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December 7, 2018

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

VIA HAND DELIVERY

Hon. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, N.J. 08625-0350

**Re: In the Matter of the Petition of Public Service Electric and Gas
Company for Approval of its Clean Energy Future - Electric Vehicle
and Energy Storage ("CEF-EVES") Program on a Regulated Basis
BPU Docket No. EO18101111**

Motion to Stay

Dear Secretary Camacho-Welch:

Please accept this letter motion, original and ten copies, from the Division of Rate Counsel ("Rate Counsel") regarding the above-captioned matter.

We enclose one additional copy of this letter motion. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

*Case mgmt
list copied*

Summary

On October 11, 2018, Public Service Electric and Gas Company (“PSE&G” or “the Company”) filed a petition (“Petition”), pursuant to N.J.S.A. 48:2-21, for approval by the Board of Public Utilities (“Board” or “BPU”) of its Clean Energy Future – Electric Vehicle and Energy Storage Program (“EVES Program” or “Program”).¹ PSE&G’s proposed EVES Program is significant in size and rate impact with a multitude of electric vehicle (“EV”) and energy storage (“ES”) technologies. PSE&G’s Petition presents many unresolved policy issues which are currently being addressed in two stakeholder proceedings and in an additional proceeding mandated by statute. Those three processes are already underway or legislatively mandated for prompt completion; none have yet been completed. Rate Counsel respectfully asks the Board to stay PSE&G’s EVES Petition until the resolution of those three proceedings. They address the same issues and their findings and recommendations will impact directly on the merits of this Petition.

The Governor’s Office and the Board have each convened a stakeholder proceeding which addresses EV issues. In 2017, the Board convened the Electric Vehicle Stakeholder Group (“EV Stakeholder Group” or “EVSG”) to solicit input to assist the Board in the development of its EV policies.² This year, pursuant to N.J.S.A. 52:27F-14, et seq., Governor Murphy directed the Board and other state agencies to develop a 2019 State Energy Master Plan

¹ On October 29, 2018, the Board issued an Order retaining this matter at the Board, designating Commissioner Upendra J. Chivukula as the presiding officer, and setting deadline of November 13, 2018 for filing motions to intervene or participate.

² Transcript of Board Agenda Item 9B (August 23, 2017).

(“2019 EMP”), which includes the formation of a “Clean and Reliable Transportation” stakeholder group to develop EV policy guidance for the State, among other tasks.³

In addition, the recently enacted Clean Energy Act sets forth a process for the development of ES in New Jersey.⁴ Rather than prescribe programs such as those proposed by PSE&G, the Legislature directed the Board to undertake certain preparatory steps within a year. The Clean Energy Act directs the Board, together with PJM and other stakeholders, to conduct an “energy storage analysis” and submit a written report to the Governor and the Legislature regarding ES needs and opportunities, including the relationship of ES to EVs.⁵ As set forth below, the scope of the ES analysis required by the Legislature clearly encompasses the issues presented by PSE&G’s ES filing, including the optimal amount of storage, its effect on peak loads and grid stabilization, and public sector deployment of energy storage.⁶ The Board recently started this process, approving a contract with Rutgers University to perform an ES analysis at its October 29, 2018 agenda meeting.⁷

PSE&G is a participant in the ongoing 2019 EMP and EV stakeholder groups. By filing this Petition now, PSE&G forecloses those processes and asserts its individual priorities before statewide policies have been decided. PSE&G’s Petition presumes the answers to a series of

³ Executive Order No. 28 (May 23, 2018); see Board Updated Notice of Energy Master Plan Stakeholder Meetings, Sept. 12, 2018, available at <https://www.nj.gov/emp/pdf/20180912-updated-locations.pdf>.

⁴ P.L. 2018, c. 17, § 1(d), codified materially at N.J.S.A. 48:3-87, -87.8, -87.9 -87.10, -87.11, and -87.12.

⁵ N.J.S.A. 48:3-87.8(1)(a). The role of ES in New Jersey’s electric supply infrastructure is also being studied in the 2019 EMP process.

⁶ See N.J.S.A. 48:3-87.8(1)(a)(1)-(7).

⁷ New Jersey Board of Public Utilities Press Release, “NJBPU Approves Contract with Rutgers to Perform Energy Storage Analysis,” Oct. 29, 2018, available at <https://www.bpu.state.nj.us/bpu/newsroom/2018/approved/20181029a.html>; BPU Dkt. No. EO18101123, I/M/O Approval of Contract between Rutgers University and the New Jersey Board of Public Utilities Regarding an Energy Storage Analysis Pursuant to L. 2018, c. 17.

fundamental questions that the Board will decide, thereby usurping the Board's proper role in guiding these groundbreaking new public utility issues. PSE&G further presumes that New Jersey ratepayers must fund \$543 million of its EV and ES programs over the next six years. Petition, pp. 4 and 6. Rate Counsel submits that, since the Board, the Governor and the Legislature have not yet decided the policy questions presented by PSE&G's EVES Petition, it is prudent to await the 2019 EMP and EV Stakeholder Group reports, and the ES analysis mandated by the Clean Energy Act, before addressing PSE&G's specific proposals.

Addressing PSE&G's EVES Petition, before deciding the "rules of the road" for EV charging and ES in New Jersey, risks inconsistent outcomes and wasted resources. A stay will not prejudice PSE&G either: it is a participant in the EVSG and 2019 EMP processes,⁸ and the Board can review PSE&G's EV and ES proposals when the Board has decided the appropriate statewide policies. There is ample time to complete the EVSG and 2019 EMP processes and the Clean Energy Act ES analysis, to carefully consider the myriad of technical, financial and other policy issues attendant to the role of New Jersey's electric distribution companies ("EDCs") in EV charging and ES.

The fact that twenty-two parties have moved to intervene or participate – including the State's three other EDCs - in the instant matter is indicative of the many interested parties affected by the policy questions raised by PSE&G's Petition.⁹ Prudent administrative procedure indicates the need to complete the 2019 EMP and the EVSG stakeholder processes and the analysis mandated by the Clean Energy Act, before considering PSE&G's EVES Petition.

