charge to the customer's bill. This letter serves as a reminder to all TPSs of their obligations to comply with the Board's Energy Competition rules, which prohibit a TPS from changing a fixed price during the term of the contract without the customer's authorization.

Moreover, if your company has increased or charged the customer a rate that is higher than the fixed rate during the period for which the rate was fixed, you are hereby notified that your company is in violation of N.J.A.C. 14:4-7.12. If this is the case, you are instructed to **cease and desist** charging these customers a rate higher than the rate for which they contracted with your company. Further, you are instructed to **refund** to each of these customers the amount that your company charged the customer in excess of the amount it would have charged the customer had the increase not been implemented. You are instructed to complete these refunds within five weeks of the date of this letter.

Pursuant to N.J.A.C. 14:4-7.12, if a TPS signs up a customer or renews a customer for a rate that the TPS characterizes as "fixed" or "firm," or the TPS uses other language to describe the rate as not variable, the TPS may not charge the customer a rate that is higher than the fixed rate during the period for which it is fixed, except as permitted in N.J.A.C. 14:4-7.6(l), without the customer's affirmative consent. N.J.A.C. 14:4-7.6(l) states:

The contract may not include provisions (sometimes referred to as "material change notices") that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by



operation of law. "Material terms of a contract" include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. . . . Changing the price to reflect a change in the Sales and Use Tax or other State-mandated charge would be permitted as a change required by operation of law.

The rulemaking history of N.J.A.C. 14:4-7.6(l) is instructive to the facts in this matter. Some commenters noted that in addition to a change in sales taxes, a TPS's costs can be affected by a federal or state requirement that increases its costs. As an example, they cited "A2966/S1925 [P.L. 2012, c. 24], a statute that imposes new, costly, solar renewable energy requirements on each TPS." The commenters stated that the TPS must be able to adjust their pricing to account for these changes. In rejecting the comments, the Board stated:

A TPS may experience increased costs during the time period covered by a contract and wish to increase fixed price customer contracts to recoup these costs. However, for many customers, this would defeat the purpose of a fixed price contract. Customers who choose fixed priced contracts do so in order to avoid price risk. . . .

Regarding the inclusion of Federal or local mandates in the definition of "non-material," the Board notes that the basis for the exception for State taxes lies in the ability of the State to collect these taxes directly from the customer if not collected by the TPS. Allowing other mandated charges to be included changes the contract from a fixed rate benefiting the customer to a variable rate benefitting the TPS.

[45 N.J.R. 934(b)]

As noted by the above text, TPSs are required by law to collect sales and use taxes from customers and pursuant to N.J.S.A. 54:32B-14, "all sellers of energy or utility service shall include the tax imposed by the "Sales and Use Tax Act" within the purchase price of the tangible personal property or service." TPSs are not required by operation of law to change the prices that they charge to their customers as a result of P.L. 2018, c. 17. Therefore, the fact that a TPS may incur an increase in its costs as a result of P.L. 2018, c. 17 does not permit the TPS to increase fixed rates under N.J.A.C. 14:4-7.6(l), without the customer's affirmative consent.

If your company has increased a rate for electric generation or gas supply service that it has characterized as "fixed" or "firm," or your company has used other language to describe the rate as not variable, and you have charged the customer a rate that is higher than the fixed rate during the period for which the rate was fixed, you are hereby notified that your company is in violation of N.J.A.C. 14:4-7.12. If this is the case, you are instructed to **cease and desist** charging these customers a rate higher than the rate for which they contracted with your company. Further, you are instructed to **refund** to each of these customers the amount that your company charged the customer in excess of the amount it would have charged the customer had the increase not been implemented. You are instructed to complete these refunds within five weeks of the date of this letter.

Finally, you are instructed to send a letter to me by no later than **March 1, 2019** detailing the actions your company has taken to remedy this situation. This letter shall include at a minimum, the number of customers affected, the amounts of the refunds, and the dates of the refunds.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacy Peterson", with a long horizontal flourish extending to the right.

Stacy Peterson  
Director



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MURRAY E. BEVAN  
mbevan@bmg.law

January 25, 2019

**VIA FEDERAL EXPRESS AND ELECTRONIC MAIL**

Stacy Peterson, Director Division of Energy  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350

***Re: January 22, 2019 Cease and Desist Letter to Third Party Suppliers***

Dear Ms. Peterson:

We represent the Retail Energy Supply Association (“RESA”),<sup>1</sup> and are in receipt of your January 22, 2019 letter titled “Cease and Desist and Refund Instructions.” This letter was sent to many RESA members. We have reviewed the arguments contained in that letter. Unfortunately, the letter overlooks controlling statutory authority that expressly permits RESA members (as well as any and all third party suppliers) to raise prices under the circumstances presented here. We respectfully request that you withdraw the letter, and that the Board not take any further actions inconsistent with relevant law.

Although the letter correctly quotes N.J.A.C. 14:4-7.6(l), it incorrectly ignores the plain language of the regulation. It also completely ignores the recent statute that specifically authorizes the price change.

N.J.A.C. 14:4-7.6(l) reads:

The contract **may not include** provisions (sometimes referred to as “**material change notices**”) that permit the TPS to change material terms of the contract without the customer’s affirmative authorization **unless the change is required by operation of law**. “Material terms of a contract” include, but are not limited to, terms

<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

Ms. Peterson  
January 25, 2019  
Page 2 of 3

regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. “Non-material” terms include those regarding the address where payments should be sent or the phone number to be used for customer inquiries. Changing the price to reflect a change in the Sales and Use Tax **or other State-mandated charge would be permitted as a change required by operation of law.**

(emphasis added). Thus, under this regulation, while a third party supplier may include a material change provision in its consumer contracts, it is only allowed to pass through changes that are required by “operation of law.” The letter cites to the last sentence for the proposition that increases to the Sales or Use Tax are the only permitted increases. The regulation states no such thing. The regulation specifically permits a price change to account for any “other State-mandated charge.” The operative word in the regulation is “or.” This is an “A” or “B” situation. The Sales and Use Tax is “A.” The “other State-mandated charge” is “B.” The regulation permits a price change to account for any change in either “A” or “B.”

The letter then refers to the “rulemaking history” of the regulation to provide context, and then states that any third party supplier’s reliance on P.L. 2018, c. 17 is misplaced. That is incorrect. The New Jersey Legislature in P.L. 2018, c. 17 amended and supplemented various statutory provisions and established the solar renewable portfolio standards requirements at issue. In doing so, the Legislature specifically addressed and decided the very issue raised in the letter. Importantly, the Legislature decided this issue exactly contrary to the position provided in the letter. The statute provides:

**Notwithstanding any rule or regulation to the contrary, the board shall recognize these new solar purchase obligations as a change required by operation of law and implement the provisions of this subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.**

N.J.S.A. 48:3-87(d)(3)(c) (emphasis added).

Many third party suppliers provide service under contracts with their New Jersey customers, and many of these contracts include the following language (in substantial form) that specifically permits the pass through of any new or increased state-mandated charges:

You are responsible for paying any new or increased taxes, fees or other state mandated charges imposed on [TPS] or you during the term of this Agreement.

The logic of RESA’s position here is straightforward and irrefutable:

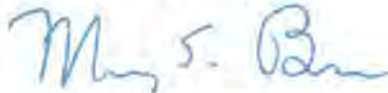
Ms. Peterson  
January 25, 2019  
Page 3 of 3

- N.J.A.C. 14:4-7.6(l) provides that a TPS may pass through a “State-mandated charge” if the charge is “required by operation of law;”
- N.J.S.A. 48:3-87(d)(3)(c) directs the Board of Public Utilities to recognize the new solar purchase obligations as a “change required by operation of law;” and
- RESA member contracts allow them to pass through any “other state mandated charges.”

The conclusion that third party suppliers must “cease and desist” from passing through those charges is therefore based on flawed reasoning. The BPU regulation, read in context with the applicable legislation and the contracts in question expressly permit third party suppliers to pass through these state-mandated charges. For that reason, RESA members with the appropriate contract provisions will continue to engage in this lawful behavior. Again, we respectfully request that the Board withdraw the “cease and desist” letter and instead issue a letter advising that third party suppliers may lawfully and appropriately pass through these charges when their contracts so provide.

Should you have any questions, please contact the undersigned at your earliest convenience.

Respectfully submitted,



Murray E. Bevan

cc: Jacqueline Galka, Energy Division  
Grace Strom Power, Chief of Staff  
Noreen Giblin, Chief Counsel  
Caroline Vachier, Deputy Attorney General

# Exhibit B

Joseph L. Fiordaliso  
President

Mary-Anna Holden  
Commissioner

Dianne Solomon  
Commissioner

Upendra J. Chivukula  
Commissioner

Robert M. Gordon  
Commissioner



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

Stacy Peterson  
Director  
Division of Energy

Telephone: (609) 292-3960  
Fax: (609) 341-5781

**CEASE AND DESIST AND REFUND INSTRUCTION**

January 22, 2019

TO: Each New Jersey Licensed Third Party Supplier

RE: Increase to Fixed Rates – P.L. 2018, c. 17

It has come to Staff's attention that following the passage of P.L. 2018, c. 17, which increased the renewable portfolio standards, there are instances where New Jersey Third Party Suppliers ("TPSs") violated the Board's Energy Competition regulations when they charged a higher rate than the fixed price in the customer's contract. The TPSs increased their fixed rates, either by increasing the fixed rate or by adding a new charge to the customer's bill. This letter serves as a reminder to all TPSs of their obligations to comply with the Board's Energy Competition rules, which prohibit a TPS from changing a fixed price during the term of the contract without the customer's authorization.

Moreover, if your company has increased or charged the customer a rate that is higher than the fixed rate during the period for which the rate was fixed, you are hereby notified that your company is in violation of N.J.A.C. 14:4-7.12. If this is the case, you are instructed to **cease and desist** charging these customers a rate higher than the rate for which they contracted with your company. Further, you are instructed to **refund** to each of these customers the amount that your company charged the customer in excess of the amount it would have charged the customer had the increase not been implemented. You are instructed to complete these refunds within five weeks of the date of this letter.

Pursuant to N.J.A.C. 14:4-7.12, if a TPS signs up a customer or renews a customer for a rate that the TPS characterizes as "fixed" or "firm," or the TPS uses other language to describe the rate as not variable, the TPS may not charge the customer a rate that is higher than the fixed rate during the period for which it is fixed, except as permitted in N.J.A.C. 14:4-7.6(l), without the customer's affirmative consent. N.J.A.C. 14:4-7.6(l) states:

The contract may not include provisions (sometimes referred to as "material change notices") that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by

operation of law. "Material terms of a contract" include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. . . . Changing the price to reflect a change in the Sales and Use Tax or other State-mandated charge would be permitted as a change required by operation of law.

The rulemaking history of N.J.A.C. 14:4-7.6(l) is instructive to the facts in this matter. Some commenters noted that in addition to a change in sales taxes, a TPS's costs can be affected by a federal or state requirement that increases its costs. As an example, they cited "A2966/S1925 [P.L. 2012, c. 24], a statute that imposes new, costly, solar renewable energy requirements on each TPS." The commenters stated that the TPS must be able to adjust their pricing to account for these changes. In rejecting the comments, the Board stated:

A TPS may experience increased costs during the time period covered by a contract and wish to increase fixed price customer contracts to recoup these costs. However, for many customers, this would defeat the purpose of a fixed price contract. Customers who choose fixed priced contracts do so in order to avoid price risk. . . .

Regarding the inclusion of Federal or local mandates in the definition of "non-material," the Board notes that the basis for the exception for State taxes lies in the ability of the State to collect these taxes directly from the customer if not collected by the TPS. Allowing other mandated charges to be included changes the contract from a fixed rate benefiting the customer to a variable rate benefitting the TPS.

[45 N.J.R. 934(b)]

As noted by the above text, TPSs are required by law to collect sales and use taxes from customers and pursuant to N.J.S.A. 54:32B-14, "all sellers of energy or utility service shall include the tax imposed by the "Sales and Use Tax Act" within the purchase price of the tangible personal property or service." TPSs are not required by operation of law to change the prices that they charge to their customers as a result of P.L. 2018, c. 17. Therefore, the fact that a TPS may incur an increase in its costs as a result of P.L. 2018, c. 17 does not permit the TPS to increase fixed rates under N.J.A.C. 14:4-7.6(l), without the customer's affirmative consent.

If your company has increased a rate for electric generation or gas supply service that it has characterized as "fixed" or "firm," or your company has used other language to describe the rate as not variable, and you have charged the customer a rate that is higher than the fixed rate during the period for which the rate was fixed, you are hereby notified that your company is in violation of N.J.A.C. 14:4-7.12. If this is the case, you are instructed to **cease and desist** charging these customers a rate higher than the rate for which they contracted with your company. Further, you are instructed to **refund** to each of these customers the amount that your company charged the customer in excess of the amount it would have charged the customer had the increase not been implemented. You are instructed to complete these refunds within five weeks of the date of this letter.



Finally, you are instructed to send a letter to me by no later than **March 1, 2019** detailing the actions your company has taken to remedy this situation. This letter shall include at a minimum, the number of customers affected, the amounts of the refunds, and the dates of the refunds.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacy Peterson", with a long horizontal flourish extending to the right.

Stacy Peterson  
Director

# Exhibit C



ATTORNEYS AT LAW

222 MOUNT AIRY ROAD, SUITE 200  
BASKING RIDGE, NJ 07920-2335  
(P) 908.753.8300  
(F) 908.753.8301

WWW.BMG.LAW

MURRAY E. BEVAN  
mbevan@bmg.law

January 25, 2019

**VIA FEDERAL EXPRESS AND ELECTRONIC MAIL**

Stacy Peterson, Director Division of Energy  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350

***Re: January 22, 2019 Cease and Desist Letter to Third Party Suppliers***

Dear Ms. Peterson:

We represent the Retail Energy Supply Association (“RESA”),<sup>1</sup> and are in receipt of your January 22, 2019 letter titled “Cease and Desist and Refund Instructions.” This letter was sent to many RESA members. We have reviewed the arguments contained in that letter. Unfortunately, the letter overlooks controlling statutory authority that expressly permits RESA members (as well as any and all third party suppliers) to raise prices under the circumstances presented here. We respectfully request that you withdraw the letter, and that the Board not take any further actions inconsistent with relevant law.

Although the letter correctly quotes N.J.A.C. 14:4-7.6(l), it incorrectly ignores the plain language of the regulation. It also completely ignores the recent statute that specifically authorizes the price change.

N.J.A.C. 14:4-7.6(l) reads:

The contract **may not include** provisions (sometimes referred to as “**material change notices**”) that permit the TPS to change material terms of the contract without the customer’s affirmative authorization **unless the change is required by operation of law**. “Material terms of a contract” include, but are not limited to, terms

---

<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

Ms. Peterson  
January 25, 2019  
Page 2 of 3

regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. “Non-material” terms include those regarding the address where payments should be sent or the phone number to be used for customer inquiries. Changing the price to reflect a change in the Sales and Use Tax **or other State-mandated charge would be permitted as a change required by operation of law.**

(emphasis added). Thus, under this regulation, while a third party supplier may include a material change provision in its consumer contracts, it is only allowed to pass through changes that are required by “operation of law.” The letter cites to the last sentence for the proposition that increases to the Sales or Use Tax are the only permitted increases. The regulation states no such thing. The regulation specifically permits a price change to account for any “other State-mandated charge.” The operative word in the regulation is “or.” This is an “A” or “B” situation. The Sales and Use Tax is “A.” The “other State-mandated charge” is “B.” The regulation permits a price change to account for any change in either “A” or “B.”

The letter then refers to the “rulemaking history” of the regulation to provide context, and then states that any third party supplier’s reliance on P.L. 2018, c. 17 is misplaced. That is incorrect. The New Jersey Legislature in P.L. 2018, c. 17 amended and supplemented various statutory provisions and established the solar renewable portfolio standards requirements at issue. In doing so, the Legislature specifically addressed and decided the very issue raised in the letter. Importantly, the Legislature decided this issue exactly contrary to the position provided in the letter. The statute provides:

**Notwithstanding any rule or regulation to the contrary, the board shall recognize these new solar purchase obligations as a change required by operation of law and implement the provisions of this subsection in a manner so as to prevent any subsidies between suppliers and providers and to promote competition in the electricity supply industry.**

N.J.S.A. 48:3-87(d)(3)(c) (emphasis added).

