

On November 19, 2018, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed a Motion to Dismiss PSE&G’s EC-AMI Petition alleging that because the EC-AMI Petition sought pre-approval of AMI costs, it was barred by the Board’s moratorium issued in the 2017 RECO AMI Order.³ When the Company subsequently proposed a procedural schedule, Rate Counsel again objected, stating that due to the moratorium, “it [was] inappropriate for PSE&G’s proposed schedule to go forward.”⁴

On October 7, 2019, in accordance with the Board’s mandate in the 2017 RECO AMI Order, Navigant Consulting, Inc. (“Navigant”) was retained by the Board to conduct two (2) independent studies: (1) a Cost Benefit Analysis of RECO’s AMI program (“Capstone Report”); and (2) a nationwide AMI gold standard analysis (“AMI Gold Standards Report”). The Capstone Report was filed with the Board on November 6, 2019, and the AMI Gold Standards Report was filed on November 27, 2019. Both Reports were accepted by the Board and placed for public review on the Board’s website.

The AMI Gold Standards Report asserted that AMI and Smart Meters were quickly becoming “the norm”. See AMI Gold Standards Report at 5.5. The installation of smart meters nationwide was anticipated to grow at an annual rate of 4.6%, from 92.1 million in 2019, to 138.4 million in 2028. Id. at 2.3. The Gold Standards Report further asserted that AMI may reduce labor costs, provide voltage optimization, detect outages, increase the opportunity for data collection, provide faster service restoration, improve billing accuracy, detect theft, and enhance energy efficiency. Id. at 2.1. Additionally, the 2019 Energy Master Plan: Pathway to 2050 (“EMP”) provides that the Board “direct the electric public utilities to develop plans that integrate grid modernization and capacity improvements that support demand growth from electrification, demand flexibility, [Distributed Energy Resources] penetration, grid resilience, and grid efficiency.” See EMP 5.1, p. 176. The EMP provides that AMI is a means to achieve this objective. See EMP 5.3.1, p. 184.

On February 19, 2020, after careful review and consideration of the RECO AMI test case, the Capstone Report, and the AMI Gold Standards Report, the Board found that AMI has the potential to benefit the distribution system, streamline and modernize utility operations, provide an enhanced customer experience, benefit the environment, and was a means to achieve the goals provided in the EMP. As such, the Board ordered that the moratorium on pre-approval of AMI be lifted, and that Atlantic City Electric Company (“ACE”), Jersey Central Power & Light Company (“JCP&L”), and PSE&G either file, or update previously filed, petitions for AMI implementation within 180 days.⁵ Each filing would receive a separate docket number and be “on a utility-specific basis, given that each utility is starting from a different investment baseline in the AMI backbone necessary to realize the full benefits of smart meters.” See February 19, 2020 AMI Order; See EMP 5.3.1 at p. 185. However, the Board noted, as provided in the EMP, replacing aging standard

³ On August 23, 2017, the Board authorized Rockland Electric Company (“RECO”) to implement its AMI program, but ordered that that RECO’s costs and recovery would remain subject to a prudency review in a subsequent base rate case after RECO’s AMI deployment (“2017 RECO AMI Order”). The Board ordered that an independent consultant provide a comprehensive Cost Benefit Analysis (“CBA”) of RECO’s AMI program, and that RECO’s program should serve as an AMI case study. As such, the Board placed a moratorium on pre-approval of the cost recovery for all AMI programs, for all utilities, until such time that the Board made a determination that AMI was a prudent investment. See In re the Petition of Rockland Electric Company for Approval of an Advanced Metering Program; and for Other Relief, BPU Docket No. ER16060524, Order dated August 23, 2017 (“2017 RECO AMI Order”).

⁴ See Correspondence from Rate Counsel to PSE&G dated August 27, 2019 in BPU Docket No. EO18101115.