⁸ It is not unreasonable to anticipate that PSE&G will also participate in the ES stakeholder proceeding under the Clean Energy Act when it commences.

⁹ JCP&L, ACE and RECO filed motions to participate in the instant matter.

Practical considerations also support a stay. New Jersey ratepayers can afford to spend only a finite amount of money to explore new technologies, and must invest those funds wisely. However, the Board has not yet decided the most cost-effective method of reducing energy use and air pollution with the limited funds available. Further, automobile retailers, as well as suppliers of EV charging equipment and services, would potentially face a confusing array of divergent EDC EV tariffs, infrastructure policies, and practices if EDCs are permitted to implement their own EV programs before the Board establishes statewide EV policies and guidelines. The ES industry could also face potentially conflicting policies and practices across the state's EDC territories. Consideration of PSE&G's half billion dollar proposals, before the Board sets statewide policies, would place a very expensive cart before the proverbial horse.

Therefore, for the reasons set forth herein, Rate Counsel respectfully requests that the Board stay consideration of PSE&G's EVES Petition until the conclusion of the 2019 EMP and the Board's EVSG processes, and the Board's ES study mandated by the Clean Energy Act.

Background

PSE&G's proposed EVES program would extend over six years, consisting of four EV and five ES subprograms. The four EV sub-programs proposed by PSE&G amount to \$261 million of investment and \$103 million in expenses. Petition, pp. 3-4. The five ES subprograms amount to investments of \$109 million and \$70 million in expenses. Petition, pp. 6-7. Together, PSE&G's proposals would cost ratepayers \$543 million. PSE&G's EV and ES proposals are described in more detail below.

PSE&G's Proposed Electric Vehicle ("EV") Program¹⁰

If approved, the four EV sub-programs proposed by PSE&G would result in the installation of nearly 40,000 EV charging locations. Petition, p.4. The four EV subprograms are:¹¹

EV Sub-program 1 – “Residential Smart Charging”: incentives for Level 2 “networked” EV chargers¹² at residences (37,000 charging stations; \$93 million investment).

EV Sub-program 2 – “Level 2 Mixed-Use Charging”: provide incentives and install infrastructure for Level 2 chargers (2,200 charging stations; \$39 million investment).

EV Sub-program 3 – “Public DC Fast Charging”: provide incentives and install infrastructure for DC Fast Chargers or, alternatively, ownership by PSE&G (450 charging stations; \$62 million investment).

EV Sub-program 4 – “Vehicle Innovation”: incentives for electric school buses and charging equipment (60 charging stations) and an open solicitation for “customized electrification projects” (\$45 million investment).

PSE&G's Proposed Energy Storage ("ES") Program¹³

PSE&G's proposed ES program is comprised of the following five subprograms:

ES Sub-program 1 – “Solar Smoothing”: intended to “smooth” short-term changes in voltage due to intermittent solar generation (\$13.1 million investment).

ES Sub-program 2 – “Distribution Deferral”: intended to resolve forecasted overloads in the electric grid system (\$38.6 million investment).

ES Sub-program 3 – “Outage Management”: deploy a fleet of mobile ES units for contingency restoration during substation construction (\$20.0 million investment).

¹⁰ See Petition, p. 4.

¹¹ See Petition, pp. 6-7.

¹² Level 2 charging is 220V and typically provides about 20 miles of range per hour of charging. DC fast charge (“DC-FC”) is 208-600V and typically provides about 40 miles of range in ten minutes. Level 1 charging, in contrast, is 110V and typically provides about 4.5 miles of range per hour of charging. See The Regulatory Assistance Project, “Getting From Here to There: Regulatory Considerations for Transportation Electrification,” May 2017, p. 12.

¹³ See Petition, p. 7.

ES Sub-program 4 – “Microgrids for Critical Infrastructure”: provide capital to support development of microgrids (\$25.7.6 million investment).

ES Sub-program 5 – “Peak Reduction for Public Sector Facilities”: provide ES units at public sector facilities, deployed to reduce peak demand (\$11.9 million investment).

PSE&G’s Rate Recovery Proposal

PSE&G seeks to recover from its ratepayers the revenue requirements associated with all of its proposed EV and ES Program costs, on an equal per kilowatt hour basis, including a return on its net investment based upon its most recent cost of capital authorized by the Board.¹⁴

Argument

I. CONSIDERATION OF THE ELECTRIC VEHICLE AND ENERGY STORAGE COMPONENTS OF PSE&G’S PETITION SHOULD BE STAYED UNTIL THE CONCLUSION OF THE RESPECTIVE ADMINISTRATIVE PROCEEDINGS.

PSE&G’s EVES Petition presents the Board with significant policy issues which have yet to be resolved by the Board, the Governor or the Legislature. Consideration of PSE&G’s EV proposals requires policy decisions as to the proper role of New Jersey’s EDCs in EV-related ventures, whether ratepayers should fund any EV-related business activities, and the role of competition in the EV market. Those substantial issues are under consideration in the current 2019 EMP and EVSG stakeholder processes, which have not yet been completed.

¹⁴ See Petition, pp. 9, 13. PSE&G also proposes to offset the amounts collected from ratepayers by any revenues derived from its EVES Program, “including, but not limited to, EV charging revenue associated with Company-owned chargers, and any PJM revenues derived from the ES subprograms or from the assets installed in the EVES Program, such as through the PJM frequency regulation market. In addition, if the Company can derive any additional revenue in the future from these programs, all net proceeds will be credited to ratepayers as a reduction to revenue requirements.” *Id.*

PSE&G's ES proposals also require policy guidance that has not yet been decided by the Board, the Governor or the Legislature. PSE&G's ES proposals ignore the energy storage provisions of the Clean Energy Act which mandate a process to consider the policy and technical issues attendant to energy storage. That process has just begun, and has yet to be completed. Furthermore, as set forth below, the role of ES in the State's electric supply infrastructure is currently being addressed in the ongoing 2019 EMP process.

