



Agenda Date: 6/18/25
Agenda Item: 8A

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

IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, C. 17, THE NEW JERSEY CLEAN ENERGY ACT OF 2018, REGARDING THE SECOND TRIENNIUM OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS) ORDER DIRECTING FILING OF)
TARIFF)
DOCKET NO. QO23030150)

Parties of Record:

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BY THE BOARD:

On October 30, 2024, the Board of Public Utilities ("Board") issued seven (7) Orders approving seven (7) stipulations of settlement ("Stipulations").¹ Each of New Jersey's seven (7) investor-

¹ In re the Petition of New Jersey Natural Gas Company for Approval of New Energy Efficiency, Building Decarbonization Start-Up, and Demand Response Programs and the Associated Cost Recovery Mechanism Pursuant to the Clean Energy Act, N.J.S.A. 48:3-87.8 et seq. and 48:3-98.1 et seq. Second Triennium, BPU Docket No. QO23120868, Order dated October 30, 2024; In re the Petition of Elizabethtown Gas Company for Approval of Triennium 2 Clean Energy Programs and Associated Cost Recovery Pursuant to the Clean Energy Act, BPU Docket No. QO23120869, Order dated October 30, 2024; In re the Petition of South Jersey Gas Company for Approval of Triennium 2 Clean Energy Programs and Associated Cost Recovery Pursuant to the Clean Energy Act, BPU Docket No. QO23120870, Order dated October 30, 2024; In re the Petition of Atlantic City Electric Company for Approval of a Portfolio of Energy

owned electric and gas utilities² executed a Stipulation with Board Staff (“Staff”), the New Jersey Division of Rate Counsel (“Rate Counsel”), and the Energy Efficiency Alliance of New Jersey (“EEA-NJ”) (collectively, “Signatory Parties”).³ Among other commitments, each Energy Utility agreed to offer two Public Sector Direct Install program pathways. This Order addresses the pathway that will employ a direct contracting model for public entities subject to Local Public Contracts Law (“LPCL”) at N.J.S.A. 40A:11-5(1)(f), Public School Contracts Law (“PSCL”) at N.J.S.A. 18A:18A-5(a)(7), and County College Contracts Law (“CCCL”) at N.J.S.A. 18A:64A-25.5(a)(8).⁴ To effectuate this program pathway, the Board now directs the Energy Utilities to file tariffs for Direct Install programs offered to public entities that conform to the specifications set out herein.

BACKGROUND AND PROCEDURAL HISTORY

The New Jersey Clean Energy Act of 2018

On May 23, 2018, Governor Murphy signed the Clean Energy Act, N.J.S.A. 48:3-87.8 *et seq.* (“CEA”), into law. The CEA mandates that New Jersey’s electric and gas public utilities increase their role in delivering EE and peak demand reduction (“PDR”) programs. The CEA further directs the Board to require the electric and gas utilities to reduce customer use of electricity and natural gas in their respective service territories.

Triennium 1

By Order dated June 10, 2020, the Board approved, pursuant to the CEA, utility programs that reduce the use of electricity and natural gas within the utilities’ territories.⁵ By the June 2020

Efficiency, Building Decarbonization and Demand Response Programs, a Cost Recovery Mechanism, and Other Related Relief Pursuant to the Clean Energy Act for the Period January 2025 Through June 2027 (Triennium 2), BPU Docket No. QO23120871, Order dated October 30, 2024; In re the Verified Petition of Jersey Central Power & Light Company for Approval of JCP&L’s Second Energy Efficiency and Conservation Plan Including Energy Efficiency and Peak Demand Reduction Programs (“JCP&L EE&C Plan II Filing”), BPU Docket No. QO23120872, Order dated October 30, 2024; In re the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future-Energy Efficiency II (CEF-EE II) Program on a Regulated Basis, BPU Docket No. QO23120874, Order dated October 30, 2024; In re the Petition of Rockland Electric Company for Approval of its Energy Efficiency and Peak Demand Reduction Programs, BPU Docket No. QO23120875, Order dated October 30, 2024 (collectively, “October 30, 2024 Orders”).

² Atlantic City Electric Company (“ACE”), Elizabethtown Gas Company (“Elizabethtown”), Jersey Central Power & Light Company (“JCP&L”), New Jersey Natural Gas Company (“NJNG”), Public Service Electric and Gas Company (“PSE&G”), Rockland Electric Company (“RECO”), and South Jersey Gas Company (“SJG”) (collectively, “Energy Utilities”).

³ The New Jersey Large Energy Users’ Coalition intervened in the ACE, Elizabethtown, JCP&L, NJNG, PSE&G, and SJG cases; the New Jersey Progressive Equitable Energy Coalition, the Natural Resources Defense Council, and the Sierra Club intervened in the NJNG and PSE&G cases.