Many third party suppliers provide service under contracts with their New Jersey customers, and many of these contracts include the following language (in substantial form) that specifically permits the pass through of any new or increased state-mandated charges:

You are responsible for paying any new or increased taxes, fees or other state mandated charges imposed on [TPS] or you during the term of this Agreement.

The logic of RESA’s position here is straightforward and irrefutable:

Ms. Peterson  
January 25, 2019  
Page 3 of 3

- N.J.A.C. 14:4-7.6(l) provides that a TPS may pass through a “State-mandated charge” if the charge is “required by operation of law;”
- N.J.S.A. 48:3-87(d)(3)(c) directs the Board of Public Utilities to recognize the new solar purchase obligations as a “change required by operation of law;” and
- RESA member contracts allow them to pass through any “other state mandated charges.”

The conclusion that third party suppliers must “cease and desist” from passing through those charges is therefore based on flawed reasoning. The BPU regulation, read in context with the applicable legislation and the contracts in question expressly permit third party suppliers to pass through these state-mandated charges. For that reason, RESA members with the appropriate contract provisions will continue to engage in this lawful behavior. Again, we respectfully request that the Board withdraw the “cease and desist” letter and instead issue a letter advising that third party suppliers may lawfully and appropriately pass through these charges when their contracts so provide.

Should you have any questions, please contact the undersigned at your earliest convenience.

Respectfully submitted,



Murray E. Bevan

cc: Jacqueline Galka, Energy Division  
Grace Strom Power, Chief of Staff  
Noreen Giblin, Chief Counsel  
Caroline Vachier, Deputy Attorney General

# Exhibit D



freepoint  
energy solutions

RECEIVED  
CASE MANAGEMENT

FEB 20 2019

3050 Post Oak Blvd  
Suite 1330  
Houston, TX 77056

Phone: 800-982-1670  
Fax: 713-583-9087

BOARD OF PUBLIC UTILITIES  
TRENTON, N.J.

February 15, 2019

The Honorable Aida Camacho-Welch  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350

*Filed  
2/22/19*

Via FedEx

RECEIVED  
MAIL ROOM

FEB 20 2019

*E019020226*

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

**Re: Freepoint Energy Solutions Joins RESA Petition to Withdraw Cease and Desist**

To the Honorable Aida Camacho-Welch:

Freepoint Energy Solutions LLC ("Freepoint") is a licensed third party supplier ("TPS") and writes today to join the Petition of the Retail Energy Supply Association ("RESA") Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under the Clean Energy Act, P.L. 2018, c. 17 (the "Petition"), filed on February 14, 2019. A copy of RESA's Petition is enclosed hereto for your reference.

Freepoint supports the position and arguments expressed by RESA, and respectfully joins in RESA's Petition.

Freepoint submits that the Clean Energy Act clearly allows TPSs to implement the increased renewable portfolio standard ("RPS") requirements by requiring the Board to recognize the increased RPS requirements as a "change required by operation of law." Freepoint submits that the Cease and Desist letter is contrary to the clear statutory mandate of the Clean Energy Act, and was further issued without Board authorization.

Freepoint joins the arguments in RESA's Petition and respectfully requests that the Board withdraw the Cease and Desist letter and stay enforcement of the letter until it acts on RESA's Petition.

Respectfully submitted,

Freepoint Energy Solutions LLC

By: *S. Patru*  
Simona Patru – Secretary & Legal Counsel

*Case mgmt  
Clean Energy*

- cc: Stacy Peterson, Director, Division of Energy  
Jacqueline Galka, Division of Energy  
Grace Strom Power, Chief of Staff  
Noreen Giblin, Chief Counsel  
Paul Flanagan, Executive Director  
Stefanie Brand, Director, Division of Rate Counsel  
Caroline Vachier, Deputy Attorney General

# Exhibit E





February 21, 2019

**Ira G. Megdal**  
Direct Phone 856-910-5007  
Direct Fax 877-259-7984  
imegdal@cozen.com

*Ira G. Megdal*  
*2/25/19*

**VIA HAND DELIVERY**

Aida Camacho-Welch  
Board Secretary  
Board of Public Utilities  
44 South Clinton Ave.  
3rd Floor, Suite 314  
PO Box 350  
Trenton, NJ 08625-0350

RECEIVED  
CASE MANAGEMENT

FEB 21 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

RECEIVED  
MAIL ROOM

FEB 21 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

Re: In the Matter of the Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Delcaration that Third Party Suppliers Can Pass Through Solar RPS Costs Under The Clean Energy Act, P.L. 2018, c. 17  
Docket No. EO19020226

Dear Secretary Camacho-Welch:

This firm represents Talen Energy Marketing, LLC. ("Talen") in the referenced matter. On behalf of Talen, enclosed for filing please find an original and ten (10) copies of a Motion to Intervene.

We are also enclosing an extra copy of the Motion. Please stamp the extra copy as "Filed" and return same in the self-addressed stamped envelope.

Thank you for your attention to this matter.

Respectfully submitted,

COZEN O'CONNOR, PC

By: Ira G. Megdal

IGM:kn  
Enclosure

cc: Service List (via email)

*CMS*  
*a. Hadley, Esq.*

LEGAL400467531



2. The Letter refers to the Clean Energy Act, P.L. 2018, c.17 (“CEA”), which was incorporated into N.J.S.A. 48:3-87. The Act, *inter alia*, imposed upon TPSs, such as TEM, increased renewable portfolio standard (“RPS”) percentage requirements.

3. The Letter alleges that some New Jersey TPSs “violated the Board’s Energy Competition regulations when they charged a higher rate than the fixed price in the customer’s contract.” Letter, p. 1.

4. The Letter instructs TPSs to cease and desist from charging customers a higher rate to recover, *inter alia*, the cost of additional Solar Renewable Energy Certificates (“SRECs”) in order to comply with the CEA. The Letter also directs TPSs to refund to their customers the amount that the TPS has charged customers for the recovery of these increased SRECs.

5. On February 14, 2019 the Retail Energy Supply Association (“RESA”) filed a Verified Petition Seeking Expedited Formal Hearing and Order (the “Petition”) in this matter.

6. The Petition seeks, *inter alia*, to enjoin the Board from contravening the CEA by authorizing and/or allowing the issuance of the Letter.

**TEM**

7. TEM provides TPS services in New Jersey solely to electric C&I customers. Its license number is ESL-0163. Its address is 600 Hamilton Street Suite 600 Allentown, PA 18101.

8. All communications with respect to this Motion and in these proceedings should be served on the following persons:

Ira G. Megdal, Esq.  
James F. Van Orden, Esq.  
Cozen O’Connor  
A Pennsylvania Professional Corporation  
LibertyView, Suite 300  
457 Haddonfield Road  
Cherry Hill, NJ 08002  
imegdal@cozen.com  
jvanorden@cozen.com

Debra L. Raggio  
Senior Vice President  
Regulatory & External Affairs Counsel  
Talen Energy  
117 Oronoco Street  
Alexandria, Virginia 22314  
Debra.Raggio@talenergy.com

Megan Toomey  
Director-Regulatory Policy & Strategy  
Talen Energy  
600 Hamilton Street, Suite 600  
Allentown, PA 18101  
Megan.Toomey@talenergy.com

**Standard for Intervention**

9. The criteria for intervention are set forth in N.J.A.C. 1:1-16.1:

[A]ny person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

10. N.J.A.C. 1:1-16.3(a) sets forth further guidance to be used to evaluate a motion to intervene:

In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

**TEM Meets the Standard for Intervention**

11. In order to comply with the CEA, TEM purchased increased SRECs at significant cost.

12. TEM has certain agreements with sophisticated commercial and industrial ("C&I") customers that include contractual provisions that permit TEM to pass increased costs to its customers arising from changes in law, such as those implemented by the New Jersey Legislature in the CEA.

13. TEM's participation in this proceeding is necessary in order to ascertain the extent to which the Letter was intended to apply to the contractual relationship between TEM and its sophisticated C&I customers. TEM maintains the position that the Letter should not apply to it and respectfully requests that the BPU promptly make such a clarification.

14. The Letter is so broad-ranging that it could be read to require TEM to make refunds to certain of its C&I customers.

15. TEM could be irreparably harmed by the apparent directives of the Letter because TEM's ability -- pursuant to contracts negotiated at arms-length with C&I customers -- to pass-through increased costs arising from changes of law could be unlawfully impaired. TEM's contracts represent a carefully-negotiated balancing of risk with sophisticated customers; the BPU should not interfere with the contractual relationships.

16. TEM therefore seeks to intervene in this matter because its contractual rights may be substantially, specifically and directly affected by the outcome of this proceeding.

17. Because TEM solely provides service to electric C&I customers in New Jersey, and has unique contractual provisions that allow TEM to recover increases such as the increased cost of SRECs, no other party is impacted in the same way that TEM is impacted. Other participating TPSs have their own customer mixes (including, in some instances, residential customers), contractual provisions, and business development plans. The interests of TEM and the other TPSs, accordingly, are not necessarily aligned.

18. Nevertheless, the Movant's intervention will not add confusion to, or otherwise delay, these proceedings in any way.

Positions on the Issues

19. TEM has a separate and independent interest in the outcome of the proceeding from that of RESA and other TPSs. TEM's customer base (solely C&I), contract provisions, and business development plan differ from those of other TPSs. Indeed, TEM and the other TPSs are competitors in the retail market. Accordingly, TEM should not be bound by any position that may be taken by RESA or any other TPS in this proceeding.

20. While TEM generally supports the arguments offered by RESA, TEM urges the Board to withdraw the Letter -- to the extent that it may have been intended to apply to TEM -- for the following reasons:

- a. The CEA does not prohibit a TPS from passing cost increases to customers, where, as is the case with TEM, the TPS does not describe its rates as "fixed," "firm," or otherwise not variable.
- b. The CEA does not prohibit a TPS from including a "change in law" provision in a contract with C&I customers, which are typically sophisticated customers.
- c. The Letter may constitute an improper delegation of Board authority to an employee of the Board.<sup>1</sup>
- d. If applied so as to adversely impact TEM's contracts and to require refunds to C&I customers, the Letter would impair contracts in violation of the contract provisions of the United States Constitution, U.S. Const. art. I § 10, and the contract provision of the New Jersey Constitution, N.J. Const. art. IV, § 7, ¶ 3.<sup>2</sup>

---

<sup>1</sup> See, e.g., In re AMICO/Tunnel Carwash, 371 N.J. Super. 199, 203, 852 A.2d 277, 279 (App. Div. 2004) (rejecting the granting of a variance by a staff level state employee as it was "not simply a ministerial act.").

<sup>2</sup> To determine whether there has been a violation of the Contract Clause, a law must have operated as a substantial impairment of a contractual relationship. See General Motors v. Romein, 503 U.S. 181, 186 (1992). The Letter has caused a substantial impairment of TEM's contracts by eliminating a key provision regarding the cost and assumption of risk for changes in law to the material detriment of TEM. Because TEM's customers are sophisticated businesses, the Letter is an unreasonable infringement of contract rights.

e. The Letter deprives TPSs of property without due process of law, in violation of the due process clause of the United States Constitution, U.S. Const., amend XIV, and the due process clause of the New Jersey Constitution, N.J. Const. art. I, § 1.

f. The Letter constitutes a *de facto* rule or regulation, which was not promulgated in accordance with the New Jersey State Administrative Procedure Act ("APA"). The failure to comply with the APA constitutes a separate violation of the federal and state due process clauses.

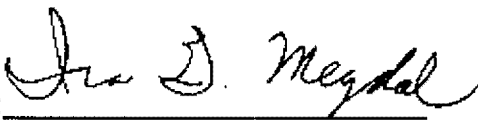
g. The Letter takes private property without just compensation, in violation of the United States Constitution, U.S. Const. amend. XIV, and the New Jersey Constitution. N.J. Const. art. I, § 20.

h. The Letter is arbitrary and capricious and constitutes an abuse of power, because it will lead to decreased competition and higher prices.

**Conclusion**

21. For the reasons set forth above, TEM respectfully requests that it be granted leave to intervene in this matter pursuant to N.J.A.C. 1:1-16.1 *et seq.* or, in the alternative, that the BPU promptly clarify that the Letter does not apply to TEM.

Respectfully submitted,

By:   
Ira G. Megdal

Dated: February 21, 2019

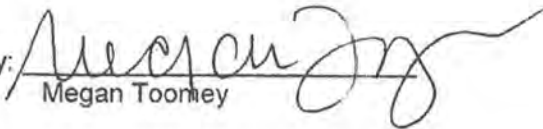
VERIFICATION

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF LEHIGH )

Megan Toomey, of full age, being duly sworn, upon her oath deposes and says:


1. I am the Director-Regulatory Policy & Strategy and I am authorized to make this Verification on behalf of Talen Energy Marketing, LLC in this matter.
2. I have reviewed the within Motion and the same is true and correct to the best of my knowledge, information and belief.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

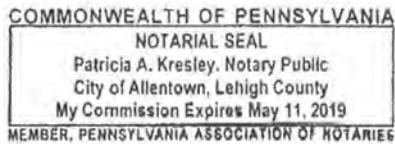
By:   
Megan Toomey

Sworn to and subscribed

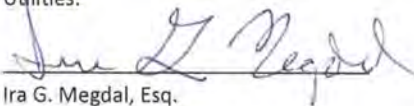
before me this 20<sup>th</sup> day of

February, 2019

  
Notary



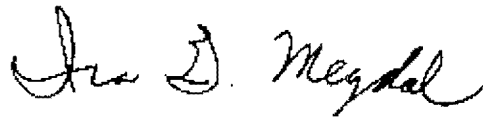
This Verification is being submitted in facsimile form. The undersigned attorney, Ira G. Megdal, certifies that the affiant acknowledge the genuineness of the signature and that the Verification or a copy with an original signature affixed will be filed if requested by the Board of Public Utilities.

  
Ira G. Megdal, Esq.



CERTIFICATION OF SERVICE

Ira G. Megdal, certifies that I am a member of the firm of Cozen O'Connor and on this date I caused copies of the attached Motion for Leave to Intervene of Talen Energy Marketing, LLC to be served via email upon each of the parties named on the service list attached to this filing. The above statements made by me are true. I am aware that if any statement made by me is willfully false, I am subject to punishment.



---

Ira G. Megdal

Dated: February 21, 2019

In the Matter of the Verified Petition of the Retail Energy Supply Association  
Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter  
and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under  
The Clean Energy Act, P.L. 2018, c. 17  
BPU Docket No.: EO19020226  
**SERVICE LIST**

Paul Flanagan, Executive Director  
NJ Board of Public Utilities  
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Stacy Peterson, Director  
Division of Energy  
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Stefanie A. Brand, Director  
Division of Rate Counsel  
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P.O. Box 003  
Trenton, NJ 08625

Noreen Giblin, Esquire  
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Brian O. Lipman, Esq.  
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140 East Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625

Caroline Vachier, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101

# Exhibit F

RECEIVED  
CASE MANAGEMENT



RECEIVED  
MAIL ROOM

MAR 12 2019

MAR 12 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ  
PHIL MURPHY  
Governor

State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. Box 003  
TRENTON, NEW JERSEY 08625

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

SHEILA OLIVER  
Lt. Governor

STEFANIE A. BRAND  
Director

March 8, 2019

*Handwritten signature*  
3/14/19

**Via US Regular Mail**

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

Re: In the Matter of the Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under The Clean Energy Act, P.O. 2018, c. 17 BPU Docket No. EO19020226

Dear Secretary Camacho-Welsh:

Please update your service list in this matter by adding the following attorneys on behalf of the Division of Rate Counsel.