⁵In the Matter of the Petition of Rockland Electric Company for Approval of an Advanced Metering Program; and for Other Relief, BPU Docket No. ER16060524, Order dated February 19, 2020.

meters with new standard meters, and not AMI smart meters, may “prevent ratepayers, and the grid as a whole, from realizing the benefits of AMI for years, or risk stranding the investments in newly installed standard meters that are no longer useful.” Ibid. Therefore, the Board expected the utilities to keep stranded costs to a minimum.

PSE&G’s EC-AMI PETITION

As noted above, on October 11, 2018, PSE&G filed its EC-AMI Petition seeking Board pre-approval of a five-year, estimated investment of \$721 million, and O&M costs of \$73 million, to implement AMI throughout the PSE&G electric service territory (“AMI Program”). The EC-AMI Petition provided that the AMI Program would further the State’s goals by, “(a) lowering energy consumption and customer bills; (b) reducing greenhouse gas emissions; (c) making the grid more reliable, resilient and safe; and (d) enabling a number of customer, community, and company energy smart capabilities.”⁶ Additionally, the Company asserted that the EC-AMI Petition was submitted in accordance with Recommendation #12 of Board Staff’s report regarding the electric distribution companies’ performance during the March 2018 Nor’easters. Recommendation #12 provides that the EDCs without AMI must “submit a plan and cost benefit analysis for the implementation of AMI” and each plan “should focus on the use and benefits of AMI for the purpose of reducing customer outages and outage durations during a major storm event.”⁷ According to the EC-AMI Petition, the AMI Program aims “to enhance safety, reliability, and/or resiliency of the electric grid through the deployment of AMI throughout PSE&G’s electric service territory.”⁸

PSE&G proposed a cost recovery method similar to the approach used in Energy Strong and its Gas System Modernization II programs. PSE&G’s proposed cost recovery mechanism would allow for semi-annual base rate adjustment filings consistent with Infrastructure Investment Program (“IIP”) regulations. The Company also proposed that the costs to be included in the rates would include the following: “depreciation/amortization expense providing for the recovery of the invested capital over its useful book life; return on net investment, where net investment is the capital expenditures less accumulated depreciation/amortization, less associated accumulated deferred income taxes; and the impact of any tax adjustments applicable to the CEF-EC Program.”⁹

The proposed AMI Program will consist of 70 applications or “use cases.” The EC-AMI Petition sought approval solely of the initial phase, referred to as “Release 1,” that features 22 of the 70 cases. Release 1 will focus solely on customer engagement, network operations and planning, new utility products and services, the foundation for the AMI Program, and the platform consisting of the advanced electric meters and the communications back-office systems.¹⁰

The Company’s EC-AMI Petition asserted that the AMI Program is cost effective, with an estimated \$1.73 billion of customer and operations benefits during the deployment and benefit realization period of nearly 20 years. When compared to the \$794 million in estimated costs, the Company states that there will be a net benefit of \$937 million.¹¹

⁶ See EC-AMI Petition at p. 2, paragraph 4.

⁷ See EC-AMI Petition at p.3, paragraph 7, citing Order Accepting Staff’s Report Requiring Utilities to Implement Recommendations, BPU Docket No. EO18030255, (July 25, 2018), p. 13.

⁸ See EC-AMI Petition at p.2, paragraph 5.

⁹ See EC-AMI Petition at p. 12, paragraph 27.

¹⁰ See EC-AMI Petition at p.4, paragraph 8.

¹¹ See EC-AMI Petition at p.6, paragraph 11.

The Company plans to install approximately 2.2 million advanced or “smart” meters over the five (5) year program period. According to the EC-AMI Petition, residential customers seeking to opt-out and not receive a smart meter would pay a \$20 monthly fee for meter reading services and the proposed replacement fee for switching from a smart meter to a non-AMI meter would be \$45. There would be no opt-out options for commercial and industrial customers under the Company’s proposal.