⁴ The program plans also commit the Energy Utilities to working with the State to develop a program pathway that employs a “trade ally” model and includes a standardized approach to the DI assessments, recommendations, and installations. This second program pathway does not involve a tariff and is not addressed here.

⁵ In re the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket Nos. QO19010040, QO19060748, and QO17091004, Order dated June 10, 2020 (“June 2020 Order”).

Order, the Board directed the utilities to file three (3)-year program petitions by September 25, 2020 for approval by the Board by May 1, 2021 and implementation from July 1, 2021 through June 30, 2024 ("Triennium 1").

The Board subsequently approved stipulations of settlement authorizing each of the Energy Utilities to implement its respective EE programs.⁶

Triennium 2

By Order dated May 24, 2023, the Board directed the electric and gas public utilities to propose, for Board approval, EE programs for Triennium 2 on or before October 2, 2023, and addressed certain aspects of the Triennium 2 framework.⁷ By Order dated July 26, 2023, the Board approved the remaining aspects of the Triennium 2 framework.⁸ By Order dated October 25, 2023, the Board updated the energy savings targets for the Triennium 2 EE programs, extended the Triennium 1 period through December 31, 2024, and ordered that Triennium 2 would be a thirty (30)-month period covering January 1, 2025 through June 30, 2027.⁹

⁶ In re the Petition of Public Service Electric and Gas Company for Approval of Its Clean Energy Future – Energy Efficiency ("CEF-EE") Program on a Regulated Basis, BPU Docket Nos. GO18101112 and EO18101113, Order dated September 23, 2020; In re the Petition of New Jersey Natural Gas Company for Approval of Energy Efficiency Program and the Associated Cost Recovery Mechanism Pursuant to the Clean Energy Act, N.J.S.A. 48:3-87.8 et seq. and 48:3-98.1 et seq., BPU Docket Nos. QO19010040 and GO20090622, Order dated March 3, 2021; In re the Petition of Elizabethtown Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act and the Establishment of a Conservation Incentive Program, BPU Docket No. GO20090619, Order dated April 7, 2021; In re the Petition of South Jersey Gas Company for Approval of New Energy Efficiency Programs and Associated Cost Recovery Pursuant to the Clean Energy Act, BPU Docket No. GO20090618, Order dated April 7, 2021; In re the Petition of Atlantic City Electric Company for Approval of an Energy Efficiency Program, Cost Recovery Mechanism, and Other Related Relief for Plan Years One Through Three, BPU Docket No. EO20090621, Order dated April 27, 2021; In re the Verified Petition of Jersey Central Power & Light Company for Approval of JCP&L's Energy Efficiency and Conservation Plan Including Energy and Peak Demand Reduction Programs (JCP&L EE&C), BPU Docket No. EO20090620, Order dated April 27, 2021; In re the Petition of Rockland Electric Company for Approval of Its Energy Efficiency Program and Peak Demand Reduction Programs, BPU Docket No. EO20090623, Order dated June 9, 2021.

⁷ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated May 24, 2023 ("May 2023 Order").

⁸ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs; In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the Second Triennium of Energy Efficiency and Peak Demand Reduction Programs; In re Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis, Pursuant to N.J.S.A. 48:3-98.1 and N.J.S.A. 48:3-87.9 - Minimum Filing Requirements, BPU Docket Nos. QO19010040, QO23030150, and QO17091004, Order dated July 26, 2023 ("July 2023 Order").

⁹ In re the Implementation of P.L. 2018, c. 17, the New Jersey Clean Energy Act of 2018, Regarding the

On October 30, 2024, the Board voted to approve the Stipulations.¹⁰

Direct Install

Direct Install (“DI”) is one of the programs that comprise the suite of commercial and industrial EE programs formerly offered by New Jersey’s Clean Energy Program (“NJCEP”) and now offered by the Energy Utilities. Designed for existing small to mid-sized facilities with an average annual energy demand of less than 300 kW/40,000 therms, DI is intended to offer a “turnkey” solution to the problem of upgrading older, inefficient lighting, HVAC, and other operational equipment. DI provides a free, on-site energy assessment, which produces a report of recommended EE upgrades (or measures), a detailed cost estimate, and the opportunity to proceed with selected EE measures. The program covers up to 80% of the total project cost of these measures.