**Stefanie A. Brand, Director**  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625-003

**Brian Lipman, Litigation Manager**  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625-003

**Felicia Thomas-Friel, Esq.**  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625-003

**Maura Caroselli, Esq.**  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625-003

The e-mail addresses are as follows:

[blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)  
[fthomas@rpa.nj.gov](mailto:fthomas@rpa.nj.gov)  
[mcaroselli@rpa.nj.gov](mailto:mcaroselli@rpa.nj.gov)  
[smassey@rpa.nj.gov](mailto:smassey@rpa.nj.gov)

**CMS**  
*D. Lee-Thomas*

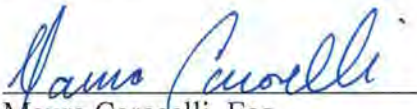
Tel: (609) 984-1460 • Fax: (609) 292-2923 • Fax: (609) 292-4991  
<http://www.nj.gov/rpa> E-Mail: [niratepayer@rpa.nj.gov](mailto:niratepayer@rpa.nj.gov)

By copy of this letter I am requesting that the other parties to this matter also amend their service lists as indicated above.

Thank you for your attention to this matter.

Very truly yours,

Stefanie A. Brand, Esq.  
Director, Division of Rate Counsel

By:   
Maura Caroselli, Esq.  
Assistant Deputy Rate Counsel

MC  
c: Service list

IN THE MATTER OF THE PETITION FOR THE  
Clean Energy Supply Association Seeking  
Withdrawal of Board Staff's Cease and Desist  
and Refund Instructions Letter and Declaration  
that Third Party Suppliers Can Pass Through  
RPS Costs Under The Clean Energy Act,  
P.L. 2018, c. 17  
BPU Docket No. EO19020226

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

Stefanie A. Brand, Director  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
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Trenton, NJ 08625

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Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
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Felicia Thomas-Friel, Esq.  
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P.O. Box 003  
Trenton, NJ 08625

Maura Caroselli, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Shelly Massey, Paralegal  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Stacy Peterson, Director  
NJ Board of Public Utilities  
44 South Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Paul Flanagan, Executive Director  
NJ Board of Public Utilities  
44 South Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Caroline Vachier, DAG  
NJ Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, NJ 07101

Grace Strom Power, Esq.  
NJ Board of Public Utilities  
44 South Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Jacqueline Galka  
NJ Board of Public Utilities  
44 South Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Noreen Giblin, Esq.  
NJ Board of Public Utilities  
44 South Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Murray E. Bevan  
Bevan, Mosca & Giuditta  
Attorneys at Law  
222 Mount Airy Road, Suite 200  
Basking Ridge, NJ 07920-2335

# Exhibit G



**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/](http://www.nj.gov/bpu/)

**AGENDA FOR BOARD MEETING**  
The meeting will be held on  
Friday, March 29, 2019 – 10:00 a.m. at the  
State House Annex, Committee Room 11  
125 West State Street, Trenton, NJ

**Executive Session**

*(Open Session will not reconvene until the conclusion of the Executive Session, which will commence at 10:00 a.m. The only business to be conducted in the 10:00 a.m. Open Session will be the reading of the public notice statement, roll call, and the exception, under the Open Public Meetings Act, for each item to be considered in Executive Session.)*

**2. ENERGY**

- I. Docket No. ER19010009 – In the Matter of Federal Energy (FERC) Items for 2019 – FERC Docket No. RP19-351 Tennessee Gas Pipeline Company, L.L.C. re: FERC Form No. 501-G.

**8. CLEAN ENERGY**

- F. Docket No. QO18121289 – In the Matter of the New Jersey Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications.





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/](http://www.nj.gov/bpu/)

**CONSENT AGENDA FOR BOARD MEETING**  
The meeting will be held on  
Friday, March 29, 2019 – 10:00 a.m. at the  
State House Annex, Committee Room 11  
125 West State Street, Trenton, NJ

**I. AUDITS**

**A. Energy Agent, Private Aggregator and/or Energy Consultant Initial Registrations**

EE19020203L	America Approved Commercial, LLC	I – EA
EE18111224L	NuEnergen, LLC	I – EA
EE18121344L GE18121345L	Pennell & Wiltberger, Inc. d/b/a PWI Engineering, Inc.	I – EA/PA
EE19010035L GE19010036L	Lower Watt, LLC	I – EA/PA/EC
EE19020195L GE19030315L	SunLight Energy Group, LLC	I – EA/EC
EE17111197L GE17111198L	Biofuels Technology, LLC d/b/a Energy Connection	I – EA/EC

**Energy Agent, Private Aggregator and/or Energy Consultant Renewal Registrations**

EE19010014L	Amerex Brokers, LLC d/b/a Amerex Energy Services	R – EA
EE19010069L	Aspen Energy Corporation	R – EA
EE19020218L	Gold Star Energy, LLC d/b/a GSEUSA	R – EA
EE19020266L	Lightstar Energy Group, LLC	R – EA

**I. AUDITS (CONT'D)**

EE19020223L	Live Energy, Inc.	R – EA
EE19020272L	Open Energy Services, LLC	R – EA
EE19020199L GE19020200L	Arcadia Power, Inc.	R – EA/PA
EE19020224L GE19020225L	Integrity Energy, LTD d/b/a Integrity Energy	R – EA/PA

**Electric Power and/or Natural Gas Supplier Initial Licenses**

EE19010039L	Rushmore Energy, LLC	I – ESL
EE19020174L GE19020173L	Tomorrow Energy Corp. f/k/a Sperian Energy Corp.	I – EGSL

**Electric Power and/or Natural Gas Supplier Renewal Licenses**

EE19010144L GE19010143L	UGI Energy Services, LLC	R – EGSL
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[Document Link](#)

**II. ENERGY**

- A. Docket No. ER19010009 – In the Matter of Federal Energy (FERC) Items for 2019 – FERC Docket No. EL19-47 Independent Market Monitor for PJM v. PJM Interconnection L.L.C.

**III. CABLE TELEVISION**

- A. Docket No. CE18020192 – In the Matter of the Petition of Comcast of South Jersey, LLC for a Renewal Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Television System in and for the Town of Hammonton, County of Atlantic, State of New Jersey. [Document Link](#)

**IV. TELECOMMUNICATIONS**

- A. Docket No. TM19020217 – In the Matter of the Verified Joint Petition of DSCI, LLC, U.S. TelePacific Holdings Corp., and Pensare Acquisition Corp. for Approval to Transfer Indirect Control of DSCI, LLC to Pensare Acquisition Corp. [Document Link](#)

**V. WATER**

NO ITEMS FOR CONSIDERATION

**VI. RELIABILITY & SECURITY**

A. Docket Nos GS19010025K, et al. – In the Matter of Alleged Violations of the Underground Facility Protection Act, N.J.S.A. 48:2-73 to -91. [Document Link](#)

**VII. CUSTOMER ASSISTANCE**

NO ITEMS FOR CONSIDERATION

**VIII. CLEAN ENERGY**

NO ITEMS FOR CONSIDERATION

**IX. MISCELLANEOUS**

A. Approval of the Minutes for the February 27, 2019, Agenda Meeting.



**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/](http://www.nj.gov/bpu/)

**AGENDA FOR BOARD MEETING**  
The meeting will be held on  
Friday, March 29, 2019 – 10:00 a.m. at the  
State House Annex, Committee Room 11  
125 West State Street, Trenton, NJ

**1. AUDITS**

NO ITEMS FOR CONSIDERATION

**2. ENERGY**

- A.** Docket No. ER18111242 – In the Matter of FERC Approved Changes to Rockland Electric Company Transmission Rate Pursuant to Paragraphs 15.9 of the BGS-RSCP and BGS-CIEP Supplier Master Agreements and Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff. [Document Link](#)
- B.** Docket No. GR18060608 – In the Matter of the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas to Review its Periodic Basic Gas Supply Service Rate. [Document Link](#)
- C.** Docket No. GR18070832 – In the Matter of the Petition of South Jersey Gas Company to Change the Levels of its Societal Benefits Clause (“SBC”) and its Transportation Initiation Clause (“TIC”). [Document Link](#)
- D.** Docket No. GR18060606 – In the Matter of the Petition of Public Service Electric and Gas Company’s 2018/2019 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge. [Document Link](#)
- E.** Docket No. GR18060605 – In the Matter of the Petition of Public Service Electric and Gas Company’s 2018 Annual Margin Adjustment Charge (“MAC”). [Document Link](#)
- F.** Docket No. ER18060681 – In the Matter of the Petition of Public Service Electric and Gas Company for Approval of Changes in its Electric Solar Pilot Recovery Charge (“SPRC”) for its Solar Loan I Program. [Document Link](#)

**2. ENERGY (CONT'D)**

- G. Docket No. GR18091055 – In the Matter of the Petition of New Jersey Natural Gas Company for the Annual Review and Revision of Societal Benefits Charge Factors for Remediation Year 2018. [Document Link](#)
- H. Docket GR19020278 – In the Matter of the Petition of New Jersey Natural Gas for Approval to Implement an Infrastructure Investment Program (“IIP”) and Associated Cost Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A. [Document Link](#)
- I. Docket No. ER19010009 – In the Matter of Federal Energy (FERC) Items for 2019 – FERC Docket No. RP19-351 Tennessee Gas Pipeline Company, L.L.C. re: FERC Form No. 501-G – **Executive Session.**
- J. Docket No. EO19020226 – In the Matter of Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff’s Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under the Clean Energy Act, P.L. 2018, c. 17.

**3. CABLE TELEVISION**

NO ITEMS FOR CONSIDERATION

**4. TELECOMMUNICATIONS**

NO ITEMS FOR CONSIDERATION

**5. WATER**

- A. Docket No. WE18080926 – In the Matter of the Petition of Village Utility, LLC for Approval of a Municipal Consent to Provide Sewerage Service to a Portion of the Township of Sparta, for Approval of Implementation of an Initial Tariff for Wastewater Service within the Township of Sparta, and for Other Required Approvals. [Document Link](#)
- B. Docket No. WR18111241 – In the Matter of New Jersey-American Water, Inc. for Authorization to Change the Level of its Purchased Water Adjustment Clause(“PWAC”) and Purchased WasteWater (Sewerage) Treatment Adjustment Clause (“PSTAC”). [Document Link](#)

**6. RELIABILITY & SECURITY**

- A. Docket No. GO18101190 – In the Matter of the Joint Petition of the Gas Distribution Companies for Approval of a Meter Selective Sampling Program. [Document Link](#)

**6. RELIABILITY & SECURITY (CONT'D)**

- B. Docket No. EO18101187 – In the Matter of the Verified Petition of Jersey Central Power and Light Company for Authorization to Revise: the Statistical Sampling Aspects of its Electric Meter Testing Program Pursuant to N.J.A.C. 14:5-4.2, and the Form of Quarterly Reporting of Meter Test Results Pursuant to N.J.A.C. 14:3-4.7. [Document Link](#)
- C. Docket No. EO18101159 – In the Matter of the Joint Petition of Public Service Electric and Gas Company for Approval of an Electric Meter Selective Sampling Program. [Document Link](#)
- D. Docket No. EO18101189 – In the Matter of the Petition of Atlantic City Electric Company to Revise and Update its Meter Selective Sampling Program Pursuant to N.J.A.C. 15:5-4.2, and the Form of Quarterly Reporting of Meter Test Results Pursuant to N.J.A.C. 14:3-7. [Document Link](#)
- E. Docket No. EO18101188 – In the Matter of the Meter Sampling Plan of Rockland Electric Company. [Document Link](#)

**7. CUSTOMER ASSISTANCE**

NO ITEMS FOR CONSIDERATION

**8. CLEAN ENERGY**

- A. Docket No. EO12090832V – In the Matter of the Implementation of P.L. 2012, c. 24, The Solar Act of 2012;  
  
Docket No. EO12090862V – In the Matter of the Implementation of P.L. 2012, c. 24, N.J.S.A. 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECs to Certified Brownfield, Historic Fill and Landfill Facilities; and  
  
Docket No. QO18050592 – AC Power 2 LLC – Winzinger Landfill. [Document Link](#)
- B. Docket No. QO18121331 – In the Matter of the Petition of Helios Solar Energy, LLC – Request for Solar Renewable Energy Certificate Extension (SREC). [Document Link](#)
- C. Docket No. QO16020130 – In the Matter of the Implementation of N.J.S.A. 48:3-87(R), Designating Grid Supply Projects as Connected to the Distribution System – Order Implementing Certain Provisions of N.J.A.C. 14:8-2.4(G) for Energy Year 2020.
- D. Docket No. QO18040393 – In the Matter of the Clean Energy Programs and Budgets for Fiscal Year 2019 – True-Up and Revised Budget. [Document Link](#)

**8. CLEAN ENERGY (CONT'D)**

- E. Docket No. QO18060646 – In the Matter of the New Jersey Community Solar Energy Pilot Program. [Document Link](#) & [Community Solar Energy Pilot Program](#)
- F. Docket No. QO18121289 – In the Matter of the New Jersey Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications – **Executive Session.**

**9. MISCELLANEOUS**

NO ITEMS FOR CONSIDERATION

# Exhibit H





NEW JERSEY SENATE

SENATOR BOB SMITH

17TH LEGISLATIVE DISTRICT

216 STELTON ROAD, SUITE E-5

PISCATAWAY, NJ 08854

(732) 752-0770

FAX (732) 752-1590

email: senbsmith@njleg.org

Website: www.senatorbobsmith.org

CHAIRMAN  
ENVIRONMENT COMMITTEE

MEMBER  
JUDICIARY COMMITTEE

MEMBER  
STATE HOUSE COMMISSION

March 27, 2019

Stacy Peterson, Director  
Division of Energy  
Board of Public Utilities  
44 S. Clinton Avenue  
Trenton, NJ 08625

Dear Ms. Peterson:

It has come to my attention that there is an issue regarding the Board of Public Utilities' implementation of the Clean Energy Act's Solar Renewable Portfolio Standard (Solar RPS) as it relates to third party suppliers.

During consideration of the Clean Energy Act, the legislature specifically included language to make clear that electricity providers, whether part of the BGS auction or a third party supplier, must be permitted to make adjustments to fixed price contracts in response to the new Solar RPS requirements imposed by the legislation. The specific language stated the following: "Notwithstanding any rule or regulation to the contrary, the board shall recognize these new solar purchase obligations as a change required by operation of law" (§ 48:3-87(d)(3)(c), emphasis added).

This language, "obligations as a change required by operation of law", was purposefully included because it was specifically taken from existing BPU regulations regarding fixed price contract to avoid any confusion about the authority of third party suppliers to make adjustments to fixed price contracts in response to the increase in the solar RPS obligation. The language from the BPU code is below.

"§14:4-7.6(l) The contract may not include provisions (sometimes referred to as "material change notices") that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by operation of law.... Changing the price to reflect a change in the Sales and Use Tax or other State-mandated charge would be permitted as a change required by operation of law" (emphasis added).

I understand that despite this language, the BPU has sent cease and desist letters to third party suppliers in response to adjustments made to their fixed price contracts as a result of the Clean Energy Act's increased Solar RPS.

I am concerned that the BPU's action is inconsistent with what the Legislature intended and inconsistent with the explicit language in the law.

Moreover, given the BPU may take action in Docket No. EO19020226 – In the Matter of Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under the Clean Energy Act, P.L. 2018, c. 17 this Friday, March 29<sup>th</sup>, I would ask that you provide my office with an explanation for the Board's position on this and what steps can be taken to bring the BPU's action more in line with the legislative authorization prior to Friday's BPU meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bob Smith", written in a cursive style.

Senator Bob Smith  
Chairman, Senate Energy & Environment Committee

CC: President Joseph Fiordaliso  
Board of Public Utilities

Grace Power, Chief of Staff  
Board of Public Utilities

Noreen Giblin, Chief Counsel  
Board of Public Utilities

# Exhibit I



**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/](http://www.nj.gov/bpu/)

**MINUTES OF THE REGULAR MEETING OF THE  
BOARD OF PUBLIC UTILITIES**

A Regular Board meeting of the Board of Public Utilities was held on March 29, 2019, at the State House Annex, Committee Room 11, 125 West State Street, Trenton, New Jersey 08625.