For the reasons set forth herein, a stay of PSE&G's EVES Petition is appropriate at this time. As the Supreme Court stated in Hackensack v. Winner, 82 N.J. 1, 32-33 (1980):

Decisions have stressed that the policy considerations which support [these] judicial doctrines – namely, finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness – have an important place in the administrative field.

A stay would allow the Board to prevent needless and duplicative consideration of issues, avoid duplication of effort, reduce unnecessary burdens of time and expense, prevent conflicting, confused and uncertain outcomes, and ensure basic fairness to all parties concerned with electrifying motor vehicles and energy storage in New Jersey. Consideration of PSE&G's EVES Petition at this juncture, while statewide policy-making proceedings are underway which directly address issues presented by PSE&G's Petition, would exemplify a duplicative, wasteful and confusing process which the Supreme Court cautioned administrative agencies to avoid. A stay would prevent such an avoidable outcome in this matter.

PSE&G's Petition asks the Board to address a broad range of EV and ES issues in an *ad hoc* manner, rather than in a comprehensive, reasoned manner that would provide needed guidance to all utilities and other stakeholders. A stay will allow the Board to map out

comprehensive policies toward EVs and ES and avoid the expense and effort of prematurely considering PSE&G's individual *ad hoc* proposals.

Traditional criteria for preliminary relief, as well as a balancing of the equities, also support a stay of PSE&G's Petition. See Crowe v. De Gioia, 90 N.J. 126, 132-33 (1982).

Ratepayers will be immediately and irreparably harmed by spending over half a billion dollars on projects that cannot advance a plan that the State has not yet written. This harm would not be redressed by money damages, since PSE&G would not issue a refund to ratepayers if its EV and ES proposals prove not to be consistent with Board policy. Ratepayers are likely to succeed on the merits, since it is highly likely that the Board will ultimately require any PSE&G EV or ES program to be consistent with the 2019 EMP and the EV and ES policy guidance that the Board ultimately issues. A stay also will avoid unfocused, scattershot and potentially wasteful expenditures, recognizing that New Jersey ratepayers have only a finite amount of money to spend on electric utility bills.

Further, staying this EV Petition will not prejudice PSE&G. PSE&G is an active participant in the EVSG and 2019 EMP stakeholder proceedings. The EV and ES industries are in their infancy. Hence, there is time for the policy-making process to run its course and determine the appropriate roles of the public utility, EV and ES industries. Thus, because the critical elements of PSE&G's Petition will depend on the policy decisions of the Board, the Governor and the Legislature in three other proceedings, the Board should stay PSE&G EVES Petition until those policy-making proceedings have concluded.

Prudential considerations also support a stay. New Jersey administrative agencies will not consider issues that are moot or may become moot.¹⁵ As detailed below, the Board's guidance on each one of the issues addressed in the policy-making forums will profoundly affect, if not obviate, PSE&G's Petition. Consideration of PSE&G's Petition at this time may prove expensive and pointless when the State issues its EV and ES policies.

A. CONSIDERATION OF PSE&G'S EV PROPOSALS SHOULD BE STAYED UNTIL THE RELEASE OF THE 2019 EMP AND THE CONCLUSION OF THE BOARD'S EV STAKEHOLDER GROUP PROCEEDING.

Fundamental issues raised by PSE&G's EVES Petition include the proper role of New Jersey EDCs in EV-related activities; the role of competition and non-EDC businesses in the EV market; and which EV-related business activity, if any, should be funded by ratepayers. The equitable considerations in this latter point alone are significant, especially when many ratepayers in New Jersey cannot afford to pay current utility bills or own any motor vehicle, let alone a more costly EV. Rate Counsel submits that the Board should carefully consider who will shoulder the costs, and reap the benefits, of serving the EV market in New Jersey. The Board created the Electric Vehicle Stakeholder Group to help it decide these issues, and the Governor's 2019 EMP Order and the Clean Energy Act direct the Board to carefully study them. PSE&G's Petition should not interfere with those processes.

In 2017, the Board convened the Electric Vehicle Stakeholder Group to solicit input from stakeholders in order to assist the Board in the development of its EV policies.¹⁶ The EVSG is a

¹⁵ See New York, S. & W. R. Corp. v. Dep't of Treasury, 6 N.J. Tax 575, 582 (Tax 1984), aff'd, 204 N.J. Super. 630 (App. Div. 1985) ("An issue is 'moot' when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy."); Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Hackensack, 82 N.J. at 32-33.

¹⁶ Transcript of Board Agenda Item 9B (August 23, 2017).

comprehensive, structured, generic proceeding that is considering, among other things, the proper role of electric public utilities in the adoption of EVs and EV servicing. This year, Governor Murphy directed the Board and other state agencies to develop a 2019 Energy Master Plan for the state which includes the formation of a “Clean and Reliable Transportation” work group to develop EV policy guidance for the State, among other tasks.¹⁷ Both the EVSG and 2019 EMP will provide guidance to the Board in developing policies for regulating the profound effects of electric vehicles on ratepayers and the entire electric utility industry. However, the EVSG has yet to report its findings to the Board. Similarly, the 2019 EMP process is ongoing and is not scheduled to be released until June 2019.¹⁸

In support of its EV Program, PSE&G cites the earlier 2015 revisions to the State’s Energy Master Plan (“2015 EMP”) notwithstanding the expectation that the 2019 EMP now under development will supersede the 2015 EMP.¹⁹ In any event, PSE&G’s EV proposals run counter to the 2015 EMP Plan as well. The 2015 EMP did not call for an EV program like that proposed by PSE&G, but merely directed the Board to explore methods “to incentivize the use of clean, efficient energy and electric technology alternatives in New Jersey’s transportation sector and at New Jersey’s ports.”²⁰

The scope of the Clean and Reliable Transportation section of the ongoing 2019 EMP process also addresses electrification of vehicles, including methods to “incentivize” clean

¹⁷ Executive Order No. 28 (May 23, 2018).

¹⁸ Petition, Attachment 1, pp. 5 and 8; Executive Order No. 28 (May 23, 2018).