When offered by the NJCEP, DI was available to both commercial and governmental institutions. With the transition of the program to the Energy Utilities, the need for local governments and boards of education to comply with public contracting laws became a barrier to those entities’ utilization of DI.¹¹ The LPCL, the PSCL, and the CCCL require that most contracts with a value that exceeds a threshold amount may be awarded only after public advertising for bids and subsequent bidding. N.J.S.A. 40A:11-4; N.J.S.A. 18A:18A-4; N.J.S.A. 18A:64A-25.3 and -25.4. These laws also provide for various exceptions to these requirements, when contracts may be awarded without advertising and bidding. One such exception is made for public utilities. A contract otherwise subject to the requirements for advertising and bidding maybe negotiated and awarded without public advertising for bids if the subject matter is “[t]he supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with the tariffs and schedules of charges made, charged and exacted, filed with said board[.]” N.J.S.A. 18A:18A-5(a)(7); see also N.J.S.A. 40A:11-5(1)(f); N.J.S.A. 18A:64A-25.5(a)(8).

The October 30, 2024 Orders incorporate by reference the design for the Triennium 2 program plans, included as Attachment 1 to each Stipulation. The program plans expressly address the barrier preventing local governments and public schools from accessing DI; the plans include a commitment by the Energy Utilities to develop a pathway for local governments and boards of education to access Direct Install in a manner compatible with the exception from the standard advertising requirements that applies to goods and services provided by a public utility.

The first of these commitments entails implementation of Direct Install in a manner that would qualify for the above-discussed exemption to public bidding:

The Utilities recognize that public entities have unique procurement requirements which could result in barriers to participation. The Utilities will work with the State to develop and implement an approach that offers a streamlined experience for these entities that meets their unique requirements. More specifically, the Utilities will offer a Public Sector Direct Install program pathway for public entities subject

Second Triennium of Energy Efficiency and Peak Demand Reduction Programs, BPU Docket No. QO23030150, Order dated October 25, 2023 (“October 2023 Order”).

¹⁰ October 30, 2024 Orders.

¹¹ N.J.S.A. 40A:11-1 to -60 (LPCL); N.J.S.A. 18A:18A-1 to -68 (PSCL); N.J.S.A. 18A:64A-25.1 to -25.44 (CCCL).

to Local Public Contracts Law at N.J.S.A. 40A:11-5(1)(f) and Public School Contracts Law at N.J.S.A. 18A:18A-5a(7) that employs a direct contracting model and includes a standardized approach to and pricing for assessments, recommendations, and installations. The Utilities will work with the State to ensure that this program pathway includes minimum requirements for contractors and subcontractors, includes local and diverse hiring requirements, and encourages participation by union labor.¹²

The program plans approved by the October 30, 2024 Orders do not address New Jersey's county colleges, but these public entities are also customers of the Energy Utilities and may also benefit from energy efficiency measures and any associated incentives. The CCCL provisions closely parallel those of the LPCL and the PSCL and restrict the ability of the county colleges to access Direct Install in the same way. Like the LPCL and the PSCL, the CCCL includes an exception for products and services provided by a public utility. Therefore, the Board is including these colleges in this Order.

To qualify for the statutory exemption discussed above, the program pathway for public entities subject to LPCL, PSCL, or CCCL ("Public Pathway") must be provided "in accordance with the tariffs and schedules of charges made, charged and exacted, filed with said board[.]" To ensure that the tariffs and schedules of charges filed with the Board reflect the requirements of the LPCL, PSCL, and CCCL as well as those of Title 48, the Board now specifies the requirements for the Public Pathway.

Financing

Staff has consulted with the New Jersey Department of Community Affairs' Division of Local Government Services ("DLGS") regarding the permissibility for public sector customers to accept financing provided by an Energy Utility, including on-bill repayment, with no interest charged to the public sector customer for the DI Program. It is Staff's understanding that financing with no interest charged to the public sector customer is permitted for the DI Program subject to such approvals or findings as may be required pursuant to law, provided that it is available to all customers without discrimination and is offered at 0% (zero percent) interest. Further, any contract including a financing mechanism must include a clause that makes financing subject to the availability and appropriation annually of sufficient funds by the public sector customer as may be required to meet the extended obligation.

DI projects implemented as part of the Energy Savings Improvement Program ("ESIP") may not utilize financing provided by an Energy Utility because of the specific financing requirements of the ESIP.

DISCUSSION AND FINDINGS

As memorialized in the Triennium 2 program plans approved by the Board on October 30, 2024, the Energy Utilities committed to developing a program pathway within the DI program for their public sector customers that would enable these customers to comply with the specific contracting statutes to which they are subject. The Board **FINDS** that the program described above will qualify for the exception to the advertising requirement for public contracting provided by N.J.S.A.