Public notice was given pursuant to N.J.S.A. 10:4-18 by posting notice of the meeting at the Board's Trenton Office, on the Board's website, filing notice of the meeting with the New Jersey Department of State and the following newspapers circulated in the State of New Jersey:

Asbury Park Press  
Atlantic City Press  
Burlington County Times  
Courier Post (Camden)  
Home News Tribune (New Brunswick)  
North Jersey Herald and News (Passaic)  
The Record (Hackensack)  
The Star Ledger (Newark)  
The Trenton Times

The following members of the Board of Public Utilities were present:

Joseph L. Fiordaliso, President  
Mary-Anna Holden, Commissioner  
Dianne Solomon, Commissioner  
Upendra J. Chivukula, Commissioner  
Robert M. Gordon, Commissioner

President Fiordaliso presided at the meeting and Aida Camacho-Welch, Secretary of the Board, carried out the duties of the Secretary.

It was announced that the next regular Board Meeting would be held on April 18, 2019 at the State House Annex, Committee Room 11, 125 West State Street, Trenton, New Jersey 08625.

**Proclamation:**

Governor Philip Murphy proclaimed April 2019 as Underground Damage Prevention Month in New Jersey, and commended the New Jersey Board of Public Utilities and underground facility personnel for their commitment to the safety of the New Jersey residents. The New Jersey Board of Public Utilities, which oversees the Underground Facilities Protection Act, in partnership with underground facility operators and the New Jersey Common Ground Alliance, will be engaging in a campaign to heighten public awareness as to the importance of damage prevention, and to promote the use of the one-call damage Prevention System.

**CONSENT AGENDA****I. AUDITS****A. Energy Agent, Private Aggregator and/or Energy Consultant Initial Registrations**

EE19020203L	America Approved Commercial, LLC	I – EA
EE18111224L	NuEnergen, LLC	I – EA
EE18121344L GE18121345L	Pennell & Wiltberger, Inc. d/b/a PWI Engineering, Inc.	I – EA/PA
EE19010035L GE19010036L	Lower Watt, LLC	I – EA/PA/EC
EE19020195L GE19030315L	SunLight Energy Group, LLC	I – EA/EC
EE17111197L GE17111198L	Biofuels Technology, LLC d/b/a Energy Connection	I – EA/EC

**Energy Agent, Private Aggregator and/or Energy Consultant Renewal Registrations**

EE19010014L	Amerex Brokers, LLC d/b/a Amerex Energy Services	R – EA
EE19010069L	Aspen Energy Corporation	R – EA
EE19020218L	Gold Star Energy, LLC d/b/a GSEUSA	R – EA
EE19020266L	Lightstar Energy Group, LLC	R – EA
EE19020223L	Live Energy, Inc.	R – EA
EE19020272L	Open Energy Services, LLC	R – EA
EE19020199L GE19020200L	Arcadia Power, Inc.	R – EA/PA

**I. AUDITS (CONT'D)**

EE19020224L	Integrity Energy, LTD	R – EA/PA
GE19020225L	d/b/a Integrity Energy	

**Electric Power and/or Natural Gas Supplier Initial Licenses**

EE19010039L	Rushmore Energy, LLC	I – ESL
-------------	----------------------	---------

EE19020174L	Tomorrow Energy Corp.	I – EGSL
GE19020173L	f/k/a Sperian Energy Corp.	

**Electric Power and/or Natural Gas Supplier Renewal Licenses**

EE19010144L	UGI Energy Services, LLC	R – EGSL
GE19010143L		

**BACKGROUND:** The Board must register all energy agents and consultants, and the Board must license all third party electric power suppliers and gas suppliers, an electric power supplier, gas supplier, or clean power marketer license shall be valid for one year from the date of issue, except where a licensee has submitted a complete renewal application at least 30 days before the expiration of the existing license, in which case the existing license shall not expire until a decision has been reached upon the renewal application. An energy agent, private aggregator or energy consultant registration shall be valid for one year from the date of issue. Annually thereafter, licensed electric power suppliers, gas suppliers, and clean power marketers, as well as energy agents, private aggregators and energy consultants, are required to renew timely their licenses in order to continue to do business in New Jersey.

Staff recommended that the following applicant be issued initial registrations as an energy agent, private aggregator and/or energy consultant for one year:

- America Approved Commercial, LLC
- NuEnergen, LLC
- Pennell & Wiltberger, Inc. d/b/a PWI Engineering, Inc.
- Lower Watt, LLC
- SunLight Energy, LLC
- Biofuels Technology, LLC d/b/a Energy Connection

Staff also recommended that the following applicants be issued renewal registrations as an energy agent, private aggregator and/or energy consultant for one year:

- Amerex Brokers, LLC d/b/a Amerex Energy Services
- Aspen Energy Corporation
- Gold Star Energy, LLC d/b/a GSEUSA
- Lightstar Energy Group, LLC
- Live Energy Inc.
- Open Energy Services, LLC
- Arcadia Power, Inc.
- Integrity Energy, LLC d/b/a Integrity Energy

Agenda Date: 5/8/19

Agenda Item: IXA

Staff further recommended that the following applicants be issued initial license as an electric power and/or natural gas supplier for one year:

- Rushmore Energy, LLC
- Tomorrow Energy Corp. f/k/a Sperian Energy Corp.

Finally, Staff recommended that the following applicants be issued renewal licenses as an electric power and/or natural gas supplier for one year:

- UGI Energy Services, LLC

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

## II. ENERGY

### A. Docket No. ER19010009 – In the Matter of Federal Energy (FERC) Items for 2019 – FERC Docket No. EL19-47 Independent Market Monitor for PJM v. PJM Interconnection LLC.

**BACKGROUND:** Staff, on behalf of the Board, filed a doc-less intervention in this proceeding as an “interested state commission” under the Federal Energy Regulatory Commission (FERC) Rules of Practice and Procedure on March 4, 2019. The FERC e-filing rules allow for doc-less interventions, which serve to establish the Board as a party to the proceeding.

As a background, on February 21, 2019, the Independent Market Monitor (Market Monitor or IMM) for PJM Interconnection, LLC (PJM) filed a formal Complaint against PJM requesting that FERC direct PJM to revise the expected number of Performance Assessment Intervals used to set the default Market Seller Offer Cap.

On February 21, 2019, the Independent Market Monitor (IMM) for PJM filed a formal Complaint against PJM requesting that FERC direct PJM to revise the expected number of Performance Assessment Intervals used to set the default Market Seller Offer Cap (MSOC).

The IMM argued that PJM’s MSOC has been inflated by the “unreasonable and unsupported” expectation of 30 performance assessment hours annually and the current rules around Capacity Performance assumptions allow sellers to exercise market power.

The IMM concluded that market power was exercised in the 2021/2022 Base Residual Auction as a result of the fact that the MSOC exceeded the competitive offer level for most resources.

Staff recommended that the Board ratify the doc-less intervention.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

### III. CABLE TELEVISION

**A. Docket No. CE18020192 – In the Matter of the Petition of Comcast of South Jersey, LLC for a Renewal Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Television System in and for the Town of Hammonton, County of Atlantic, State of New Jersey.**

**BACKGROUND:** On February 26, 2018, Comcast of South Jersey, LLC, filed a petition for an Automatic Renewal Certificate of Approval for the Town of Hammonton (Town) based on the automatic renewal provision.

The petition is based on the Town's ordinance granting renewal municipal consent, which was adopted on May 24, 2004. The Town's ordinance granted a term of 15 years with an automatic renewal term of 10 years. The initial term expired on January 26, 2018.

Staff recommended that the Board approve the proposed Automatic Renewal Certificate of Approval. This Certificate shall expire on January 26, 2028.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

### IV. TELECOMMUNICATIONS

**A. Docket No. TM19020217 – In the Matter of the Verified Joint Petition of DSCI, LLC, U.S. TelePacific Holdings Corp., and Pensare Acquisition Corp. for Approval to Transfer Indirect Control of DSCI, LLC to Pensare Acquisition Corp.**

**BACKGROUND:** On February 15, 2019, DSCI, LLC (DSCI), U.S. TelePacific Holdings Corp. (TPx Holdings), and Pensare Acquisition Corp. (Pensare) (collectively, the Petitioners) submitted a Petition to the Board requesting approval to transfer indirect control of DSCI to Pensare. Following closing of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to customers.

Having reviewed the Petition and supporting documents, Staff did not find any reason to believe that there will be an adverse impact on rates, competition in New Jersey, the employees of the Petitioners, or on the provision of safe, adequate and proper service to New Jersey consumers. Moreover, a positive benefit may be expected from the strengthening of the Petitioners' competitive posture in the telecommunications market. Therefore, Staff recommended that the Petitioners be allowed to proceed with the transaction, finding that there will be no adverse effect to customers in New Jersey.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.



**V. WATER**

There were no items in this category.

**VI. RELIABILITY & SECURITY**

**A. Docket Nos GS19010025K, et al. – In the Matter of Alleged Violations of the Underground Facility Protection Act, N.J.S.A. 48:2-73 to -91.**

**BACKGROUND:** Commissioner Gordon recused himself from this matter. This matter involved settlements of alleged violations of the Underground Facility Protection Act (Act) by both excavators and operators of underground facilities. This matter did not contain settlements involving catastrophic situations, death or major property damage. The categories of infraction include failure to provide proper notice, failure to use reasonable care and mismarking of facilities. The cases have been settled in accordance with a penalty strategy which escalates the penalty ranges in relationship to the aggravating factors such as injury, property damage, fire, evacuation, road closure, and other public safety concerns. Moreover, the strategy seeks to establish appropriate disincentives for actions which violate the Act.

Pursuant to the Act, the Board through the Bureau of One-Call supervises and enforces the One-Call Underground Damage Prevention System. The Act subjects violators of its provisions to civil penalties of not less than \$1,000.00 and not more than \$2,500.00 per violation per day, with a \$25,000.00 maximum for a related series of violations. Violations involving a natural gas or hazardous liquid underground pipeline or distribution facility are subject to civil penalties not to exceed \$100,000.00 for each violation for each day with a \$1,000,000.00 maximum for any related series of violations.

The number of settlements are 52 and total penalty of \$152,000.00.

Staff employed a single order to close multiple cases in order to create a more streamlined and effective enforcement process. Staff recommended that the Board approve all those cases in which offers of settlement and payment have been received.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

**VII. CUSTOMER ASSISTANCE**

There were no items in this category.

**VIII. CLEAN ENERGY**

There were no items in this category.

**IX. MISCELLANEOUS**

**A. Approval of the Minutes for the February 27, 2019, Agenda Meeting.**

**BACKGROUND:** Staff presented the minutes of February 27 2019, and recommended that they be accepted.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

After appropriate motion, the consent agenda was approved.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye (with noted recusal)</b>

## AGENDA

### 1. AUDITS

There were no items in this category.

### 2. ENERGY

**Stacy Peterson, Director, Division of Energy**, presented these matters.

#### **A. Docket No. ER18111242 – In the Matter of FERC Approved Changes to Rockland Electric Company Transmission Rate Pursuant to Paragraphs 15.9 of the BGS-RSCP and BGS-CIEP Supplier Master Agreements and Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff.**

**BACKGROUND AND DISCUSSION:** On November 14, 2018, Rockland Electric Company (RECO or Company) filed a petition (November 2018 Petition) with the Board seeking to establish the methodology by which it will translate final transmission rate into the retail rates that will be paid by RECO's customers for transmission service. The November 2018 Petition relates to a May 14, 2018 filing (May 14 Filing) made by RECO with the Federal Energy Regulatory Commission (FERC). Additionally, RECO requested that the Board waive its 30-day filing requirement so that RECO can expeditiously implement any rate reduction that may occur as a result of the pending FERC order.

RECO requested Board approval to implement revised retail rates to reflect the change in the Company's transmission rate, after issuance of the pending FERC Order in Docket No. ER18-1585. The November 2018 Petition indicated that RECO would submit an amended filing with the final, proposed tariff leaves that reflect the final transmission rate in FERC Docket No. ER18-1585 into the Service Classification specific retail rates contained in the electric tariff. RECO will credit its Basic Generation Service (BGS) Reconciliation Charge for any change in revenues that result from the change in the transmission rate to the date that the new retail rates become effective.

In the November 2018 Petition, RECO requested that the Board: 1) accept the final, proposed RECO tariff sheets that would be submitted upon a FERC Order in ER18-1585, 2) approve a reduction in RECO's payments to RECO's Commercial and Industrial Pricing (BGS-CIEP) suppliers, and 3) in the event FERC establishes a refund date, approve RECO's collection of the reduction in transmission rate from RECO's Residential and Small Commercial Pricing (BGS-RSCP) and BGS-CIEP suppliers.

On February 13, 2019, RECO filed an amendment (February 2019 Amended Filing) to the November 2018 Petition indicating that on November 15, 2018, FERC issued an Order (November 15 FERC Order) in Docket No. ER18-1585 directed the following:

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1. RECO's Network Integration Transmission Service (NITS) rate decrease as a result of the lower, federal corporate tax rate, from \$44,799 per megawatt per year to \$42,548 per megawatt per year;
2. The effective date of RECO's new, lower NITS rate be retroactive to March 21, 2018; and
3. RECO refund to its transmission customers the difference between its existing and the new, lower NITS rates, with interest, from March 21, 2018 to November 15, 2018.

Staff recommended that the Board issue an order accepting the proposed tariff changes and approving implementation of changes to RECO's retail transmission rates as approved by FERC.

Staff also recommended that the Board direct RECO to file tariffs and rates consistent with the Board's findings by May 1, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**B. Docket No. GR18060608 – In the Matter of the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas to Review its Periodic Basic Gas Supply Service Rate.**

**BACKGROUND AND DISCUSSION:** On May 31, 2018, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (Elizabethtown or the Company) filed a petition (2018 BGSS Petition) with the Board seeking to decrease its then current per therm Basic Gas Supply Service (BGSS-P) rate from \$0.4540 per therm to \$0.4237 per therm, to be effective October 1, 2018 through September 30, 2019 (BGSS Period). As stated in its 2018 BGSS Petition, the Company projected that it would have an estimated under recovery balance as of September 30, 2018 of approximately \$1.9 million including interest. The 2018 BGSS Petition also indicated that the proposed BGSS-P rate of \$0.4237 per therm was designed to bring the BGSS balance to approximately zero as of September 30, 2019.

The 2018 BGSS Petition further indicated that the projected impact of the BGSS-P rate of \$0.4237 per therm was a decrease in gas cost recoveries of approximately \$7.1 million before taxes in the year ending September 30, 2019 as compared to the amount that would otherwise be recovered by the Company under the current BGSS-P rate of \$0.4540 per therm. The 2018 Petition also indicated that the Company, using the current volume forecast, under the BGSS-P rate of \$0.4540 per therm, would collect approximately \$107.0 million before taxes. Under the proposed BGSS-P rate of \$0.4237 per therm, Elizabethtown would collect approximately \$100.0 million before taxes.

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On September 17, 2018, the Board issued an Order (September 2018 Provisional Order) in this proceeding approving a stipulation for provisional rates executed by Elizabethtown, the New Jersey Division of Rate Counsel (Rate Counsel) and Board Staff (collectively, Parties). The September 2018 Provisional Order authorized the Company to implement a BGSS-P rate of \$0.4237 per therm, on a provisional basis, subject to refund, effective October 1, 2018. Based on this rate approved in the September 2018 Provisional Order, the monthly bill of a residential heating customer using 100 therms decreased by \$3.03 from \$91.83 to \$88.80, a decrease of 3.3%.

The 2018 BGSS Petition was subsequently transmitted to the Office of Administrative Law. The matter was subsequently assigned to Administrative Law Judge (ALJ) Gail M. Cookson.

On December 27, 2018, Elizabethtown submitted a notice to the Board and the Rate Counsel of Elizabethtown's intent to self-implement a BGSS-P rate adjustment based on a 5% increase of the monthly bill of a typical residential customer using 100 therms to be effective February 1, 2019. That self-implementing adjustment increased the BGSS-P rate from \$0.4237 per therm to \$0.4691 per therm. The self-implemented BGSS-P rate increased the monthly bill of a typical residential heating customer using 100 therms by \$4.54 from \$90.78 to \$95.32, an increase of 5% based on rates in effect at the time of the increase.

