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CASE MANAGEMENT

NOV 30 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ



November 29, 2018

IN THE MATTER OF THE PETITION OF PUBLIC
SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF ITS
CLEAN ENERGY FUTURE-ENERGY CLOUD (“CEF-EC”) PROGRAM
ON A REGULATED BASIS

BPU Docket No. EO18101115

VIA E-MAIL AND OVERNIGHT DELIVERY

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625

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NOV 30 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Dear Secretary Camacho-Welch:

In accordance with *N.J.A.C.* 1:1-12.2(b), Public Service Electric and Gas Company (“PSE&G” or the “Company”) hereby submits this letter in opposition to the Motion to Dismiss the above-captioned matter that the Division of Rate Counsel (“Rate Counsel”) filed with the Board of Public Utilities (the “Board” or “BPU”) on November 19, 2018. Kindly stamp one of the copies of these opposition papers with your filing stamp, and return it in the enclosed, self-addressed envelope. Copies of this filing are being served on the attached service list by electronic mail.

Rate Counsel seeks dismissal on the grounds that the moratorium set forth in the Board’s August 23, 2017 Order addressing Rockland Electric Company’s (“RECO”) advanced metering

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infrastructure (“AMI”) program precludes PSE&G from proceeding with the instant filing.¹ As more fully set forth below, PSE&G respectfully requests that the Board deny Rate Counsel’s motion to dismiss and permit this matter to proceed on the merits. Recent State and Board action taken since the moratorium was initiated -- such as the Clean Energy Act, the BPU’s July 2018 Storm Investigative Report, the new Energy Master Plan (“EMP”) development, and the Infrastructure Investment Program (“IIP”) regulations -- represent a shift in policy and calls to action to which PSE&G responded with its plans for AMI deployment throughout its electric service territory. Through the Company’s Clean Energy Future – Energy Cloud Program (the “Program”), customers of the state’s largest electric utility will timely reap the benefits of AMI in accordance with the recent State and Board action identified above. Those benefits include, but are not limited to, increased resiliency through better storm outage response, reduced energy consumption, and fewer greenhouse gas emissions. The moratorium should be lifted so that New Jersey can join nearly the entire country in recognizing those benefits of AMI, among others.

Background

On October 11, 2018, PSE&G filed a Petition in this proceeding seeking Board approval to implement the Program pursuant to the BPU’s IIP regulations, *N.J.A.C. 14:3-2A et seq.*, and in accordance with the Board’s July 2018 Investigative Report regarding the electric distribution companies’ (“EDC”) performance during the March 2018 Nor’easters (“Investigative Report”).² The cornerstone of the Program is the installation of AMI throughout PSE&G’s electric service territory, including installation of 2.2 million advanced meters for all customer classes.

¹ See Decision and Order, *In the Matter of the Petition of Rockland Electric Company for Approval of an Advanced Metering Program; and for Other Relief*, BPU Docket No. EO16060524, p. 24 (August 23, 2017 Order).

² See *Order Accepting Staff’s Report Requiring Utilities to Implement Recommendations*, BPU Docket No. EO18030255 (July 25, 2018).

PSE&G's AMI deployment will create significant customer benefits. *See generally* the Petition, paras. 11-15. Those benefits will be realized via: (1) increased participation in an existing Time of Use rate, that will shift usage to off-peak hours; (2) improved storm response (including up to an estimated two percent improvement in reliability metrics, specifically System Average Interruption Duration Index or "SAIDI"); (3) reduction in use from inactive accounts; (4) reduction in write-offs; (5) avoided energy theft; and (6) recovered line loss due to slow meters.³ Customers will also benefit from automatic service activation after making a service request or satisfying a past due amount.

With respect to operational benefits, AMI's remote data and connection capabilities will eliminate the need for nearly all manual meter reads, among other duties currently performed. Those capabilities will increase the data accuracy of meter reads from 91% to at least 99%, thereby reducing the amount of estimated reads, increasing bill accuracy, and lowering customer complaints. Operational savings will also be achieved due to reduced workloads and truck rolls. More specifically, remote and instantaneous service disconnect and reconnect activities, avoided customer power quality visits and investigation, and outage management improvement reduce the need for the Company to send a truck to customer locations.