¹⁹ Petition, Attachment 1, p. 8; see N.J.S.A. 52:27F-14(b) (Energy Master Plan to be updated at least once every three years); Executive Order No. 28, p. 1 (“New Jersey must overhaul the 2015 Energy Master Plan.”).

²⁰ New Jersey EMP Update, December 2015.

transportation. The Clean and Reliable Transportation section of the 2019 EMP process addressed this early on, in its call for stakeholder comments:

Recognizing that the transportation sector is the leading source of greenhouse gas emissions in New Jersey, the Clean and Reliable Transportation will focus on how to reduce the state's carbon footprint and advance electric and alternative fuel vehicles. The Plan will also identify methods to incentivize the use of clean, efficient, technological advances in commercial and public transportation operations.²¹

Although similar to language in the 2015 EMP, the call for stakeholder comments by the 2019 EMP administrators recognizes the need for an EMP update due to New Jersey's re-entry to the Regional Greenhouse Gas Initiative in 2018 and to achieve reductions in greenhouse gases that were referenced in the Executive Order authorizing its formation.²² The 2019 EMP stakeholder process specifically addresses the role of EDCs - such as PSE&G - in the EV charging market. The administrators of the 2019 EMP process asked stakeholders to comment on several aspects of EV charging and the role of EDCs.²³ As set forth below, the 2019 EMP stakeholders have directly commented on issues raised by PSE&G's EV proposal.

Fundamentally, the 2019 EMP process considers the role that EDCs should play in the electrification of transportation, a question PSE&G presumes to have already answered with its EV proposal. The 2019 EMP administrators asked stakeholders to comment on the following questions relating to the role of EDCs:

11. What role should utilities play in clean transportation?

...

18. What is the effect of increasing alternative fuel vehicle adoption on energy generation and the utility distribution system? What role should utilities play?²⁴

²¹ See New Jersey EMP website: <https://nj.gov/emp/docs/>.

²² Executive Order No. 28 (May 23, 2018).

²³ See Attachment A for a list of questions posed to stakeholders by the 2019 EMP administrators for comment.

²⁴ See Attachment A.

PSE&G also proposes to recover the costs of EV infrastructure and technological development from ratepayers.²⁵ However, the method for funding electrification is an open issue in the 2019 EMP, as evidenced by the following question posed by the 2019 EMP administrators for comment by stakeholders:

16. What clean transportation funding mechanisms should the state explore? What type of financial planning and programming should be considered?²⁶

PSE&G proposes a network of EV charging stations in various locations, including residences, public spaces, and transportation corridors.²⁷ Again, this is a question on which stakeholders are commenting in the 2019 EMP process:

15. What infrastructure investments, policies, and procedures are needed to support the future of clean transportation in the state? What infrastructure needs will the state have in the promotion of clean and alternative fuel vehicles?²⁸

PSE&G also proposes incentives in its rates per kilowatt-hour for EV charging, as well as rebates and subsidies for EV charging equipment.²⁹ The question of incentives is currently under consideration as part of the 2019 EMP process:

17. What incentives can New Jersey explore to encourage the transition to clean transportation?³⁰

“Vehicle Innovation” is another subprogram included as part of PSE&G’s EV proposal.³¹

Again, this issue is also currently under consideration as part of the 2019 EMP process:

²⁵ Petition, pp. 8-13; and Petition, Attachment 3.

²⁶ See Attachment A.

²⁷ See Petition, p. 3, and Petition, Attachment 1.

²⁸ See Attachment A.

²⁹ See Petition, p. 3; and Petition, Attachment 1.

³⁰ See Attachment A.

³¹ See Petition, p.3, and Attachment 1, pp. 26-28.

13. How can the State best encourage research and development of new technologies?³²

In sum, PSE&G's EV proposals adopt policy positions on issues that have yet to be fully considered, much less adopted, by the State and the Board in the 2019 EMP process.

Last year, the Board recognized the many potential effects of the electrification of transportation on EDCs and ratepayers, and convened the EVSG. In its presentation at the agenda meeting where the Board approved the creation of the EVSG, Board Staff noted many of those questions:

[H]ow much of that [EV] infrastructure can be done beyond the meter. So infrastructure up to the meter is typically what the Board approves in rate cases. That's standard. But how beyond the meter that other states are starting to look at could be included in regulatory assets, up through the charging stations: Should [electric utilities] be able to own charging stations? Can they own charging stations? How do you deal with electric vehicles? Are they defined as energy efficiency within the statutes? What happens [to] customers, how do they get charged for actually charging electric vehicles?³³

Each of these questions is raised and answered by subprograms proposed in PSE&G's EVES Petition, but they have not yet been resolved by the Board as they are currently being considered in the EVSG. Stakeholders, including PSE&G, have provided written answers to essentially these same questions in the EVSG.³⁴

The Board initiated the EVSG at its August 23, 2017 agenda meeting, when it accepted the Regulatory Assistance Project's ("RAP") report on transportation electrification ("RAP

³² See Attachment A.

³³ Transcript of Board Agenda Item 9B (August 23, 2017).

³⁴ The questions used by the EVSG to solicit written comments from EVSG participants are provided in Attachment B, attached hereto.

Report”).³⁵ The RAP Report recognized the many issues presented by EVs and recommended the establishment of a stakeholder process that would benefit from the insights of various interested parties and seek consensus on issues. RAP Report, pp. 4-5. Based on the RAP Report, the Board established the EVSG and directed BPU Staff to report on its findings.³⁶ Since then, the EVSG has convened several meetings and actively sought input from EVSG participants. Specifically, the EVSG Staff circulated three sets of questions seeking input from the EVSG participants on a wide range of issues related to EVs.³⁷ Rate Counsel is a participant in the EVSG and anticipates that the responses to the questions presented by Staff will be considered by the Board in the development of guidelines and policies governing public utility involvement in the EV market. The EVSG’s questions and participant responses addressed most of the same policy questions raised by PSE&G’s EV proposals and the proposed cost recovery method, to wit, the scope of EDC involvement in EV-related activities and cost recovery for those activities. In addition to PSE&G, stakeholder participants in the EVSG include Atlantic City Electric Company, Jersey Central Power & Light Company and Rockland Electric Company, all of whom have moved to participate in the instant PSE&G EVES Petition. The EVSG process is ongoing and a report on the EVSG proceedings has yet to be released.