On March 6, 2019, the Parties executed a Stipulation for Final Rates (Stipulation) in which the Parties agreed that the \$0.4691 per therm BGSS-P rate should be made final. On March 12, 2019, ALJ Cookson issued her Initial Decision recommending Board approval of the Stipulation finding that the Parties voluntarily agreed to the Settlement and that the Settlement fully disposed of any issues in controversy and was consistent with the law.

The existing rate of \$0.4691 per therm will be maintained causing no change in monthly bills.

Staff recommended that the Board issue an Order adopting the Initial Decision and Stipulation which seeks to finalize Elizabethtown's BGSS-P rate. Staff also recommended that the Board direct Elizabethtown to file tariffs consistent with its Order by April 15, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

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**C. Docket No. GR18070832 – In the Matter of the Petition of South Jersey Gas Company to Change the Levels of its Societal Benefits Clause (SBC) and its Transportation Initiation Clause (TIC).**

**BACKGROUND AND DISCUSSION:** On July 31, 2018, South Jersey Gas Company (SJG or Company) filed a petition with the Board requesting approval to change the rates pertaining to its Transportation Initiation Clause (TIC), and two elements of the Company's Societal Benefits Charge (SBC): the Remediation Adjustment Clause (RAC) and the Clean Energy Program (CLEP).

SJG sought approval to decrease the revenues recovered through the RAC, CLEP, and TIC by approximately \$3.4 million. The increase in the SBC charge was the result of a \$0.4 million increase in the level of its RAC related to expenditures for the remediation year August 1, 2017 to July 31, 2018 and a \$4.0 million decrease to the revenue recovered through its CLEP for the period November 1, 2018 through October 31, 2019. Additionally, SJG sought authorization to increase its TIC revenues by approximately \$0.2 million.

In response to discovery requests, the Company updated its petitioned recovery amounts and rates based upon actual data through September 30, 2018, and projected information for the period October 2018 through October 2019. Based upon the updates, the total recovery sought was modified to a decrease of \$2.2 million.

On March 5, 2019, following review of the Petition and discovery responses, SJG, the New Jersey Division of Rate Counsel and Board Staff (collectively, Parties) executed a stipulation of settlement (Stipulation).

Staff recommended that the Board issue an Order approving the Stipulation of the Parties. In addition, Staff recommended that the Board direct SJG to file tariff sheets consistent with the terms and conditions of the Order by May 1, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**D. Docket No. GR18060606 – In the Matter of the Petition of Public Service Electric and Gas Company's 2018/2019 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge.**

**BACKGROUND AND DISCUSSION:** On June 1, 2018, Public Service Electric and Gas Company (PSE&G or Company) filed a petition (2018 BGSS Petition) with the Board requesting authority to decrease the Company's Basic Gas Supply Service (BGSS) Residential Gas Service (BGSS-RSG) rate from \$0.368938 per therm (including losses and Sales and Use Tax (SUT) to \$0.349579 per therm (including losses and Sales and Use Tax (SUT)). The decrease in the BGSS-RSG would result in a decrease in annual

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BGSS revenues of approximately \$24.8 million (excluding losses and SUT). The Company also sought authority to increase PSE&G's Balancing Charge, which recovers the cost of providing storage and peaking services, from its current charge of \$0.090052 per therm (including losses and SUT) to a charge to \$0.102825 per therm (including losses and SUT).

Subsequent to the June 1, 2018 filing, the Company made a compliance filing on August 31, 2018 in response to the Board's Order in the Company's Petition for Approval of Electric and Gas Base Rate Adjustments Pursuant to the Energy Strong Program (Energy Strong) in Docket Nos. ER18040358 and GR18040359. As a result of the Energy Strong Rate Adjustment Order, the Company's BGSS-RSG Commodity Charge was decreased from \$0.368938 per therm (including losses and SUT) to \$0.358937 per therm, effective September 1, 2018.

On September 10, 2018, the Company, the New Jersey Division of Rate Counsel and Board Staff (the Parties), executed a stipulation of settlement (Stipulation) whereby the Parties requested the Board accepting the Stipulation which sought to implement provisional changes in the Company's BGSS-RSG and Balancing Charge rates subject to refund to be effective as of October 1, 2018 as final.

On September 17, 2018, the Board issued an Order (September 2018 Provisional Order) in this docket approving a stipulation executed by the Parties. The September 2018 Provisional Order authorized PSE&G to implement its proposed BGSS-RSG and Balancing Charge rates on a provisional basis, subject to refund, effective on and after October 1, 2018. As approved in the September 2018 Provisional Order, the annual bill for a typical residential heating customer using 165 therms per winter months and 1,010 therms annually from \$879.16 to \$867.45 would decrease by \$11.71, or approximately 1.3% based on rates in effect on June 1, 2018 and for those customers who receives BGSS service from PSE&G.

On September 20, 2018, the Board transmitted this matter to the Office of Administrative Law as a contested case where it was subsequently assigned to Administrative Law Judge (ALJ) Jacob S. Gertsman.

Subsequent to the Board's issuance of the September 2018 Provisional Order, PSE&G made compliance filings in response to the Board's Orders in two matters. First, on October 30, 2018, PSE&G made a compliance filing as a result of a Board Order in PSE&G's 2018 base rate case. As a result of the Base Rate Case Order, the BGSS-RSG rate was decreased from the provisional approved rate of \$0.349579 per therm (including losses and SUT) to \$0.349129 per therm (including losses and SUT) effective November 1, 2018. Second, on December 28, 2018, PSE&G made a compliance filing in response to a Board Order resolving the Company's filing related to its Gas System Modernization Program based rate adjustment case. As a result of the GSMP Roll In Order, PSE&G's BGSS-RSG rate was further decreased from \$0.349129 per therm (including losses and SUT) to \$0.349059 per therm (including losses and SUT) effective January 1, 2019.

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On March 11, 2019, the Parties executed a Stipulation of Settlement whereby the Parties request the Board approve PSE&G' Provisional BGSS Rates as updated per the Base Rate Case Order and GSMP Roll In Order, as Final. On March 14, 2019, ALJ Gertsman issued an Initial Decision approving the Stipulation finding that the Parties had voluntarily agreed to the terms of the Stipulation and that the Stipulation fully disposed of all matters and is consistent with the law.

Staff recommended that the Board issue an Order approving the Initial Decision and the Stipulation. In addition, Staff recommended that the Board direct PSE&G to file tariff sheets consistent with its Order by April 15, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**E. Docket No. GR18060605 – In the Matter of the Petition of Public Service Electric and Gas Company's 2018 Annual Margin Adjustment Charge.**

**BACKGROUND AND DISCUSSION:** On June 1, 2018, Public Service Electric and Gas Company (PSE&G or Company) filed a petition with the Board seeking authority to adjust its Margin Adjustment Charge (MAC). The MAC was established to ensure margins from Non-Firm Transportation customers are credited to firm gas customers in recognition that both firm and non-firm customers should contribute toward off-setting the costs associated with maintaining the Company's distribution system. In the filing, PSE&G projected that, based on actual data through April 2018, the net MAC balance including cumulative interest at September 30, 2018 would have an over- collected balance of \$25.32 million including interest. This translated to a change in the per therm MAC rate from the then existing credit rate of \$0.006758, including Sales and Use Tax (SUT) to a credit of \$0.010873 per therm, a decrease of 0.004115 per therm.

The Company updated the information in the filing to include actual data through September 2018, which supported a credit rate of \$0.006598 per therm, including SUT. However, since the change was negligible, the Company proposed maintaining the current MAC credit of \$0.006758 per therm.

On March 7, 2019, the Company, the New Jersey Division of Rate Counsel and Board Staff (collectively, the Parties) executed a Stipulation of Settlement (Stipulation) by which the Parties agreed that the current per therm MAC credit rate of \$0.006758 should be maintained.

Staff recommended that the Board approve the Stipulation of the Parties. Staff also recommended that the Board direct PSE&G to file revised tariff prior to April 15, 2019.



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**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**F. Docket No. ER18060681 – In the Matter of the Petition of Public Service Electric and Gas Company for Approval of Changes in its Electric Solar Pilot Recovery Charge for its Solar Loan I Program.**

**BACKGROUND AND DISCUSSION:** On June 29, 2018, Public Service Electric and Gas Company (PSE&G or the Company) filed a petition (2018 Solar Pilot Recovery Charge (SPRC) Filing) with the Board seeking approval of an increase in its electric tariff SPRC rate. The 2018 SPRC Filing requested an increase in the SPRC revenues of approximately \$2.6 million for the period October 1, 2018 through September 30, 2019. The rates proposed for the SPRC were designed to recover approximately \$8.2 million in revenue on an annual basis.

Subsequently, PSE&G updated the revenue requirement to include actual data through September 30, 2018. Based on this update, the total revenue to be recovered from ratepayers was approximately \$7.2 million.

On March 7, 2019, PSE&G, Board Staff and the New Jersey Division of Rate Counsel (collectively, the Parties) executed a stipulation of settlement (Stipulation) agreeing to a proposed increase to the SPRC to \$0.000184 per kWh, including Sales and Use Tax (SUT).

Staff recommended that the Board issue an Order accepting the Stipulation of the Parties, which seeks to implement an SPRC rate of \$0.000184 per kWh, including SUT. Staff also recommended that the Board order PSE&G to file tariffs consistent with the Board's Order by May 1, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**G. Docket No. GR18091055 – In the Matter of the Petition of New Jersey Natural Gas Company for the Annual Review and Revision of Societal Benefits Charge Factors for Remediation Year 2018.**

**BACKGROUND AND DISCUSSION:** On September 21, 2018, New Jersey Natural Gas Company (NJNG or Company) filed a petition with the Board requesting approval to change rates for two components of its Societal Benefits Charge (SBC): the Remediation Adjustment (RA) and the New Jersey Clean Energy Program (NJCEP).

NJNG sought approval to increase the Company's per therm after-tax RA rate, approval to increase the NJCEP per therm after-tax rate, and approval of the remediation expenditures incurred by the Company for the period July 1, 2017 through June 30, 2018.

The Company proposed to increase the per therm after-tax RA rate from \$0.0106 to \$0.0127 and increase the per therm after-tax NJCEP rate from \$0.0194 to \$0.0222. These rates combined with the existing Universal Service Fund rate of \$0.0103 per therm establish the proposed SBC after-tax rate of \$0.0452 per therm. The RA revenues would increase by approximately \$1.50 million, while the NJCEP revenues would increase by approximately \$2.01 million over what is currently being collected in rates on an after-tax basis.

On March 13, 2019, NJNG, the New Jersey Division of Rate Counsel and Board Staff executed a stipulation of settlement (Stipulation). Based on the Stipulation, the annual bill impact on a typical residential heating customer using 1,000 therms per year is an increase of approximately \$4.90 or 0.49%.

Staff recommended that the Board issue an Order approving the Stipulation of the Parties. In addition, Staff recommended that the Board direct NJNG to file tariff sheets consistent with the terms and conditions of the Order by April 1, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**H. Docket GR19020278 – In the Matter of the Petition of New Jersey Natural Gas for Approval to Implement an Infrastructure Investment Program (IIP) and Associated Cost Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A.**

**BACKGROUND AND DISCUSSION:** On February 28, 2019, New Jersey Natural Gas Company (NJNG or the Company) filed a petition (2019 IIP Petition) with the Board seeking approval for its Infrastructure Investment Program (IIP or Program), including an associated cost recovery mechanism. NJNG proposed to invest \$507 million over a five year period from July 1, 2019 through June 30, 2023. NJNG sought authority to implement a cost recovery mechanism for its proposed IIP. The Company proposed that NJNG's investment cost will be recovered utilizing the cost recovery mechanism utilized in the Company's SAFE Extension (SAFE II) Program, which was approved by the Board in the Company's last base rate case.

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The proposed program includes seven projects estimated to cost \$288.2 million excluding Allowance for Funds Used during Construction. The proposed projects include: (1) reliability and resiliency projects, adding 65.9 miles of reinforcement mains to the system; (2) replacement and reinforcement of 7.7 miles of main as well as install a new regulator station; (3) LNG transmission interconnection from the Howell LNG facility to the Company's backbone transmission system; (4) reconstruction of a regulator station in order to mitigate existing storm – related risks; (5) replace older steel mains with state of the art steel mains; (6) Excess Flow Valve (EFV) installation of approximately 16,000 EFV's in potential storm-affected areas of the Company's service territory; and (7) Protection of Regulators, approximately 60,000 protective devices on regulator vents in flood areas.

In addition, NJNG proposed an integrated information technology investment referred to as NEXT. The Company anticipated that NEXT's total capital cost to be approximately \$219 million. According to the petition, NEXT will support and modernize the business process and technology platforms, while increasing the security of the information. The Company has broken down the NEXT project into five major components: (1) Finance and Accounting; (2) Customer Experience; (3) Customer Information and Billings; (4) Work Force and Asset Management; and (5) the technical foundational platforms required for IT integration, reporting and content management.

The Company proposed to utilize the after-tax Weighted Average Cost of Capital (WACC) approved by the Board in the Company's recent base rate case filing (BPU Docket No. GR15111304). The WACC is 6.90 percent (6.40 percent after-tax), based on the Board's Order in NJNG's last base rate case proceeding in. The initial WACC is based on the return on equity of 9.75 percent and an equity component in the capital structure of 52.50 percent.

Staff recommended that the Board retain this matter for hearing at the Board and designate Commissioner Robert M. Gordon as the presiding officer. Staff also recommended that any entity seeking to intervene or participate in this matter file the appropriate application with the Board by April 29, 2019. Also, any party wishing to file a motion for admission of counsel *pro hac vice* do so, concurrently with any motion to intervene or participate.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

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**I. Docket No. ER19010009 – In the Matter of Federal Energy (FERC) Items for 2019 – FERC Docket No. RP19-351 Tennessee Gas Pipeline Company, LLC re: FERC Form No. 501-G – See Executive Session.**

**BACKGROUND AND DISCUSSION:** This matter was first discussed in executive session. Staff recommended that the Board ratify its consent to the recommendation given in executive session.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**J. Docket No. EO19020226 – In the Matter of Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff’s Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under the Clean Energy Act, P.L. 2018, c. 17.**

This matter was deferred.

**3. CABLE TELEVISION**

There were no items in this category.

**4. TELECOMMUNICATIONS**

There were no items in this category.

**5. WATER**

**Michael Kammer, Director, Division of Water**, presented these matters.

**A. Docket No. WE18080926 – In the Matter of the Petition of Village Utility, LLC for Approval of a Municipal Consent to Provide Sewerage Service to a Portion of the Township of Sparta, for Approval of Implementation of an Initial Tariff for Wastewater Service within the Township of Sparta, and for Other Required Approvals.**

**BACKGROUND AND DISCUSSION:** Village Utility LLC, (Petitioner or Village Utility) filed a petition with the Board, seeking approval of the following: (1) a municipal consent adopted by Ordinance No. 18-07 (Ordinance) on August 14, 2018, by the Township of Sparta (Township), County of Sussex; and (2) the implementation of an initial tariff for wastewater service within the Township.

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Village Utility was formed in order to own and operate a wastewater collection and treatment facility to serve the needs of the North Village at Sparta (North Village), a new mixed-use development in the Township.

On February 12, 2019, a municipal consent hearing was held at the Board's Office. Megan Lupo, Esq. presided over the hearing at which representatives of Village Utility LLC, the New Jersey Division of Rate Counsel (Rate Counsel) and Staff appeared. No members of the public appeared at the hearing.

Village Utility, the Rate Counsel and Board Staff (collectively, Signatory Parties) entered into a Stipulation of Settlement (Stipulation) to resolve this matter.