The Program will also result in environmental benefits, helping New Jersey to satisfy the greenhouse gas reduction standards set forth in the State's Global Warming Response Act.⁴ More specifically, the initial phase of the Program will result in the reduction of carbon dioxide emissions by 2,761 tons through fewer truck rolls. The energy efficiency advantages of AMI -- discussed further below -- will provide additional environmental benefits.

³ The costs associated with customer benefits #3 through #6 are spread across the customer base; thus, improvements in those areas reduce customer bills.

⁴ N.J.S.A. 26:2c-37 *et seq.*

The Program is cost-effective as well. During the deployment and benefit realization period of nearly 20 years (*i.e.*, 2019-2037, subject to BPU approval), the Program will deliver an estimated \$1.73 billion of the aforementioned customer and operational benefits, versus \$794 million of costs, for total net benefits of \$937 million.

By Order dated October 29, 2018, the Board, *inter alia*, decided to retain jurisdiction over this filing and designated Commissioner Mary-Anna Holden as the presiding officer. Rate Counsel filed the instant motion to dismiss on November 19, 2018.

Current Policy Dictates that the Moratorium be Lifted and PSE&G's Energy Cloud Program Proceeds on the Merits

A lot has changed since the Board announced the moratorium in August 2017. The Administration and the Board have wisely emphasized throughout 2018 that: (1) outage response and grid resiliency are a priority; (2) energy efficiency is the lowest cost energy resource and consumers must decrease usage; and (3) harmful greenhouse gas emissions must be reduced. AMI checks all of those boxes, furthering the Administration's and the Board's goals at each turn. The shift in policy under the Administration and the BPU warrants lifting the moratorium and consideration of PSE&G's proposal on the merits.

This policy change officially began in January 2018 when the Board's IIP regulations took effect. Recognizing the need to stimulate investments that strengthen utility infrastructure, the Board designed the IIP regulations "to encourage[] and support[] necessary accelerated construction, installation, and rehabilitation of certain utility plants and equipment" that "enhance safety, reliability, and/or resiliency". *N.J.A.C.* 14:3-2A.1(a)-(b). Qualifying projects include "[e]lectric distribution automation investments, including, but not limited to. . . voltage and reactive power control [and] communications networks. . . ." *N.J.A.C.* 14:3-2A.2(b)(4).

The Program and its proposal for AMI fit squarely within the types of "necessary

accelerated . . . installation” projects that the Board sought to encourage when it promulgated the IIP regulations. More specifically, AMI includes a communication network that enables electric distribution automation, and it gives PSE&G the opportunity to determine with better efficiency where voltage violations exist, both above and below nominal voltage. Thus, AMI is exactly the type of project that the Board sought to incent when it promulgated the IIP regulations in January 2018.

The next policy shift favoring the lifting of the moratorium occurred on May 23, 2018, when Governor Murphy signed the Clean Energy Act (the “Act”) into effect.⁵ By signing the Act, the Administration -- like the Legislature before it -- recognized that reducing energy consumption is pivotal for the State to meet its energy goals and lowers customers’ utility bills. Specifically, the Act mandates that the Board within one year of its enactment “require each electric public utility and gas public utility to reduce the use of electricity, or natural gas, as appropriate, within its territory, by its customers, below what would have otherwise been used.” *N.J.S.A. 48:3-87.9(a)*. The Act states further that EDCs shall “achieve annual reductions in the use of electricity of two percent of the average annual usage in the prior three years within five years” of implementing an energy efficiency program. *Id.* Penalties exist for utilities that fail to achieve the reduction targets. *N.J.S.A. 48:3-87.9(e)(3)*.

The AMI deployment contemplated by the Program furthers the State policy – set forth in the Act -- of reducing consumers’ energy usage and lowering energy bills. AMI provides customers with near real-time energy usage information literally in the palms of their hands through smartphones and other devices. More informed customers courtesy of AMI will make smarter energy decisions, thereby reducing their energy consumption and utility bills. Thus, the

⁵ P.L. 2018, c. 17.

proliferation of AMI without delay will assist the State in meeting its energy goals and utilities in reducing consumption in accordance with the Act. Moreover, given that utilities will be penalized for failing to reach the reduction targets set forth in the Act, the Board should remove any and all barriers -- such as the moratorium -- to the utilities satisfying those targets.