Furthermore, at the agenda meeting initiating the EVSG, Board Staff noted the lack of clear statutory guidance in the area, requiring the Board to fill the gaps:

³⁵ See I/M/O the Regulatory Assistance Project Electric Vehicle Infrastructure Report, “Getting From Here to There: Regulatory Considerations for Transportation Electrification”, BPU Dkt. No. EO17070748 (Transcript of Agenda Item 9B, August 23, 2017); see also The Regulatory Assistance Project, “Getting From Here to There: Regulatory Considerations for Transportation Electrification,” May 2017.

³⁶ Id.

³⁷ The EVSG solicited comments via the EVSG participants’ responses to three sets of questions: TASK 1 questions; TASK 2 questions; and TASK 1 Follow-up questions. See Attachment B.

[T]he statutes are not clear on electric vehicles. There's not a clear, yes, you can do this with electric vehicles or, no, you cannot do that with electric vehicles. So there are a number of inferences that you have to make within the statutes. So it's not clearly defined. It's not a technology when the legislature was putting together the utility statutes that was in place.³⁸

The recently enacted Clean Energy Act³⁹ also recognizes the importance of carefully planning to address the expected proliferation of EVs. The Clean Energy Act directs the Board to study the trajectory of the EV market and understand its effect on energy use in New Jersey. Specifically, the Legislature has directed the Board to adopt, within one year, quantitative performance indicators for each regulated public utility to reduce its use of electricity. The Board's methodology to establish those quantitative performance indicators must incorporate several factors, including growth in the use of EVs.⁴⁰ The Clean Energy Act took effect on May 23, 2018, and the Board has not yet completed its legislatively directed analyses.

Through the ongoing 2019 EMP and EVSG processes, as well as the Clean Energy Act studies, the Board will consider these major policy issues and interpret its statutory authority to develop a comprehensive approach to the role of EDCs in the expansion of EVs in New Jersey. New Jersey needs a thoughtful map for the respective roles of these industries in our energy markets before committing hundreds of millions of ratepayer dollars.

Avoiding potentially disruptive effects of placing the enormous energy demands and costs of motor vehicles onto our electric grid also supports a stay. Pursuant to certain provisions of the federal Clean Air Act,⁴¹ New Jersey has adopted California's vehicle emission regulations,

³⁸ Transcript of Board Agenda Item 9B (August 23, 2017).

³⁹ P.L. 2018, c. 17, § 1(d), codified materially at N.J.S.A. 48:3-87, -87.8, -87.9 -87.10, -87.11, and -87.12.

⁴⁰ N.J.S.A. 48:3-87.9(3)(c).

⁴¹ Section 177 of the Clean Air Act, 42 U.S.C. § 7507.

which commit New Jersey to require zero emission vehicles to constitute 15.4% of total new car sales in the State by 2025.⁴²

The RAP Report cited by the Board found that the proliferation of EVs has the potential to significantly increase electric demand and peak loads, adding stress and cost to the electric system.⁴³ As noted, the Legislature has directed the Board to study this precise question. The Board must decide who will pay the cost of providing the infrastructure for the EV segment of the transportation industry. Therefore, Board policies and guidelines are needed, early in the EV review process, to ensure the integrity of the electric grid and supply resources, foster competition, achieve cost-effective results, fairly allocate risks and benefits, and protect the interests of ratepayers.

The 2019 EMP and EVSG processes are soliciting the input of diverse stakeholders in an efficient manner, avoiding duplicative appearances and interventions in any number of EV-related filings by individual electric utility companies that would place even greater demands on the Board's resources. This is already occurring in the instant matter, where all three New Jersey EDCs have moved to participate. Separate proceedings for each EDC, before the Board maps out the EV rules, would risk contradictory, inconsistent or disproportionate outcomes for different utilities, ratepayers and the EV market. The Board must resolve these fundamental policy issues, already being addressed through the 2019 EMP and EVSG processes, to inform the Board's review of any individual utility's EV proposal.

Since the Board's policy decisions on each of these issues will profoundly affect, if not obviate, PSE&G's Petition, the Board should stay consideration of these potentially moot

⁴² See Petition, pp. 18-19.

⁴³ RAP Report, pp. 15, 18-19.

issues.⁴⁴ If the EVSG process leads the Board to decide that competitive businesses and not the EDCs should market and install EV chargers, then most of PSE&G's proposed subprograms are moot because they would be outside the proper role of the EDCs. If the Board decides that the proper role of EDCs in the EV industry is to ensure their distribution systems can manage the additional and changing load patterns resulting from EVs, then PSE&G's Petition is moot because it has not proposed an assessment of EV effects on the electric system. If the Board decides that the transportation industry rather than public utility customers should bear the costs of electrifying its own equipment and reducing its air emissions, then PSE&G's petition is moot because all of its subprograms would shift EV-related costs onto ratepayers. If the Board decides that public utilities must reduce their electricity use, as directed by the Clean Energy Act, by implementing energy conservation and efficiency measures before increasing electric use by adding the demand from EVs, then PSE&G's Petition must wait. The potential mootness of PSE&G's Petition supports a stay.

Another critical concern is the effect on the New Jersey economy of investing huge sums into PSE&G's proposed new transportation businesses. Through its Petition, PSE&G proposes to entangle itself in the EV automobile "business" through EVES programs that would include discounted electric rates for EV charging; incentives for installing EV equipment; the ownership and operation of EV charging stations by PSE&G;⁴⁵ and an "Innovation Fund" to support EV equipment-related research projects, including electric school buses.⁴⁶ Not only do the policy questions presented by PSE&G's EVES Petition largely coincide with those under consideration

⁴⁴ See New York, S. & W. R., 6 N.J. Tax at 582; Anderson, 143 N.J. Super. at 437; Hackensack, 82 N.J. at 32-33 (New Jersey administrative agencies will not consider issues that are moot or may become moot.).