Staff recommended that the Board approve the Stipulation of the Signatory Parties.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**B. Docket No. WR18111241 – In the Matter of New Jersey-American Water, Inc. for Authorization to Change the Level of its Purchased Water Adjustment Clause and Purchased WasteWater Treatment Adjustment Clause.**

**BACKGROUND AND DISCUSSION:** On November 15, 2018, New Jersey-American Water Company, Inc. (Petitioner or Company) filed a petition with the Board for authorization to change the levels of its existing Purchased Water Adjustment Clause charge and Purchased Sewerage Treatment Adjustment Clause charges, with respect to increased purchased water expense and increased purchased wastewater treatment expense. The total amount originally requested was an overall increase of \$1,678,816.00 or 0.25%. On January 25, 2019, the Company filed an amended petition. The total amount in the Petition was an increase of annual revenues by \$1,946,639.00 or 0.29% above the total Company revenues. As a result of settlement discussions, the Signatory Parties have agreed to a total overall stipulated increase of \$1,946,639.00 or 0.29% above total Company revenues of \$676,800,000.00.

This matter was transmitted to the Office of Administrative Law on November 16, 2018, as a contested case and was assigned to Administrative Law Judge (ALJ) Gertsman. A telephonic prehearing conference was held on December 12, 2018, with ALJ Gertsman during which, the ALJ directed that public hearings be held on this matter. On November 26, 2018, Middlesex Water Company (Middlesex) filed a motion to intervene in the instant proceeding, and no party opposed the motion, which was subsequently granted.

After proper notice, a public hearing was held on February 28, 2019 in Howell Township at 5:30 p.m. No members of the public attended the public hearing and no written comments were received.

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Subsequent to the public hearing, the Petitioner, the New Jersey Division of Rate Counsel, Staff and Middlesex (Signatory Parties) engaged in settlement negotiations which resulted in entering into a Stipulation of Settlement (Stipulation) on March 1, 2019. Middlesex filed a letter indicating that it did not object to the Stipulation.

ALJ Gertsman issued his Initial Decision recommending adoption of the Stipulation executed by the Signatory Parties, finding that they had voluntarily agreed to the Stipulation and that the Stipulation fully disposes of all issues and is consistent with the law.

Staff recommended that the Board adopt the Initial Decision and approve the Stipulation executed by the Signatory Parties in this matter becoming effective on March 29, 2019 with rates to become effective April 1, 2019.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

## 6. RELIABILITY & SECURITY

**James Giuliano, Director, Division of Reliability and Security**, presented these matters.

### **A. Docket No. GO18101190 – In the Matter of the Joint Petition of the Gas Distribution Companies for Approval of a Meter Selective Sampling Program.**

**BACKGROUND AND DISCUSSION:** The four regulated gas distribution companies (GDCs) in New Jersey are Public Service Electric and Gas Company, New Jersey Natural Gas Company, Elizabethtown Gas Company and South Jersey Gas Company. The role of Board Staff is to monitor the GDCs' meter testing programs.

Staff convened a comprehensive work group with the GDCs. The purpose of this work group was to come to a consensus for implementation of a national standard that conforms to the rules and guidelines set forth by the Board.

Pursuant to N.J.A.C. 14:6-4.2, Periodic meter testing, (a) No gas utility shall allow a gas meter to remain in service for a period longer than 10 years, except where a sampling program has been established in accordance with American National Standards Institute (ANSI) B109 and approved by the Board. To date each Company has had its' own Board Order passed.

ANSI B109.1 is published by the American Gas Association. Pursuant to ANSI B109, 4.3.1, Objectives: The primary purpose of in-service performance testing is to provide service-life information on which the user may base a meter utilization program. The testing and maintenance procedures, meter design and the level of accuracy specified

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must be such that a realistic balance exists between the benefits realized from high accuracy levels and the cost of achieving these levels. Any program established should be reviewed periodically with a view toward improvement in light of the current state of the art.

ANSI Z1.4, a nationally accepted standard, shall be incorporated into the Companies' meter sampling program. ANSI Z1.4 will be used in conjunction with other applicable rules to improve the current gas metering sampling protocol which was last updated in 1983. Hence, approval of this Board Order will create uniformity with respect to N.J.B.P.U.'s gas meter accuracy sampling program. The ANSI Z1.4 publication is titled: American National Standard prepared by The Statistics Subcommittee of the Accredited Standards Committee Z1 on Quality Environment, Dependability and Statistics.

Staff recommended that the Board adopt ANSI Z1.4, Natural Gas Sampling Standard and protocols for the four natural gas operators in the State.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**B. Docket No. EO18101187 – In the Matter of the Verified Petition of Jersey Central Power and Light Company for Authorization to Revise: the Statistical Sampling Aspects of its Electric Meter Testing Program Pursuant to N.J.A.C. 14:5-4.2, and the Form of Quarterly Reporting of Meter Test Results Pursuant to N.J.A.C. 14:3-4.7.**

**BACKGROUND AND DISCUSSION:** The Board has jurisdiction to oversee the electric meter sampling program pursuant to N.J.A.C. 14:5-4.2, Periodic Testing of Electric Meters. The primary purpose of this rule is to establish a meter sampling techniques to ensure electric meter accuracy. The four regulated electric distribution companies in the State of New Jersey are Public Service Electric and Gas Company, Atlantic City Electric, Jersey Central Power and Light (JCP&L) and Rockland Electric Company, (EDCs).

Staff convened a comprehensive work group with the EDCs. The purpose of this work group was to reach a consensus for implementation of a national standard that conforms to the rules and guidelines set forth by the Board.

Board rules require a statistical sampling plan approved by the Board to be used by the EDCs. Staff has consensus with the EDCs on a comprehensive sampling plan which will streamline meter sampling by setting a universal protocol for electric meter sampling. In addition to the new testing protocol, updated reporting forms will be utilized by the EDCs.

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Staff determined that a national standard consistent with American National Standards Institute (ANSI) guidelines should be adopted. Staff held multiple meetings with the EDCs to discuss updating the sampling techniques, to agree upon a uniform methodology that would be consistent with national guidelines, and to come to a consensus on a single plan which would benefit the public.

The New Jersey Division of Rate Counsel had no objection to the EDCs' petitions.

Staff recommended that the Board approve the petition of JCP&L to revise its statistical sampling methods to conform to ANSI Z1.9.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**C. Docket No. EO18101159 – In the Matter of the Joint Petition of Public Service Electric and Gas Company for Approval of an Electric Meter Selective Sampling Program.**

**BACKGROUND AND DISCUSSION:** The Board has jurisdiction to oversee the electric meter sampling program pursuant to N.J.A.C. 14:5-4.2, Periodic Testing of Electric Meters. The primary purpose of this rule is to establish a meter sampling techniques to ensure electric meter accuracy. The four regulated electric distribution companies in the State of New Jersey are Public Service Electric and Gas Company (PSE&G), Atlantic City Electric, Jersey Central Power and Light and Rockland Electric Company, (EDCs).

Staff convened a comprehensive work group with the EDCs. The purpose of this work group was to come to a consensus for implementation of a national standard that conforms to the rules and guidelines set forth by the Board.

Board rules require a statistical sampling plan approved by the Board to be used by the EDCs. Staff has consensus with the EDCs on a comprehensive sampling plan which will streamline meter sampling by setting a universal protocol for electric meter sampling. In addition to the new testing protocol, updated reporting forms will be utilized by the EDCs.

Staff determined that a national standard consistent with American National Standards Institute (ANSI) guidelines should be adopted. Staff held multiple meetings with the Companies to discuss updating the sampling techniques, to agree upon a uniform methodology that would be consistent with national guidelines, and to come to a consensus on a single plan which would benefit the public.

The New Jersey Division of Rate Counsel had no objection to the EDCs' petitions.



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Staff recommended approval of the petition of PSE&G to implement its Electric Metering Sampling Program in the form of ANSI Z1.9.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**D. Docket No. EO18101189 – In the Matter of the Petition of Atlantic City Electric Company to Revise and Update its Meter Selective Sampling Program Pursuant to N.J.A.C. 15:5-4.2, and the Form of Quarterly Reporting of Meter Test Results Pursuant to N.J.A.C. 14:3-7.**

**BACKGROUND AND DISCUSSION:** The Board has jurisdiction to oversee the electric meter sampling program. 14:5-4.2, Periodic Testing of Electric Meters. The primary purpose of this rule is to establish a meter sampling techniques to ensure electric meter accuracy. The four regulated electric distribution companies in the State of New Jersey are Public Service Electric and Gas Company, Atlantic City Electric, Jersey Central Power and Light and Rockland Electric Company, (EDCs).

Staff convened a comprehensive work group with the EDCs. The purpose of this work group was to come to a consensus for implementation of a national standard that conforms to the rules and guidelines set forth by the Board.

Board rules require a statistical sampling plan approved by the Board to be used by the EDCs. Staff has consensus with the EDCs on a comprehensive sampling plan which will streamline meter sampling by setting a universal protocol for electric meter sampling. In addition to the new testing protocol, updated reporting forms will be utilized by the EDCs.

Staff determined that a national standard consistent with American National Standards Institute (ANSI) guidelines should be adopted. Staff held multiple meetings with the Companies to discuss updating the sampling techniques, to agree upon a uniform methodology that would be consistent with national guidelines, and to come to a consensus on a single plan which would benefit the public.

The New Jersey Division of Rate Counsel had no objection to the EDCs' petitions.

Staff recommended approval of the petition of Atlantic City Electric to update similarly its meter sting program to conform with that same standard.

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**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**E. Docket No. EO18101188 – In the Matter of the Meter Sampling Plan of Rockland Electric Company.**

**BACKGROUND AND DISCUSSION:** The Board has jurisdiction to oversee the electric meter sampling program. Periodic Testing of Electric Meters. The primary purpose of this rule is to establish a meter sampling techniques to ensure electric meter accuracy. The four regulated electric distribution companies in the State of New Jersey are Public Service Electric and Gas Company, Atlantic City Electric, Jersey Central Power and Light and Rockland Electric Company, (EDCs).

Staff convened a comprehensive work group with the EDCs. The purpose of this work group was to come to a consensus for implementation of a national standard that conforms to the rules and guidelines set forth by the Board.

Board rules require a statistical sampling plan approved by the Board to be used by the EDCs. Staff has consensus with the EDCs on a comprehensive sampling plan which will streamline meter sampling by setting a universal protocol for electric meter sampling. In addition to the new testing protocol, updated reporting forms will be utilized by the EDCs.

Staff determined that a national standard consistent with American National Standards Institute (ANSI) guidelines should be adopted. Staff held multiple meetings with the Companies to discuss updating the sampling techniques, to agree upon a uniform methodology that would be consistent with national guidelines, and to come to a consensus on a single plan which would benefit the public.

The New Jersey Division of Rate Counsel had no objection to the EDCs' petitions.

Staff recommended approval of the petition of Rockland Electric to revise its sampling program to the same standards.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**7. CUSTOMER ASSISTANCE**

There were no items in this category.

**8. CLEAN ENERGY**

**Scott Hunter, Manager, Division of Clean Energy**, presented these matters.

**A. Docket No. EO12090832V – In the Matter of the Implementation of P.L. 2012, c. 24, The Solar Act of 2012;**

**Docket No. EO12090862V – In the Matter of the Implementation of P.L. 2012, c. 24, N.J.S.A. 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECs to Certified Brownfield, Historic Fill and Landfill Facilities; and**

**Docket No. QO18050592 – AC Power 2 LLC – Winzinger Landfill.**

**BACKGROUND AND DISCUSSION:** On May 17, 2018, AC Power 2. LLC (AC Power 2 or Applicant) submitted an application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to N.J.S.A. 48:3-87(t) (Subsection (t)) of the Solar Act. AC Power 2's 6.5 MWdc project is proposed to be constructed on property owned by Robert T. Winzinger, Inc. and located at Block 1504, Lots 1–9, at Pearce Road in Egg Harbor Township, Atlantic County, New Jersey.

Subsection (t) of the Solar Act of 2012, P.L. 2012, c. 24, enacted July 23, 2012, codified in part at N.J.S.A. 48:3-87 (t), provides for Board establishment of a certification program for approval of certain grid supply solar electric power generation facilities located on properly closed landfills, brownfields, and areas of historic fill that seek eligibility for Solar Renewable Energy Certificates (SRECs). On January 23, 2013, after conducting a public proceeding that the Board commenced on October 4, 2012, the Board established a certification program and directed staff to work with New Jersey Department of Environmental Protection (NJDEP) to develop an application.

Staff received advisory recommendations from NJDEP for the application described below and recommends that the Board grant conditional certification to AC Power 2 for its proposal to build a 6.5 MWdc solar facility project at Winzinger Landfill located in Egg Harbor Township, New Jersey.

Staff consulted with NJDEP about AC Power 2's request for certification of its potential solar generation facility pursuant to Subsection (t) of the Solar Act. On the basis of NJDEP's determination, information contained in the application, and other relevant factors, Staff recommended that the Board conditionally certify the applicant's project as a "properly closed sanitary landfill" pursuant to Subsection (t). NJDEP determined that the 22 acre area on which the solar electric power generation facility will be located constitutes a "properly closed sanitary landfill" pursuant to the Solar Act. Staff also recommended that the Board direct the Applicant to file its SREC registration within 14 days of the date of the Order and explicitly grant conditional certification.

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**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**B. Docket No. QO18121331 – In the Matter of the Petition of Helios Solar Energy, LLC – Request for Solar Renewable Energy Certificate Extension (SREC).**

**BACKGROUND AND DISCUSSION:** This matter involved Helios Solar Energy, LLC and e2/ECTA (Petitioners) requesting the Board to extend the deadline by which a complete Solar Renewable Energy Certificates (SRECs) Registration Program application must be filed in order for a project to receive a fifteen-year SREC Qualification Life (QL). The Board issued an Order setting midnight of October 29, 2018 as the cut-off period for submitting a complete application for which a project would receive a fifteen-year SREC QL. The Board reaffirmed that deadline in an Order issued at the February 27, 2019 Agenda Meeting. The Petitioners represented that through no fault of its own it was unable to complete the applications for seven solar projects until the following day and requested that the Board extend the deadline for twenty-four hours, through midnight October 30, 2018.

Staff recommended that the Board find that all market participants were all noticed that the Board would implement the reduction, thereby, bringing its rules and practice into conformity with the Clean Energy Act at the earliest feasible time and the solar market participants were equally uncertain as to the time of the Board's implementation.

Staff also recommended that the Board reaffirm the implementation of the reduction in the qualification life in the October 29 order and find that it would be inequitable to make an exception for the Petitioner. Staff further recommended that the Board provided the Petitioners' seven projects identified that having been complete after midnight on October 2018, meet all other requirements of the RPS and state and federal law, that the Board direct staff to apply 10-year qualification life to the identified projects. Finally, Staff recommended the Board deny the petition of Helios solar and e2/ECTA.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

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**C. Docket No. QO16020130 – In the Matter of the Implementation of N.J.S.A. 48:3-87(R), Designating Grid Supply Projects as Connected to the Distribution System – Order Implementing Certain Provisions of N.J.A.C. 14:8-2.4(G) for Energy Year 2020.**

**BACKGROUND AND DISCUSSION:** The Solar Act of 2012 (Solar Act or 2012 Act) sought to transition away from providing solar incentives for construction of large grid scale solar on farmland and open space. The law provided a four year window for accommodating the farmland projects under development at that time via Subsections s and q. Subsection r added criteria for protecting ratepayers, the electric distribution system and open space preservation from large scale solar development.

Subsection r mandates that the Board evaluate all proposed “grid supply” projects, other than those submitted pursuant to Subsection t (i.e., landfills, brownfields and areas of historic fill), for which applications are submitted on or after June 1, 2016.

By Order dated February 27, 2019, the Board approved the opening of an application round for solar electric generation facilities seeking Solar Renewable Energy Certificates (SRECs) approval pursuant to Subsection r from March 1 through March 14 and an application form and escrow agreement for immediate release.

Five applications were received by the March 14, 2017 deadline. As required by statute, Staff provided public notice of the opportunity to comment on the applications. Staff recommended that the Board conditionally approve each of the five applications for SREC eligibility conditioned upon the facility commencing commercial operations prior to the Board’s determination that the state has attained 5.1% of its electricity from solar generated kilowatt hours.