The Company forecasted that the initial annual impact of the proposed rates for the first roll-in period to the typical residential customer using 750 kilowatt-hours in a summer month, and 7,200 kilowatt-hours annually, is an increase of \$5.52 or approximately 0.45%.¹²

To aid in the setting of an appropriate schedule, Board Staff, Rate Counsel, and the Company agreed to a proposed procedural schedule, a copy of which is attached hereto as Exhibit A.

MOTIONS TO INTERVENE

Google, LLC. (“Google”)

Google filed a Motion to Intervene on November 16, 2018.

According to its motion, Google is a multinational technology company specializing in cloud-based services and products. Google has a Google Cloud Platform (“GCP”); a suite of cloud computing services that Google not only uses internally, but externally for its own end-user products, including the electric utility industry. Some examples are the Nest Learning Thermostat and the Nest Thermostat E, both of which include energy efficiency programs. Google also offers voice activated assistant services to customers which also are utilized by the utilities.

Google claimed that the increase in information collected by the AMI meters, versus previously with analog meters, will require the use of the internet and cloud storage capabilities. Therefore, Google claimed to have an interest in the process and outcome of this matter because it is a leading developer of cloud-based services for the energy industry. Additionally, Google provided that it could explain the technology to the parties, and participate in the discussions so PSE&G can learn how Google can assist the Company in its AMI goals. Google added that its intervention in this matter will not cause confusion or delay the conclusion of this proceeding, but rather, it will clarify certain issues and contribute to the development of a complete record.

Enel X North America, Inc. (“Enel X”)

Enel X filed a motion to intervene on November 16, 2018.

According to its Motion, Enel X provides complete energy solutions to businesses and consumers by partnering with utilities, including in New Jersey, to “make the electric grid more affordable, reliable and clean.” Thus, Enel X explained that its experience developing and operating energy storage projects will constructively assist the Board in evaluating the value of proposed investments details of project design to maximize benefits while limiting costs.

¹² See EC-AMI Petition at p.13-14, paragraph 30.

Enel X stated that it is substantially, specifically and directly affected by the outcome of this proceeding because it manages a network of metering infrastructure with its Demand Response and Distributed Energy Resources (“DER”) customers. Thereby, Enel X argued that changes to PSE&G’s infrastructure or technology platforms that could impact any communications between Enel X, its customers, and PSE&G are of vital interest to Enel X. Enel X further provided that it has a unique perspective in the data, telemetry, and network changes that could result from the AMI Program. Enel X stated that its interests will not be addressed by any other party in this proceeding, and will not create any delay in this matter.

New Jersey Large Energy Users Coalition (“NJLEUC”)

NJLEUC filed a Motion to Intervene on November 13, 2018.

According to its Motion, NJLEUC was formed, in part, to monitor regulatory proceedings involving the State’s electric and natural gas utilities, including PSE&G. Members of NJLEUC are large volume purchasers of electric natural gas distribution service from PSE&G and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserted that its interests with regard to the AMI Petition are unique and not adequately represented by any other party. NJLEUC further asserted that it has a unique perspective and insight regarding the potential impact on large volume electric and gas customers of the significant rate relief sought by PSE&G in this proceeding, the outcome of which will have an impact on the reliability and cost of electric distribution service received from PSE&G by the members of NJLEUC. Thus, NJLEUC stated that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLEUC, making intervention appropriate.

NJLEUC points out that it has been granted intervenor status in recent PSE&G regulatory, infrastructure and rate proceedings, including Energy Strong, Gas Modernization I and II, Energy Efficiency, Energy Efficiency Extension and various solar proceedings. NJLEUC further stated that it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

By motion dated November 13, 2018, NJLEUC, via Steven S. Goldenberg, Esq., also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg stated that Mr. Forshay, is a member in good standing admitted to the bar of the District of Columbia and has had significant experience representing the interests of large end-use customers, and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represented that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing large end-use customers before Federal Energy Regulatory Commission and the Board. He stated that his experience includes involvement in the various PSE&G utility rate and infrastructure proceedings brought before the Board. Mr. Forshay represented that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agreed to abide by the other requirements for admission pro hac vice.