¹² ACE Program Plan at 33; Elizabethtown Program Plan at 32; JCP&L Program Plan at 39; NJNG Program Plan at 33; PSE&G Program Plan at 33; RECO Program Plan at 34; SJG Program Plan at 32.

40A:11-5(1)(f), N.J.S.A. 18A:18A-5(a)(7), and N.J.S.A. 18A:64A-25.5(a)(8), contingent upon Board approval of proposed tariff sheets that set forth the pricing for public sector DI services.

The Board **DIRECTS** the Energy Utilities to file proposed tariff sheets within eight (8) months of the effective date of this Order with the Board for approval that shall clearly describe all public sector DI-related service categories and the associated prices. If an Energy Utility is using more than one contractor, its tariff sheets shall, at a minimum, include “up to” pricing for all public sector DI-related services to be offered. This pricing shall reflect the total price to customers but will not itemize the portion of the price that represents the mark-up. The proposed tariff sheets shall also contain language referencing the availability of detailed pricing that does identify the mark-up to public sector customers upon request. The Energy Utility may require the public entity customer to first execute a confidentiality agreement with the Energy Utility pursuant to a form agreed upon by the Energy Utility and the public sector customer. In addition, the Energy Utility shall provide the detailed pricing for each EE measure to be installed prior to DI contract execution, so that rates are transparent for work being performed. This detailed pricing shall also be provided to the Board and to Rate Counsel. The filed tariff shall comply with all applicable Board requirements, including those described in N.J.A.C. 14:3-1.3.

In addition, both the Energy Utilities and their public sector customers shall be bound by the requirements of applicable New Jersey law, including but not limited to the provisions of the LPCL, PSCL, and CCCL. Therefore, each Energy Utility and its subcontractors shall:

- Comply with public work project requirements.
- Be registered with the Department of Labor and Workforce Development, pursuant to the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.).
- Comply with the requirements of the Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.) which includes but is not limited to:
 - Submitting certified payroll records to the public body awarding the contract within 10 days of payday. The certified payrolls will be sent via e-mail or alternate method as agreed to by the public sector customer, the Energy Utility, and the DI contractor.
 - Affirming that neither the entity nor any of its affiliates is included on the list of debarred, suspended, or disqualified contractors maintained by the New Jersey Treasurer or any Federal agency.
 - Confirming that they do not do business with Iran or other New Jersey State prohibited countries or entities.

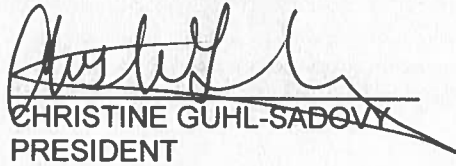
The Energy Utilities’ DI contractors shall obtain and stay current with the New Jersey Department of the Treasury’s Division of Property Management & Construction (“DPMC”) certification in DPMC category P051-Energy Auditing and any other necessary DPMC classifications/certifications required for the work being performed.

The Board **FINDS** that financing with no interest charged to the public sector customer is permitted for the Energy Utilities’ DI Programs, subject to such approvals or findings as may be required by the New Jersey Department of Community Affairs’ Division of Local Government Services or the Local Finance Board pursuant to law. The Board **FURTHER FINDS** that the financing requirements of the Energy Savings Improvement Program (“ESIP”) prohibit the use of OBR and **ORDERS** that DI projects implemented as part of ESIP may not utilize utility financing. The Energy Utilities shall include a clause in the contract language that makes financing subject to the availability and appropriation annually of sufficient funds by the public sector customer as may be required to meet the extended obligation.

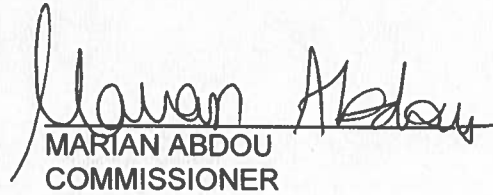
The effective date of this Order is June 25, 2025.

DATED: June 18, 2025

BOARD OF PUBLIC UTILITIES
BY:

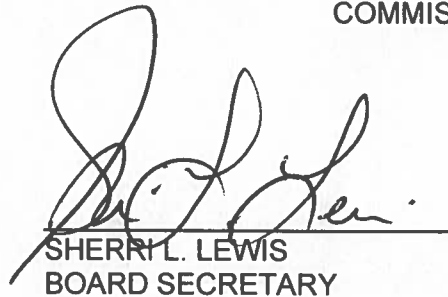

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MICHAEL BANGE
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ATTEST:


SHERRIL L. LEWIS
BOARD SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, C. 17, THE NEW JERSEY CLEAN ENERGY ACT OF 2018, REGARDING THE SECOND TRIENNIUM OF ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS

DOCKET NO. QO23030150

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