On March 14, 2019, applicant HCE Strykers Road Solar LLC submitted an application under Subsection r for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant’s 1.76 MW dc, 1.38 MW ac project is located in Lopatcong Township, New Jersey.

On March 14, 2019, applicant HCE River Road Solar LLC submitted an application under Subsection r for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant’s 11.085 MW dc, 8.79 MW ac project is located in Burlington Township, New Jersey.

On March 14, 2019, applicant HCE Campus Drive Solar LLC submitted an application under Subsection r for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant’s 4.78 MW dc, 3.72 MW ac project is located in Burlington Township, New Jersey.

On March 14, 2019, applicant Lakehurst Solar Farm LLC submitted an application under Subsection r for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant’s 14.99 MW dc, 9.6 MW ac project is located in Manchester, New Jersey.

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On March 14, 2019, applicant Ben Moreell Solar Farm LLC submitted an application under Subsection r for designation as connected to the distribution system so that the project would be eligible to generate SRECs. Applicant's 28.56 MW dc, 20 MW ac project is located in Tinton Falls, New Jersey.

Staff reviewed the applications individually in light of the statutory and regulatory requirements for Board approval. With respect to potential impact on the SREC market, Staff advises the Board's consideration of the requirement of the Clean Energy Act of 2018 (CEA) to close the Solar Registration Program to new registrations upon attainment of 5.1%. The five projects, if built to the full capacity proposed, would equal 61.175 MWdc, less than 15% of the total solar capacity anticipated to enter the market.

Staff recommended that the Board conditionally approve each of the five applications for SREC eligibility conditioned upon the facility commencing commercial operations prior to the Board's determination that the state has attained 5.1% of its electricity from solar generated kilowatt hours.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**D. Docket No. QO18040393 – In the Matter of the Clean Energy Programs and Budgets for Fiscal Year 2019 – True-Up and Revised Budget.**

**Sherri Jones, Assistant Director, Division of Clean Energy,** presented this matter.

**BACKGROUND AND DISCUSSION:** This matter involved reallocations of funds per staff's authorization, the trued up expenses from FY18, reallocation of funds for FY 19 and new initiatives for the New Jersey Clean Energy Program (NJCEP), revisions to the detailed budgets and updated savings projections. The FY19 programs and budgets were established through a Board Order entered In the Matter of the Clean Energy Programs and Budget for FY19, BPU Dkt. No. QO18040393 (June 22, 2018). By Order dated June 22, 2018, the Board approved a funding level of \$344,665,000.00 for FY19 via the Comprehensive Resource Analysis (CRA).

In a separate Order also dated June 22, 2018, the Board approved FY19 programs and budgets for the NJCEP (FY19 Budget Order). The Division of Clean Energy initially establishes annual budgets based, in part, on estimated expenses for the previous year. Once actual expenses are known, the Board then issues a revised budget Order to "true up" any differences between actual and estimated expenses. The June 22, 2018 FY19 Budget Order included estimated carry-over of unspent funds from previous years, plus new funding of \$344,665,000.00, as set out in the June 22, 2019 CRA Order.

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On March 13, 2019, staff released the proposal for public comment on the trued up expenses from FY18, reallocation of funds for FY19 and new initiatives for the NJCEP, revisions to the detailed budgets and updated savings projections. Comments were due on March 20, 2019.

Comments were received by the New Jersey Division of Rate Counsel (Rate Counsel) and New Jersey Natural Gas (NJNG) in support of the changes; however, Rate Counsel stressed that they would like more information, such as, participation rates, forecasts and more detailed explanations. NJNG also expressed concern on the implementation of the Energy Efficiency Goals for the utilities via the Clean Energy Act.

On February 11, 2019, staff issued a proposal for public comment to move \$1,000,000.00 from the C&I Buildings Program to LGEA to fund an increase in applications. Staff represented a reasonable approach to maintaining the NJCEP programs through the remainder of the fiscal year, and recommended that the budget maintains consistency in programs and incentives levels through the remainder of the fiscal year.

Staff recommended the available funds be distributed as follows:

- \$2.5 million to the Comfort Partners Program;
- \$15 million towards state facilities;
- 350,000 towards marketing;
- 750 towards reinstating of Clean Energy Conference;
- \$2.3 million towards a New Community Energy Grant Initiative; and
- \$250,000.00 for software.

In addition to the reallocation of the true-up funds, staff also proposed reallocating \$12.7 million among and within programs to align budgets with the program performance. Of that 12.7, staff recommended the following increases:

- One million towards Energy Efficiency Products Program;
- \$4 million to the C&I Buildings Program;
- 5 million to Direct Install;
- 2.7 million for evaluation; and
- an additional 3,500 for services provided by NJIT.

Staff further proposed the following reductions:

- \$500,000.00 from the Residential New Construction Program;
- \$5 million from the Multi-Family Program;
- 6.2 million from CHP and storage; and
- \$915,000.00 from outreach and education.

Additionally, staff sought approval for a staff authorization budget reallocation that happened in February of 2019 where \$1 million was moved from the C&I Buildings Program to fund an unexpected increase of applications in the Local Government Energy Audit Program.

Finally, Staff sought approval for the updated energy savings to reflect these budget adjustments.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**E. Docket No. QO18060646 – In the Matter of the New Jersey Community Solar Energy Pilot Program.**

**Ariane Benrey, Program Administrator, Office of Clean Energy**, presented this matter.

**BACKGROUND AND DISCUSSION:** On May 23, 2018, P.L. 2018, c.17 (the Clean Energy Act) was signed into law, directing the Board to adopt rules and regulations establishing a Community Solar Energy Pilot Program within 210 days.

On July 6, 2018, the Board released a Request for Comments which provided an opportunity for interested stakeholders to provide input on the design of the Pilot Program. A public meeting s held on July 24, 2018. Written comments were solicited with a deadline of receipt by the Board on July 31, 2018. On August 29, 2018, the Board approved the Proposed Rules for the Pilot Program.

The Proposed Rules were published in the New Jersey Register on October 1, 2018 and subject to a 60-day public comment period, which closed on November 30, 2018. Additionally, the Board held two public hearings on the Proposed Rules on November 8, 2018.

Additional stakeholder engagement was solicited as part of the development of the Pilot Program’s Application process. A draft Application Form was published on November 28, 2018, along with drafts of the Community Solar Subscriber Organization Registration Form and the Community Solar Subscriber Disclosure Form. Written comments were received until December 21, 2018. Three public meetings were held on December 6, December 13, and December 17, 2018.

With strong support for the Proposed Rules and no substantive changes, the Board adopted the Community Solar Energy Pilot Program on January 17, 2019. The adopted Rules were filed with the Office of Administrative Law and published in the New Jersey Register on February 19, 2019. The final Rules provide the framework necessary for the development and implementation of community solar in New Jersey.

Staff recommended that the Board approve and release the Community Solar Energy Pilot Program application form. Staff further recommends that the Board approve the Board order clarifying the interconnection process for community solar projects in the pilot program.



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**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

Staff recommended that the Board Order clarifying the interconnection process for community solar projects in the Community Solar Energy Pilot Program.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**F. Docket No. QO18121289 – In the Matter of the New Jersey Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications – See Executive Session.**

**Andrew Kuntz, Deputy Attorney General, Division of Law,** presented this matter.

**BACKGROUND AND DISCUSSION:** This matter was first discussed in executive session and it involved Staff recommending that the Board, consistent with the discussions in executive session ratify Staff's selection of the contractor in this matter.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

## **9. MISCELLANEOUS**

There were no items in this category.

## EXECUTIVE SESSION

After appropriate motion, the following matters, which involved pending litigation attorney/client privilege and contract negotiations to the Open Public Meetings Act at N.J.S.A. 10:4-12(b)7 was discussed in Executive Session.

### 2. ENERGY

- I. **Docket No. ER19010009 – In the Matter of Federal Energy (FERC) Items for 2019 – FERC Docket No. RP19-351 Tennessee Gas Pipeline Company, LLC re: FERC Form No. 501-G.**

The substance of this discussion shall remain confidential except to the extent that making the discussion public is not inconsistent with law.

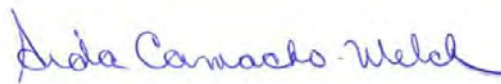
### 8. CLEAN ENERGY

- F. **Docket No. QO18121289 – In the Matter of the New Jersey Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications.**

The substance of this discussion shall remain confidential except to the extent that making the discussion public is not inconsistent with law.

After appropriate motion, the Board reconvened to Open Session.

There being no further business before the Board, the meeting was adjourned.



AIDA CAMACHO-WELCH  
SECRETARY OF THE BOARD

DATE: May 8, 2019

# Exhibit J



BEVAN, MOSCA & GIUDITTA, P.C.

ATTORNEYS AT LAW

FORWARD CASE MANAGEMENT

2019 MAY 28 A 10:32 BOARD OF PUBLIC UTILITIES TRENTON, NJ

RECEIVED MAIL ROOM

MAY 28 2019

BOARD OF PUBLIC UTILITIES TRENTON, NJ

222 MOUNT AIRY ROAD, SUITE 2007

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(F) 908.753.8301

WWW.BMG.LAW

MURRAY E. BEVAN

mbevan@bmg.law

RECEIVED

CASE NO. 19-0220-2335

MAY 28 2019

BOARD OF PUBLIC UTILITIES TRENTON, NJ

May 22, 2019

**Via Email and Regular Mail**

The Honorable Aida Camacho-Welch  
Secretary, Board of Public Utilities  
44 S Clinton Avenue  
3<sup>rd</sup> Floor, Suite 314  
Trenton, NJ 08625

*Case mgmt*  
*R. Boylan, Esq*  
*J. Richardson, Esq*  
*J. Wehner, Esq*  
*S. Bluhm*  
*A. Heid, Esq*

**Re: *I/M/O the Verified Petition of the Retail Energy Supply Association Seeking Withdrawal of Board Staff's Cease and Desist and Refund Instructions Letter and Declaration that Third Party Suppliers Can Pass Through RPS Costs Under the Clean Energy Act.***  
***BPU Docket No. EO19020226***

Dear Secretary Camacho-Welch:

I am writing on behalf of the Retail Energy Supply Association (“RESA”)<sup>1</sup> to request that the Board of Public Utilities (“Board”) at its next Agenda Meeting address the RESA Petition, filed February 14, 2019, that seeks to have Staff withdraw its cease and desist letter dated January 22, 2019. Staff’s letter specifically directs all third party suppliers (“TPSs”) with fixed or firm rate customer contracts to “cease and desist” charging customers for the new solar RPS costs at a rate in excess of the original contract rate and to refund any excess solar costs already collected. Staff issued this directive despite the Clean Energy Act’s express instruction to the Board to “recognize these new solar purchase obligations as a change required by operation of law.” As RESA noted in its Petition, Staff’s cease and desist letter irreparably harms TPSs in number of ways.

The need for expedited consideration of RESA’s Petition is clear. The letter created regulatory mandates – although they are of questionable legal validity and are not being enforced by the Board – that are causing TPSs to operate under a fog of regulatory uncertainty. The Board must address RESA’s Petition to clear this matter. There have now been five Board Agenda

<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

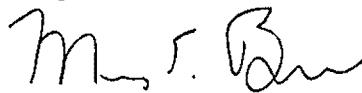
Secretary Camacho-Welch  
May 22, 2019  
Page 2 of 2

meetings where the RESA Petition was not considered. The Board's failure to address RESA's Petition is aggravating the harm caused to TPSs.

On March 27 Senator Smith, the prime sponsor of the Clean Energy Act, wrote the Board to express his concern that Staff's cease and desist letter "is inconsistent with what the legislature intended and inconsistent with the explicit language in the law." Senator Smith went on to say that "the legislature specifically included language to make clear that electric providers, whether part of the BGS auction or a third party supplier, must be permitted to make adjustments to fixed price contracts in response to the new Solar RPS requirements imposed by the legislation." RESA urges the Board to heed Senator Smith's guidance and to clear up the confusion Staff's letter created, and to do so without further delay.

In summary, RESA asks that its Petition be scheduled for consideration at the Board's next Agenda meeting and repeats its request that Staff's letter be withdrawn as it is inconsistent with the clear language of the Clean Energy Act.

Respectfully Submitted,



Murray E. Bevan,

Counsel, Retail Energy Supply Association

cc: President Joseph Fiordaliso  
Commissioner Dianne Solomon  
Commissioner Mary-Anna Holden  
Commissioner Upendra Chivukula  
Commissioner Bob Gordon  
Grace Strom Power, Chief of Staff  
Stacy Peterson, Director, Division of Energy  
Senator Bob Smith

# Exhibit K



Philip D. Murphy  
Governor

Sheila Y. Oliver  
Lt. Governor

**State of New Jersey**  
BOARD OF PUBLIC UTILITIES  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

**Joseph L. Fiordaliso**  
President

Mary-Anna Holden  
Commissioner

Dianne Solomon  
Commissioner

Upendra Chivukula  
Commissioner

Bob Gordon  
Commissioner

DATE: December 2, 2020  
TO: Each New Jersey Licensed Third Party Supplier  
RE: In The Matter of the Cease and Desist and Refund Instructions Letter of January 22, 2019 to Third Party Suppliers; Docket No. EO20100654

On January 22, 2019, in response to complaints filed with the Board of Public Utilities (the "Board"), Board Staff issued a letter to all Third-Party Suppliers ("TPSs") licensed to sell retail electricity in the State of New Jersey, interpreting the Board's rules regarding changes to a fixed price for electricity during the term of the contract, without the customer's prior authorization (the "January 22 Letter"). A copy of the January 22 Letter is appended hereto.

**Background:**

The January 22 Letter advised that, pursuant to N.J.A.C. 14:4-7.12, any contract to sell electricity at rates characterized as "fixed" or "firm", "not variable" or other similar language (collectively referred herein as a "fixed rate"), could not be increased during the pendency of the contract, without the customer's affirmative consent, as permitted in N.J.A.C. 14:4-7.6(l). The January 22 Letter set forth Staff's view that changes to the solar carve-out in the 2018 solar renewable portfolio standard law, P.L. 2018, c. 17 ("2018 Solar RPS Law"), were not an acceptable justification for charging more than the fixed rate.

**Remedy:**

In an effort to resolve this matter, Staff has developed a pathway for TPSs to reach resolution and to close out the matter by certifying that they have substantively complied with the terms of this subsequent Secretary's Letter. Entities wishing to discuss options for substantive compliance are encouraged to contact Lanhi Saldana at [Lanhi.Saldana@bpu.nj.gov](mailto:Lanhi.Saldana@bpu.nj.gov).