On the same day that Governor Murphy signed the Act into law, he also signed Executive Order 28 requiring the Board and other State agencies to produce a new EMP by June 2019.⁶ The new EMP will have these five goals:

1. Putting New Jersey on a path to achieve 100 percent clean energy by 2050;
2. Growing New Jersey's clean energy economy;
3. Ensuring reliability and affordability for all customers;
4. Reducing the state's carbon footprint; and
5. Advancing new technologies for all New Jersey residents.⁷

The BPU created five working groups to facilitate the drafting of the new EMP, consisting of:

1. Clean and Renewable Energy;
2. Sustainable and Resilient Infrastructure;
3. Reducing Energy Consumption;
4. Clean and Reliable Transportation; and
5. Building a Modern Grid.⁸

AMI furthers the new EMP's goals and fits squarely within the BPU working group topics. More specifically, AMI: (1) reduces energy consumption and lowers utility bills, ensuring affordability for all customers; (2) diminishes the state's carbon footprint by reducing

⁶ <https://nj.gov/infobank/eo/056murphy/pdf/EO-28.pdf>.

⁷ <https://www.nj.gov/emp/energy/>.

⁸ *Id.*

unnecessary truck rolls; (3) advances a new technology in the state that can be used and enjoyed by all New Jersey residents; (4) improves the grid's resiliency; (5) helps build a modern grid; and (6) will use data to help assist customers with distributed energy resources or "DER" (*i.e.*, solar, electric vehicles, and energy storage) installations, and the management of any power quality issues that occur as a result of variable DER load. Thus, the new EMP is another example of a call to action from the State after the moratorium was announced to which PSE&G's AMI proposal is responsive.

The last relevant policy development occurred in July 2018, when the Board issued its Investigative Report after the March 2018 Nor'easters left customers without power for extended periods of time. Governor Murphy directed the Board to investigate the EDCs' performance during the March 2018 storms "[g]iven the magnitude of damage to electric utility infrastructure within the state and the lengthy restoration period that ensued. . . ."⁹ According to the Board, the purpose of its review was "to identify areas for improvement so that the impacts of future storms are minimized and restorations are conducted with the utmost efficiency and effectiveness."¹⁰

The Investigative Report "reinforce[d]" Staff's conclusion that utilities have "a lack of visibility into the downstream distribution system," and have a "continued reliance on individual customer feedback [to determine outages], particularly at the tail end of a prolonged restoration" (Investigative Report, p. 50). Staff noted that AMI could alleviate those problems by assisting utilities in deploying resources after a major event like the March 2018 Nor'easters, as well as shortening the tail end of restoration efforts after such events. *Id.* More specifically, the Investigative Report correctly points out that AMI can "ping" a meter to confirm whether service has been restored to a customer and detect any nested outages while service crews are still in the

⁹ Investigative Report, p. 1.

¹⁰ *Id.*

area, thereby reducing truck roll time, accelerating restoration, and increasing customer satisfaction. *Id.* In sum, the Investigative Report notes that AMI can be a “valuable tool” with respect to storm restoration efforts, and has helped utilities in other jurisdictions in that regard. *Id.*

Given AMI’s ability to improve restoration efforts, Staff recommended in the Investigative Report that the three EDCs other than RECO “submit a plan and cost benefit analysis for the implementation of AMI.” (Investigative Report, p. 51). According to Staff, the EDCs’ plans “should focus on the use and benefits of AMI for the purpose reducing customer outages and outage durations during a major storm event.” *Id.* The Board approved this recommendation along with the others set forth in the Investigative Report.¹¹ PSE&G filed the Program in accordance with Staff’s AMI recommendation. The Company’s AMI deployment will help solve the restoration issues noted in the Investigative Report and improve outage response for all PSE&G customers. It will also provide the Company with the ability to determine which of its critical care customers are without power during or after a storm, so restoration efforts can be prioritized with more efficiency.