⁴⁵ Petition, Attachment 1, pp. 19, 22.

⁴⁶ Petition, Attachment 1, p. pp. 26-28.

by the 2019 EMP and EVSG processes, but they represent new ventures into services already provided in the competitive marketplace.

Approving such a fundamental shift in the role of a regulated utility would implicate policies critical to ratepayers, such as the extent of public utility involvement in the transportation industry, the role of new competitive EV enterprises, and who should pay for the costs associated with EV operation and ownership.

PSE&G's Petition also raises the fundamental question of whether ratepayers should fund EV activities. PSE&G frames its EV Program as a means to facilitate the electrification of the transportation sector in New Jersey, and seeks to recover the net cost of its proposed EV Program from ratepayers. PSE&G estimates the cost of its proposed EV program amounts to \$364 million: \$261 million in investment plus \$103 million in expense.⁴⁷ However, Rate Counsel submits that the larger question is whether New Jersey's public utility ratepayers – squarely within the public utility sector of the economy – should be asked to bear the cost of reducing the greenhouse gas emissions from the transportation sector of the economy through the electrification of motor vehicles. Rate Counsel submits that this question must be addressed in a generic policy proceeding, such as the pending 2019 EMP, EVSG, and Clean Energy Act processes, before spending ratepayer money on any individual EDC's EV proposal.

The EV principles established by the Board through the EVSG and 2019 EMP processes are essential to guide all of New Jersey's EDCs. PSE&G's EVES Petition would “short circuit” those processes, since it presents issues on which stakeholder consensus has not yet been reached and which the Board has not yet addressed in a comprehensive manner.

⁴⁷ Petition, p.3.

B. CONSIDERATION OF PSE&G'S ENERGY STORAGE PROPOSALS SHOULD BE STAYED UNTIL THE RELEASE OF THE BOARD'S REPORT ON ENERGY STORAGE MANDATED BY THE CLEAN ENERGY LAW AND THE 2019 EMP.

Well-established principles support a stay of the ES proposals in PSE&G's Petition at this time. Our Supreme Court has explained the important role of staying an administrative matter.⁴⁸ Here, three pending proceedings will formulate policy to decide issues directly presented by PSE&G's Petition. Until the conclusion of those proceedings, a stay is needed to prevent duplicative, burdensome, wasteful and confusing efforts, while ensuring basic fairness to all parties affected by EDC involvement in the New Jersey ES market.

The recently enacted Clean Energy Act⁴⁹ expressly recognizes the importance of carefully planning for cost-effective renewable energy storage. Rather than prescribe programs such as those proposed by PSE&G, the Legislature directed the Board to undertake certain preparatory steps over the next year. The Clean Energy Act directs the Board to conduct an "energy storage analysis," involving the PJM grid operator and other stakeholders, and to submit a written report to the Governor and the Legislature regarding ES needs and opportunities, including the relationship of ES to EVs.⁵⁰ Further, the scope of the ES analysis encompasses the issues presented by PSE&G's ES filing, including the optimal amount of storage, its effect on peak loads and grid stabilization, and public sector deployment of energy storage.⁵¹ More specifically, the Clean Energy Act clearly sets the scope of the ES analysis and report:

In conducting this analysis, the board shall:

⁴⁸ See Hackensack, 82 N.J. at 32-33.

⁴⁹ P.L. 2018, c. 17, § 1(d), codified materially at N.J.S.A. 48:3-87, -87.8, -87.9 -87.10, -87.11, and -87.12.

⁵⁰ N.J.S.A. 48:3-87.8(1)(a).

⁵¹ See N.J.S.A. 48:3-87.8(1)(a)(1)-(7).

(1) consider how implementation of renewable electric energy storage systems may benefit ratepayers by providing emergency back-up power for essential services, offsetting peak loads, and stabilizing the electric distribution system;

(2) consider whether implementation of renewable electric energy storage systems would promote the use of electric vehicles in the State, and the potential impact on renewable energy production in the State;

(3) study the types of energy storage technologies currently being implemented in the State and elsewhere;

(4) consider the benefits and costs to ratepayers, local governments, and electric public utilities associated with the development and implementation of additional energy storage technologies;

(5) determine the optimal amount of energy storage to be added in the State over the next five years in order to provide the maximum benefit to ratepayers;

(6) determine the optimum points of entry into the electric distribution system for distributed energy resources; and

(7) calculate the cost to the State's ratepayers of adding the optimal amount of energy storage.⁵²

Since the Clean Energy Act directs completion of the ES analysis within one year of its enactment,⁵³ awaiting its instruction will not cause undue delay.

Moreover, only after completion of the energy storage analysis report is the Board mandated to initiate a proceeding to "establish a process and mechanism for achieving the goal of 600 megawatts of energy storage by 2021 and 2,000 megawatts of energy storage by 2030."⁵⁴ PSE&G's proposal to add 35 MW of ES capacity at this juncture runs afoul of the timetable set forth in the Clean Energy Act. Notably, the Board has yet to submit the energy storage analysis report mandated by the Clean Energy Act; in fact, the Board has only recently initiated the ES proceeding mandated by that Law by approving a contract with Rutgers to perform an ES

⁵² N.J.S.A. 48:3-87.8(1)(a)(1)-(7).

⁵³ N.J.S.A. 48:3-87.8(1)(a).

⁵⁴ N.J.S.A. 48:3-87.8(1)(d).

analysis.⁵⁵ PSE&G should not be permitted to embark on an ambitious and expensive ES venture at this juncture, funded by ratepayers, lacking the Board's technical and policy guidance provided by that ES report and stakeholder proceeding. Therefore, Rate Counsel respectfully recommends that the Board stay consideration of PSE&G's ES proposal until the conclusion of the ES process mandated by the Clean Energy Act.