TPSs who charged customers a rate that was higher than the fixed rate, without the customer's affirmative consent, including because of the charges associated with the 2018 Solar RPS Law, hereinafter referred to as "2018 Solar RPS Costs", may be released from further obligations associated with the January 22 Letter, if they certify that they have taken the following actions:

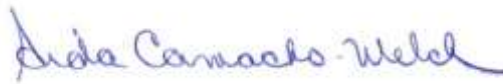
1. For any contracts that remain in effect, refrain from collecting additional 2018 Solar RPS Costs from New Jersey residential customers or small commercial customers (defined as those who utilized 11,000 kWh or less per year and hereinafter referred to as "SCC");
2. Provide a refund to all qualifying residential customers and SCC as follows:
  - a. TPSs shall place an electronic banner on the main page of its website for residential customers or SCC, which will appear when the webpage is accessed by a New Jersey IP address, that will inform the customer that they may be eligible for a refund of 2018 Solar RPS Costs. The electronic banner will act as a hyperlink to a webpage where the customer may submit information to determine whether the customer is eligible for a refund of the 2018 Solar RPS Costs. For identification purposes, the residential or SCC customer must supply information that includes, but is not limited to, the name, address, telephone number, and e-mail address of the account holder. The customer may, but is not required to, provide the account number against which the 2018 Solar RPS Costs were billed. The electronic banner shall appear on the TPSs' website within sixty (60) business days from the date of this Notice and remain on the TPSs' website and available to SCC or residential customers for a period of thirty (30) calendar days after the banner first appears. TPSs shall take all reasonable measures to ensure the webpage and any associated hyperlinks upon which the residential customer or SCC is relying to make a request for a refund is fully functional and operating within the TPSs' control. TPSs shall address any technical issues within a reasonable period of time once notified of any technical difficulties experienced by any residential or SCC customer seeking information about a refund.
  - b. Once the residential customer or SCC has been identified as a customer of the TPS, the TPS shall review the customer's account status, contract terms, and usage in order to determine the customer's eligibility for a refund of the 2018 Solar RPS Costs and calculate the potential refund within a reasonable period of time. The TPSs shall not unreasonably delay or cause delays in making timely evaluations of the residential or SCC customer's eligibility for a refund. The evaluation shall consider objectively verifiable metered data in determining the customer's eligibility.
  - c. In order for a residential customer or SCC to receive a refund, if eligible, the residential or SCC customer must be in good standing with the TPS. If the residential or SCC customer owes any sum to the TPS, any refund due to the residential or SCC customer shall first be deducted from the customer's outstanding balance and any remaining refund shall be issued as set out in section (d) below.
  - d. If a residential or SCC customer is eligible for a refund, the TPS shall issue a check to the residential or SCC customer and mail same to the residential or SCC customer's address on record within sixty (60) days from the date eligibility was determined.
  - e. Upon the expiration of the thirty (30) days of the electronic banner appearing on the main page of the TPSs' webpage, TPSs shall send a letter to the Director of Energy of the Board within ten (10) days detailing the actions taken by the TPS to comply with this Notice. Additionally, the letter shall include the number of



customers who sought a refund, the number of customers deemed ineligible and the reasons for the ineligible classification, the number of refunds actually issued and pending, the dates and amounts of the refunds or projected refunds, and all other information that may be relevant in the Board's evaluation of compliance by the TPS.

- f. TPSs are not required to take any additional actions related to non-residential customers, other than those described above as SCC.

TPSs seeking to opt into this settlement may notify the Secretary of the Board of their intent to comply by sending a letter to [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov), which will be placed into the public record of this docket. Those who complete compliance with the foregoing requirements will thereafter be released from the January 22 Letter.



---

Aida Camacho-Welch  
Secretary of the Board

Joseph L. Fiordaliso  
President

Mary-Anna Holden  
Commissioner

Dianne Solomon  
Commissioner

Upendra J. Chivukula  
Commissioner

Robert M. Gordon  
Commissioner



**State of New Jersey**  
**Board of Public Utilities**  
44 S. Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Stacy Peterson  
Director  
Division of Energy

Telephone: (609) 292-3960  
Fax: (609) 341-5781

**CEASE AND DESIST AND REFUND INSTRUCTION**

January 22, 2019

TO: Each New Jersey Licensed Third Party Supplier

RE: Increase to Fixed Rates – P.L. 2018, c. 17

It has come to Staff's attention that following the passage of P.L. 2018, c. 17, which increased the renewable portfolio standards, there are instances where New Jersey Third Party Suppliers ("TPSs") violated the Board's Energy Competition regulations when they charged a higher rate than the fixed price in the customer's contract. The TPSs increased their fixed rates, either by increasing the fixed rate or by adding a new charge to the customer's bill. This letter serves as a reminder to all TPSs of their obligations to comply with the Board's Energy Competition rules, which prohibit a TPS from changing a fixed price during the term of the contract without the customer's authorization.

Moreover, if your company has increased or charged the customer a rate that is higher than the fixed rate during the period for which the rate was fixed, you are hereby notified that your company is in violation of N.J.A.C. 14:4-7.12. If this is the case, you are instructed to **cease and desist** charging these customers a rate higher than the rate for which they contracted with your company. Further, you are instructed to **refund** to each of these customers the amount that your company charged the customer in excess of the amount it would have charged the customer had the increase not been implemented. You are instructed to complete these refunds within five weeks of the date of this letter.

Pursuant to N.J.A.C. 14:4-7.12, if a TPS signs up a customer or renews a customer for a rate that the TPS characterizes as "fixed" or "firm," or the TPS uses other language to describe the rate as not variable, the TPS may not charge the customer a rate that is higher than the fixed rate during the period for which it is fixed, except as permitted in N.J.A.C. 14:4-7.6(l), without the customer's affirmative consent. N.J.A.C. 14:4-7.6(l) states:

The contract may not include provisions (sometimes referred to as "material change notices") that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by

operation of law. "Material terms of a contract" include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. . . . Changing the price to reflect a change in the Sales and Use Tax or other State-mandated charge would be permitted as a change required by operation of law.

The rulemaking history of N.J.A.C. 14:4-7.6(l) is instructive to the facts in this matter. Some commenters noted that in addition to a change in sales taxes, a TPS's costs can be affected by a federal or state requirement that increases its costs. As an example, they cited "A2966/S1925 [P.L. 2012, c. 24], a statute that imposes new, costly, solar renewable energy requirements on each TPS." The commenters stated that the TPS must be able to adjust their pricing to account for these changes. In rejecting the comments, the Board stated:

A TPS may experience increased costs during the time period covered by a contract and wish to increase fixed price customer contracts to recoup these costs. However, for many customers, this would defeat the purpose of a fixed price contract. Customers who choose fixed priced contracts do so in order to avoid price risk. . . .

Regarding the inclusion of Federal or local mandates in the definition of "non-material," the Board notes that the basis for the exception for State taxes lies in the ability of the State to collect these taxes directly from the customer if not collected by the TPS. Allowing other mandated charges to be included changes the contract from a fixed rate benefiting the customer to a variable rate benefitting the TPS.

[45 N.J.R. 934(b)]

As noted by the above text, TPSs are required by law to collect sales and use taxes from customers and pursuant to N.J.S.A. 54:32B-14, "all sellers of energy or utility service shall include the tax imposed by the "Sales and Use Tax Act" within the purchase price of the tangible personal property or service." TPSs are not required by operation of law to change the prices that they charge to their customers as a result of P.L. 2018, c. 17. Therefore, the fact that a TPS may incur an increase in its costs as a result of P.L. 2018, c. 17 does not permit the TPS to increase fixed rates under N.J.A.C. 14:4-7.6(l), without the customer's affirmative consent.

If your company has increased a rate for electric generation or gas supply service that it has characterized as "fixed" or "firm," or your company has used other language to describe the rate as not variable, and you have charged the customer a rate that is higher than the fixed rate during the period for which the rate was fixed, you are hereby notified that your company is in violation of N.J.A.C. 14:4-7.12. If this is the case, you are instructed to **cease and desist** charging these customers a rate higher than the rate for which they contracted with your company. Further, you are instructed to **refund** to each of these customers the amount that your company charged the customer in excess of the amount it would have charged the customer had the increase not been implemented. You are instructed to complete these refunds within five weeks of the date of this letter.

Finally, you are instructed to send a letter to me by no later than **March 1, 2019** detailing the actions your company has taken to remedy this situation. This letter shall include at a minimum, the number of customers affected, the amounts of the refunds, and the dates of the refunds.

Sincerely,

A handwritten signature in black ink that reads "Stacy Peterson". The signature is written in a cursive style with a long horizontal flourish at the end.

Stacy Peterson  
Director

# Exhibit L



STATE OF NEW JERSEY  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

**AGENDA FOR BOARD MEETING**  
The meeting will be held on  
Wednesday, December 2, 2020 – 10:00 a.m.

**Listen Via Teleconference:** 1 301 715 8592 – **Webinar ID:** 938 7618 4944  
**Passcode:** 212413

**Watch Online:** <https://youtu.be/6SZMwRNpKXw>

### **Executive Session**

*(Open Session will not reconvene until the conclusion of the Executive Session, which will commence at 10:00 a.m. The only business to be conducted in the 10:00 a.m. Open Session will be the reading of the public notice statement, roll call, and the exception, under the Open Public Meetings Act, for each item to be considered in Executive Session.)*

## **2. ENERGY**

- E.** Docket No. EO20100654 – In the Matter of the Cease and Desist and Refund Instructions Letter of January 22, 2019 to Third Party Suppliers.

*This matter is a settlement agreement issued by way of Secretary's Letter to Third Party Suppliers in response to a Cease and Desist Letter sent by Staff on January 22, 2019 concerning certain rate increases on fixed term contracts. The Secretary's Letter provides instructions on how other Third Party Supplies may opt-into the settlement and provide refunds to affected customers.*



STATE OF NEW JERSEY  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

**CONSENT AGENDA FOR BOARD MEETING**  
The meeting will be held on  
Wednesday, December 2, 2020 – 10:00 a.m.

**Listen Via Teleconference:** 1 301 715 8592 – **Webinar ID:** 938 7618 4944  
**Passcode:** 212413

**Watch Online:** <https://youtu.be/6SZMwRNpKXw>

**I. AUDITS**

NO ITEMS FOR CONSIDERATION

**II. ENERGY**

- A.** Docket No. EF20080522 – In the Matter of the Petition of Atlantic City Electric Company for Authority to Issue Up to \$600 Million of Long-Term Debt Securities Pursuant to N.J.S.A. 48:3-9 (2021-2022).

*In this matter, Atlantic City Electric Company seeks authorization from the Board to issue up to \$600 million of aggregate long-term debt with various lengths of maturity. If approved, the Company will have until December 31, 2022 to issue debt under this authorization. This debt, if issued, will be for the purpose of converting existing short-term debt into long-term debt and for funding capital construction programs through 2022.*

- B.** Docket No. EF20060400 – In the Matter of the Petition of Public Service Electric and Gas Company, Pursuant to N.J.S.A 48:3-9 and N.J.A.C. 14:1-5.9, for Authority to Issue and Sell Short-Term Obligations Not Exceeding \$1.0 Billion Aggregate Principal Amount at any One Time Outstanding Through January 3, 2023.

*In this matter, PSE&G seeks authorization from the Board to issue up to \$1.0 billion of aggregate short-term debt with various lengths of maturity. If approved, the Company will have until January 3, 2023 to issue debt under this authorization. This debt, if issued, will be for various short-term utility purposes, including but not limited to current tax obligations, working capital, and purchase of energy and gas.*

**III. CABLE TELEVISION**

NO ITEMS FOR CONSIDERATION

**IV. TELECOMMUNICATIONS**

NO ITEMS FOR CONSIDERATION

**V. WATER**

NO ITEMS FOR CONSIDERATION

**VI. RELIABILITY AND SECURITY**

NO ITEMS FOR CONSIDERATION

**VII. CUSTOMER ASSISTANCE**

- A.** Docket No. GC18080939U – In the Matter of Dawn Macrillo, Petitioner v. South Jersey Gas, Respondent – Request for Extension.

*This petition involves a billing dispute between Dawn Macrillo and South Jersey Gas Company. Ms. Macrillo alleges she was improperly billed by the company.*

**VIII. CLEAN ENERGY**

NO ITEMS FOR CONSIDERATION

**IX. MISCELLANEOUS**

- A.** Approval of Minutes for the September 23, 2020 Agenda Meeting.





**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 9<sup>th</sup> Floor**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

**AGENDA FOR BOARD MEETING**  
**The meeting will be held on**  
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**Passcode:** 212413

**Watch Online:** <https://youtu.be/6SZMwRNpKXw>

**1. AUDITS**

NO ITEMS FOR CONSIDERATION

**2. ENERGY**

- A.** Docket No. ER20060473 – In the Matter of the Verified Petition of Jersey Central Power and Light Company Constituting its Annual Filing With Respect to the Non-Utility Generation Charge Clause of its Filed Tariff (“2019 NGC Filing”).

*The Board will consider the Non-Utility Generation Charge rates of Jersey Central Power and Light Company. The parties have executed a stipulation, which if approved by the Board, will result in no changes to customer bills.*

- B.** Docket No. EM19111460 – In the Matter of the Verified Petition of Jersey Central Power and Light Company Seeking Approval of the Transfer and Sale of the Company’s 25% Interest in the Three Mile Island Unit 2 Nuclear Generating Facility, and the Transfer of its Associated Nuclear Decommissioning Trust, Pursuant to N.J.S.A. 48:3-7, and a Waiver of the Advertising Requirements of N.J.A.C. 14:1-5.6(B).

*The Board will consider the proposed sale of Jersey Central Power and Light Company’s 25% Interest in the Three Mile Island Unit 2 Nuclear Generating Station.*

## 2. ENERGY (CONT'D)

- C. Docket No. GM20020170 – Notice of Transfer of Property by South Jersey Gas Company in the Ordinary Course of Business Pursuant to N.J.A.C. 14:1-5.6.

*The Board will consider South Jersey Gas Company's request to sell real property in Bridgeton, New Jersey.*

- D. Docket No. ER20100672 – In the Matter of the Provision of Basic Generation Service, and the Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff – October 23, 2020 Filing.

*The Board will consider a filing made by the electric distribution companies requesting authorization to update transmission rates related to FERC approved cost reallocations.*

- E. Docket No. EO20100654 – In the Matter of the Cease and Desist and Refund Instructions Letter of January 22, 2019 to Third Party Suppliers – **Executive Session**.

*This matter is a settlement agreement issued by way of Secretary's Letter to Third Party Suppliers in response to a Cease and Desist Letter sent by Staff on January 22, 2019 concerning certain rate increases on fixed term contracts. The Secretary's Letter provides instructions on how other Third Party Suppliers may opt-into the settlement and provide refunds to affected customers.*

- F. Docket No. ER20010003 – In the Matter of Federal Energy Items for 2020 – FERC Docket Nos. ER18-1314 and EL18-178 PJM Interconnection, LLC re: 206 Proceeding to Determine Just and Reasonable Replacement Rate; and

Docket No. ER20010003 – In the Matter of Federal Energy Items for 2020 – FERC Docket No. EL16-49 – Calpine Corporation, et al. v. PJM Interconnection, LLC.

*The Board will consider ratification of the Request for Clarification, or in the Alternative, Rehearing, which was filed by Staff, on behalf of the Board, in these Dockets on November 16, 2020.*

## 3. CABLE TELEVISION

NO ITEMS FOR CONSIDERATION

## 4. TELECOMMUNICATIONS

NO ITEMS FOR CONSIDERATION

**5. WATER**

- A. Docket Nos. BPU WR20010056 and OAL PUC 01318-2020S – In the Matter of the Petition of Aqua New Jersey, Inc. for Approval of an Increase in Rates for Wastewater Service and Other Tariff Changes.

*The Board will consider Aqua New Jersey's petition for a wastewater rate increase. The Parties have executed a stipulation, which, if approved by the Board, will result in an overall increase of \$500,000 for wastewater service. The impact on individual customer bills will vary by system. The Stipulation also agrees that Aqua will establish a uniform systemwide Purchased Sewerage Treatment Adjustment Clause, which will apply to all wastewater customers.*

**6. RELIABILITY AND SECURITY**

- A. Docket No. EX20090613 – In the Matter of the Proposed Readoption with Substantial Changes of New Jersey Administrative Code (“N.J.A.C.”) 14:2 “Protection of Underground Facilities: One Call Damage Prevention System”.

*The Board will consider proposing to readopt, with substantial changes, the Board's existing rules contained within the New Jersey Administrative Code, N.J.A.C. 14:2 et seq.*

**7. CUSTOMER ASSISTANCE**

- A. Docket No. EC20020144U – In the Matter of Christine Smith, Petitioner v. Atlantic City Electric, Respondent – Billing Dispute.

*This petition involves a billing dispute between Christina Smith (Ms. Smith) and Atlantic City Electric Company. Ms. Smith alleges she was improperly billed by the company.*

**8. CLEAN ENERGY**

- A. Docket No. QO20090584 – In the Matter of Revisions to New Jersey's Clean Energy Program – Fiscal Year 2021 Protocols to Measure Resource Savings.

*The Board will consider adoption of the Fiscal Year 2021 Protocols to Measure Resource Savings.*

**9. MISCELLANEOUS**

NO ITEMS FOR CONSIDERATION