Rather than appreciate the multiple indicia from the State of its prudent shift in policy since the Board announced the moratorium in the RECO decision, Rate Counsel implores the BPU to resort to that stale ruling and to not even consider PSE&G’s proposal to deliver to its 2.2 million electric customers in an accelerated manner the plethora of benefits AMI provides. In essence, Rate Counsel is asking the Board to close its eyes to even considering PSE&G’s filing. Rate Counsel would rather the Board prevent PSE&G from implementing AMI throughout its electric service territory until RECO is finished with its AMI deployment -- currently estimated

¹¹ See July 25, 2018 Order, *supra*, at pp. 10-11.

by RECO at 30 percent complete -- and RECO completes a base rate case, which will not be in until 2020 at the earliest given that RECO estimates that it will finish AMI deployment in the third quarter of 2019. The Board should decline Rate Counsel's request to revert to the *status quo*, which reflects an aversion towards AMI in New Jersey that has seen the state fall behind nearly the entire country with respect to advanced metering technology and the resiliency, energy efficiency, and environmental benefits, along with customer savings, it provides.

Rate Counsel believes the Board "needs several years" to review RECO's full AMI deployment in its "very small" and relatively homogenous service territory before it can assess the value of AMI for the entire state. (Moving brief, p. 5).¹² However, the policy developments described above recognize that the state does not have "several years" to wait for the benefits and cost savings that AMI provides, especially considering that nearly every state in the country is already providing those benefits and savings to its utility customers. Put differently, the state does not have "several years" to improve grid resiliency, reduce energy consumption, and decrease harmful greenhouse gas emissions. At a minimum, the Program can provide the Board with additional information and analysis that it could use to assess AMI, including its benefits and cost savings for low income communities and other parts of the state that are not adequately represented in RECO's relatively small and uniform service territory. The moratorium should be

¹² Rate Counsel cites to a portion of the August 2017 BPU agenda transcript wherein a representative of Board Staff gave his "personal opinion" that he would like to see "at least 18 months' worth of [AMI] data" before lifting the moratorium. (Moving brief, pp. 6-7). This "personal opinion" is obviously not binding on the Board. Moreover, given that RECO reportedly began deploying AMI in May 2018, the Board very well may be able to avail itself of 18 months' worth of AMI data prior to reaching a determination on PSE&G's Energy Cloud Program.

lifted so that the benefits of AMI can be realized by all customers of New Jersey's largest electric utility with alacrity, not "several years" down the line.¹³

Rate Counsel's Procedural Arguments Do Not Warrant Dismissal

Rate Counsel concludes its brief with procedural arguments for why the Board should retain the moratorium, all of which are unavailing. (Moving brief, pp. 8-9). For example, Rate Counsel submits that the Board should dismiss the Petition on the grounds of *res judicata* and collateral estoppel. However, unlike in a judicial forum, the Board is not bound by either principle. The New Jersey Supreme Court has held: "In the absence of a legislative restriction, administrative agencies generally have the inherent power to reopen or to modify and rehear prior decisions." *In re Trantino Parole Application*, 89 N.J. 347, 364 (1982); *see also Trap Rock Industries, Inc. v. Sagner*, 133 N.J. Super. 99, 109 (App. Div. 1975) ("[T]he power to reconsider, to rehear and to revise determinations may be regarded as inherent in administrative agencies."). Indeed, the Board has the express, statutory right "at any time [to] order a rehearing and extend, revoke or modify an order made by it." *N.J.S.A.* 48:2-40(e). The New Jersey Administrative Code similarly states that the "Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it." *N.J.A.C.* 14:1-8.6(b).

The New Jersey Supreme Court has noted that within the administrative agency context, the urging to apply doctrines such as *res judicata* and collateral estoppel "must be tempered by a full appreciation of an administrative agency's statutory foundations, its executive nature, and its

¹³ PSE&G suspects that Rate Counsel will reply to the Company's position with an argument that nothing stops PSE&G from deploying AMI today, because the moratorium only impacts requests for pre-approval of AMI deployment. That argument would not warrant dismissal. The IIP regulations -- promulgated after the moratorium was announced -- authorize filings such as the Program. Furthermore, given the size of PSE&G's proposal (2.2 million electric meters), its accelerated time frame (five years), and the state's prior aversion to AMI, PSE&G's request for pre-approval is proper. Practically speaking, no utility would install 2.2 million AMI meters without the Board giving some indication that it approved of the company's decision.

special jurisdictional and regulatory concerns.” *City of Hackensack v. Winner*, 82 N.J. 1, 29 (1980) (internal citations omitted). The Court stated in *Winner* that an administrative agency’s consideration of whether to apply those judicial doctrines must depend not only on the agency’s regulatory responsibilities toward the particular parties appearing before it, but also the nature of the agency’s regulatory responsibilities toward the subject matter of the controversy. *Id.* at 30.