Furthermore, issues incumbent to the deployment of energy storage in the State are currently being addressed in the ongoing 2019 EMP stakeholder process. ES issues are addressed directly as part of the "Clean and Renewable Power" section, as well as peripherally through the "Sustainable and Resilient Infrastructure," "Reducing Energy Consumption," and "Building a Modern Grid" sections, of the 2019 EMP stakeholder process. The role of ES is addressed directly in the call for comments in the "Clean and Renewable Power" section:

9. How should the state address the baseload needs v. intermittent elements of clean energy generation? What is the role of energy storage in the conversion to 100% clean energy?⁵⁶

PSE&G's ES proposals assert its own policy positions on issues that remain unresolved pending the conclusion of the 2019 EMP process. Therefore, PSE&G's ES proposal should be stayed until these important policy positions are resolved as part of the Clean Energy Act ES and 2019 EMP processes.

⁵⁵ New Jersey Board of Public Utilities Press Release, "NJBPUB Approves Contract with Rutgers to Perform Energy Storage Analysis," Oct. 29, 2018, available at <https://www.bpu.state.nj.us/bpu/newsroom/2018/approved/20181029a.html>; BPU Dkt. No. EO18101123, I/M/O Approval of Contract between Rutgers University and the New Jersey Board of Public Utilities Regarding an Energy Storage Analysis Pursuant to L. 2018, c. 17.

⁵⁶ See 2109 NJ EMP website:


<https://nj.gov/emp/pdf/EMP%20Discussion%20Points%20Clean%20and%20Renewable%20Power%20Final.pdf>.

Conclusion

For all of these reasons, Rate Counsel respectfully requests that the Board stay PSE&G's Petition for approval of its EVES Program until the Board sets policies to guide electric vehicle and energy storage investments.

Respectfully submitted,

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DIRECTOR, DIVISION OF RATE COUNSEL

By: _____

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Assistant Deputy Rate Counsel

c: Hon. Upendra J. Chivukula, Commissioner (By Hand and electronic mail)
Service List (via electronic and regular mail)

2019 NJ EMP Stakeholder Process: Clean and Reliable Transportation Section

Discussion Points:

• **General**

1. What are the intermediate timeframes and pathways to new or enhanced clean transportation systems? What clean and reliable transportation goals should be set for 2030 and 2050?
2. What is the most significant obstacle that the state will face in implementing a clean transportation plan by 2050? What are some solutions to these challenges?
3. What is the role of clean transportation in freight movement? What should the State do to promote low-carbon freight/goods movement?
4. How can clean transportation solutions impact goods movement and economic growth?

• **State Policy**

5. What are the regulatory or statutory barriers to the expansion of low- and zero-emission vehicles?
6. What are the clean fuel transportation approaches the State should consider to achieve its zero emission vehicle (ZEV) goals of 330,000 ZEVs on the road by 2025?
7. What actions can the state take with its own fleet to demonstrate clean transportation leadership? How would these actions affect service reliability?
8. What strategic incentives should be considered for encouraging the adoption of zero emission vehicles, plug in hybrids, and other low emission and clean fuel transportation?
9. What best practices can the state adopt from other states and local governments that have advanced clean transportation goals?
10. What actions can the state take to help promote clean and reliable transportation at the state's ports?
11. What role should utilities play in clean transportation?

• **Technological Advancements**

12. What existing and emerging technologies need to be incorporated into future transportation planning?
13. How can the State best encourage research and development of new technologies?
14. How could new technology impact infrastructure investment?

• **Infrastructure Investment**

15. What infrastructure investments, policies, and procedures are needed to support the future of clean transportation in the state? What infrastructure needs will the state have in the promotion of clean and alternative fuel vehicles?
16. What clean transportation funding mechanisms should the state explore? What type of financial planning and programming should be considered?
17. What incentives can New Jersey explore to encourage the transition to clean transportation?

• **Reliability and Security**

18. What is the effect of increasing alternative fuel vehicle adoption on energy generation and the utility distribution system? What role should utilities play?
19. How can clean transportation systems assist in assuring enhanced energy security, reliability, and resiliency?
20. What strategies can NJ TRANSIT develop (infrastructure, facilities, vehicles, labor, workforce, training, etc.) to implement clean transportation (buses, paratransit and rail) by 2030 and 2050 while maintaining reliability?

• **Economic Growth and Workforce Development**

21. What new industries will be needed to meet clean transportation goals? What new jobs and training will be needed to meet the demands of these industries?
22. What is the impact of changes in transportation on the mobility of the workforce?
23. How does the state encourage innovation startups in this sector?
24. What are possible public-private partnerships in transportation innovation and what do they look like?

• **Environmental Justice**

25. What strategies could be implemented to allow for disproportionately impacted communities to have access to clean transportation options?
26. What efforts are most successful towards making clean energy measures and zero emission vehicles affordable and accessible to all?
27. How can the state play a role in ensuring that disproportionately impacted communities receive opportunities and benefits connected to the clean energy economy and expansion of low and zero emission vehicles

BPU EV Stakeholder Group (“EVSG”) Questions:

A. TASK 1 QUESTIONS (comment period closed on 10/16/17)

TASK 1 Q1: Do EVs fall under the definition of demand side management and energy efficiency as set forth at N.J.S.A. 48:3-51 and/or N.J.S.A. 48:3-98.1.d.?

TASK 1 Q2: Should owners and operators of EVSE that provide electric vehicle charging service be regulated as electric utilities? Are operators of EVSE reselling electricity or providing a charging service?

B. TASK 2 QUESTIONS (comment period closed on 11/30/17)

TASK 2 Q1: What goals for EV Infrastructure should be established?

TASK 2 Q2: What role should the Board, other government agencies; electric utilities, non-governmental organizations and the private market have in addressing EV/infrastructure adoption? Regarding electric utilities, please address: EV Grid integration; EV Rates (ToU, Demand Charges, etc.); and Role in EVSE [and/or] infrastructure, if any.

TASK 2 Q3: What is the present status of EVs and EV infrastructure in New Jersey?

TASK 2 Q4: What EV/EV infrastructure developments can be expected in the short/medium term under a Business as Usual scenario?

C. TASK 1 FOLLOW-UP QUESTIONS (comment period closed on 2/9/2018)

1 USDOE – AFDC Findings

TASK 1 Follow-up Q1.1 Are the analysis and findings of the USDOE AFDC and ANL accurate and supported by other independent analysis? Please cite why or why not.

TASK 1 Follow-up Q1.2 Should the NJBPU run the ARL GREET model for several different types of EV, ICE vehicles and other alternate fuel vehicles under different New Jersey driving conditions for various New Jersey electric generation mixes? Or not?

TASK 1 Follow-up Q1.3 If the Rutgers LESS energy efficiency evaluation shows favorable results for PEVs under NJ driving conditions and a NJ energy mix, how should that information be leveraged by the BPU to accelerate the pace of EV adoption in NJ? If not what actions should be taken by BPU?

2 Energy Efficiency

TASK 1 Follow-up Q2.1 Would an EV fueled by electricity from the current New Jersey electric generation sources be more efficient, less efficient or the same level of energy efficiency than the EVs noted in the ANL analysis? If so why? If not why not?

TASK 1 Follow-up Q2.2 Would an EV fueled by a New Jersey electric generation mix meet the definition of conserving energy in the definition for energy efficiency as set forth at N.J.S.A. 48:3-98.1? If so why? If not why not?

TASK 1 Follow-up Q2.3 Would an EV fueled by a New Jersey electric generation mix meet the definition of using less electricity or natural gas in the definition for energy efficiency as set forth at N.J.S.A. 48:3-98.1? If so why? If not why not?

3.0 Electric Systems Impacts

TASK 1 Follow-up Q3.1 What could be the expected percentage increase in electric energy attributable to EVs result in by 2025, 2030 and 2050?

TASK 1 Follow-up Q3.2 What could be the expected impacts and costs (positive and negative) on generation, transmission and distribution systems by the years 2025, 2030 and 2050?

4.0 Grid Integration, Demand Response and V2X (consisting of Vehicle to Grid (V2G), Vehicle to House (V2H), etc.

TASK 1 Follow-up Q4.1 What is the state of the technology that could allow the EV to be utilized as a demand response technology? What is the availability of the technology now and how/when will that availability evolve? What actions should NJBPU take to take advantage of the use of EVs as demand response technology? If not why not?

TASK 1 Follow-up Q4.2 V2X: Is the two way communication of the EV to the grid a commercially available technology or not? If so why? If not why not? What is the availability of the technology now and how/when will that availability evolve? What actions should NJBPU take and when to take advantage of the use of EVs in V2X technology?

TASK 1 Follow-up Q4.3 Could the EV electric customer access the energy markets directly, through an aggregator or Network Operations Center (NOC), through the electric utility or blockchain?

TASK 1 Follow-up Q4.4 If the EV could be utilized as a demand response technology in a two way communication with the grid, distribution and/or transmission, would the EV meet the definition of demand side management in N.J.S.A. 48:3-51? If so why? If not why not?

TASK 1 Follow-up Q4.5 What are the types and level of benefits to the grid of EVs in a demand response program and what would be the overall costs to develop and implement this program?

TASK 1 Follow-up Q4.6 If the EV could be utilized as a demand response technology, should the BPU consider changes to demand charges? If so why? If not why not?

TASK 1 Follow-up Q4.7 Should the BPU consider the use of telematics (such as Con Edison's SmartCharge New York program) in any demand response program and to address changes to demand charges. If so why? If not why not?

TASK 1 Follow-up Q4.8 If the EV is not using less electricity or natural gas per the definition for energy efficiency as set forth at N.J.S.A. 48:3-98.1 and the EV could be utilized as demand response for the EV to meet the definition of demand side management in N.J.S.A. 48:3-51, what could be the expected impacts on the grid for increased generation capacity by 2025, 2030 and 2050? What could be the level of costs and over what timeframe?

TASK 1 Follow-up Q4.9 If there is an increase in electric energy usage from the increase in EV but not a generation capacity increase because of demand response of EV what would the increase efficiency of the grid be in 2025, 2030 and 2050? If not why not?

5.0 Electric Vehicle Supply Equipment (EV Charging Station) State of the Competitive Market

TASK 1 Follow-up Q5.1 Is vehicle charging a fully competitive market across all market sectors (e.g. residential, public L2, public DCFC, low income communities and Multi Unit Dwellings)? If not which market sectors are not competitive and why not? Which market sectors are competitive? What is the business case for the EVSE industry and where does the business case fail?

TASK 1 Follow-up Q5.2 If the charging market sections are not competitive should the utilities be allowed to develop managed charging programs for the non-competitive charging market sections? If not why not?

TASK 1 Follow-up Q5.3 If the charging market sections are competitive should the utilities be allowed to develop managed charging programs for the competitive charging market sections? If not why not?

TASK 1 Follow-up Q5.4 If the utilities are allowed to develop managed charging programs is there a time limit or other criterion that should be imposed on this participation? If so what timeframe? Should any utility managed charging program have a sunset date?

TASK 1 Follow-up Q5.5 If the utilities are allowed to develop managed charging programs what guidelines should be developed for this participation? If not why not?

6.0 Utility Role in “Charge Ready”

TASK 1 Follow-up Q6.1 Should electric utilities engage in rate-based “Charge Ready” programs? What additional measures beyond Charge Ready are appropriate in non-competitive markets? Should utilities offer rebates on EV chargers or own/operate EV chargers in non-competitive markets?

7.0 Advanced Metering Infrastructure (AMI) - Smart Grid / Smart Meters

TASK 1 Follow-up Q7.1 What policies should the Board establish to take advantage of AMI, Smart Grid / Smart Meters with respect to the EV market?

TASK 1 Follow-up Q7.2 Would a utility managed charging program support and supplement any smart grid (SG) or automatic meter initiatives (AMI)? If not why not and what programs should be developed instead of AMI? If so what would be the level and value of the benefit to and from the AMI programs. If not describe why not and what would be the level of value in any other program?

In the Matter of the Petition of Public
Service Electric and Gas Company for
Approval of its Clean Energy Future-
Electric Vehicle and Energy Storage
("CEF-EVES") Program on a Regulated
Basis
BPU Docket No. EO18101111

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