The Court further commented:

Moreover, because administrative agencies serve in part to effectuate the constitutional obligation of the executive branch to see that laws are faithfully executed, N.J. Const. (1947), Art. V, § I, par. 11, the public interest is an added dimension in every administrative proceeding. That interest is necessarily implicated in agency adjudications, and, in a sense, the public is an omnipresent party in all administrative actions.

Id.

Here, the “public interest” dictates that the Program proceed on its merits so that 2.2 million electric customers reap the benefits and cost savings associated with AMI sooner, as opposed to years from now. Indeed, as set forth above, the State after the moratorium was announced has on multiple occasions declared that the benefits of AMI are in the public’s interest. The Board should not apply the principles of *res judicata* or collateral estoppel in this case because preserving the moratorium would be contrary to the public interest.

Rate Counsel further notes that “regulatory stability is also the basis” for New Jersey’s Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.* (Moving brief, p. 8). However, the Board eschewed rulemaking when it implemented the moratorium, making that statute irrelevant to the instant motion.

Lastly, Rate Counsel asserts that the Board should preserve the moratorium because it came at the conclusion of “full litigation” of RECO’s proceeding, and the Order from that proceeding was not appealed. (Moving brief, p. 9). Both arguments fail. While the RECO filing

proceeded through evidentiary hearings, the moratorium was not at issue during the litigation of that matter. Rather, the Board announced the moratorium *sua sponte* in its final Order adjudicating the RECO filing and, therefore, the moratorium was not -- and could not have been -- the subject of testimony, public comment, discovery, hearing evidence, oral argument or briefing.¹⁴ Furthermore, PSE&G was a participant in the RECO filing, meaning it did not have the right to file an appeal of the final Order in that matter. (See N.J.A.C. 1:1-16.6(c) for the "limited" abilities of a participant, which do not include the right to file an appeal). Obviously, PSE&G made the decision to seek participation status -- rather than full party rights as an intervenor -- well before the concept of a moratorium was first introduced in the Board's final Order.¹⁵

Rate Counsel's procedural arguments fall well short of overcoming the strong policy arguments in favor of lifting the moratorium and permitting the Program to proceed on the merits.¹⁶ Rate Counsel's motion should be denied.

¹⁴ Immediately after arguing that the moratorium came at the conclusion of "full litigation" and, therefore, should remain in place, Rate Counsel acknowledges that it was the Board's "independent decision" to implement the moratorium, and the BPU imposed it "on its own initiative[.]" (Moving brief, p. 9).

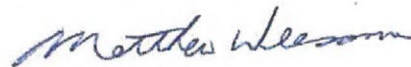
¹⁵ Notably, another electric distribution company, Atlantic City Electric Company, moved to intervene in the RECO proceeding, Rate Counsel opposed that application, and the Board denied the motion and granted that utility participant status like PSE&G. Thus, even if PSE&G had moved to intervene instead of participate in the RECO filing, in all certainty it would have been reduced to a participant without appeal rights per Rate Counsel's request.

¹⁶ Rate Counsel also makes an entirely speculative argument that the moratorium should remain in place because the state's EDCs other than RECO "likely have factored the moratorium into their budgeting and other planning decisions." (Moving brief, p. 9). Besides being based on nothing but conjecture and the mistaken belief that utilities cannot be nimble particularly once the State -- as is the case here -- changes its policy for the better, Rate Counsel's argument is obviously erroneous at least with respect to PSE&G.

Conclusion

The Administration and the BPU have made clear on multiple occasions since the moratorium went into effect that the State has a new policy on issues surrounding grid resiliency, storm restoration, energy efficiency, and greenhouse gas emissions. Customers should no longer have to wait for the material benefits AMI provides in those critical areas, in additions to the cost savings associated with the advanced technology. For the foregoing reasons, the moratorium should be lifted, Rate Counsel's motion to dismiss should be denied, and the Program should proceed on the merits.

Respectfully submitted,



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Dated: November 29, 2018

cc: Commissioner Mary-Anna Holden (via overnight delivery)
Service List (via e-mail)

Certification of Service

I hereby certify that on this date a copy of the foregoing letter response was served by electronic service on all parties set forth on the attached service list, and original and ten copies were filed with the BPU via overnight delivery.



Justin B. Incardone

Dated: November 29, 2018