On November 13, 2018, via sworn affidavit, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

Eastern Environmental Law Center (“EELC”)

EELC submitted a Motion to Intervene on behalf of Environment New Jersey (“ENJ”), Environmental Defense Fund (“EDF”), Sierra Club, and Natural Resources Defense Council (“NRDC”) on November 16, 2018.

EELC claimed they will be substantially, specifically and directly affected by the outcome of this matter because the AMI Program has significant implications for the provision of utility service and the functioning of the grid as it relates to safety, modernization, and economic welfare. According to EELC, this goes to the “heart” of their mission; to implement grid modernization in a manner that achieves all available customer benefits, including environmental benefits. Furthermore, EELC provided that their expertise in understanding best practices in instituting grid modernization programs will lead to evidence and testimony demonstrating where the AMI Program can be optimized to be cost-effective while delivering all available benefits, including, but not limited to, clean energy benefits.

As provided in the Motion, ENJ is one of the State’s largest nonprofit, citizen-based advocacy organizations with more than 20,000 members, most of whom are in PSE&G’s service territory. As such, ENJ argued that the AMI Program directly impacts its members. ENJ has intervened in prior Board proceedings, including the construction of the Susquehanna Roseland transmission line. The organization advocates for a more resilient energy grid, allowing the state to reach its clean energy goals and bring smart meter technology to New Jersey ratepayers.

EDF is a national nonprofit organization which “links science, economics, and law to create innovative, equitable, and cost-effective solutions to society’s most urgent environmental problems.” EDF has over 11,000 members in New Jersey, and 1,000 in PSE&G’s service territory. EDF claimed the EC-AMI Petition directly impacts the safety, economic and environmental interests of EDF and its members. EDF has previously intervened in other BPU matters, and asserts it provided material and unique contributions.

NRDC is a nonprofit organization with 3 million members, and 500 scientists, lawyers and policy advocates whose stated goal is to “ensure the rights of all people to the air, the water, and the wild.” NRDC has more than 12,000 members in New Jersey, many of whom are in PSE&G’s service territory.

Sierra Club has more than 20,000 members in New Jersey and is dedicated to “exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.”

EELC claimed that their interests are sufficiently different from any other party, and granting intervenor status will not cause delay in this proceeding.

By motion supported by an affidavit dated November 10, 2018. Arron Kleinbaum, Esq. moved for the admission pro hac vice of John Finnigan, Esq. as attorney for ENJ, EDF, Sierra Club, and NRDC.

Mr. Kleinbaum stated that Mr. Finnigan is a member in good standing admitted to the bars of Ohio and Kentucky, and that he has significant experience representing the interests of environmental

non-profit organizations before public utility commissions. He has an attorney-client relationship with EDF, and by his affidavit, Mr. Finnigan represents that EDF, Sierra Club, and NRDC have requested his representation. He stated that his experience includes involvement in the various PSE&G utility rate and infrastructure proceedings brought before the Board, including PSE&G's Energy Strong program. Mr. Finnigan represented that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice.

On November 10, 2018, via a sworn affidavit, Mr. Finnigan provided proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

Market Participants

On November 16, 2018, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Gateway Energy Services Corporation, and Centrica Business Solutions filed a motion to intervene. On December 6, 2018, a Supplemental Motion to Intervene was filed adding two (2) additional entities; NRG Energy Inc. ("NRG") and Just Energy Group, Inc. ("Just Energy"). All seven entities were collectively identified as the "Market Participants."

Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Gateway Energy Services Corporation (collectively "Direct Energy") provided that it is one of the largest competitive retail providers of electricity, natural gas and home services in North America, with over 4 million customer relationships, multiple brands, and approximately 5,000 employees. As third party energy suppliers ("TPSs"), the four (4) Direct Energy companies hold electric power licenses to sell electricity to customers in PSE&G's service territory. Direct Energy offers Hive products which allow customers to control their heating and cooling, lights, plugs and sensors through a mobile application. Additionally, Direct Energy has a family of brands and offers home energy audits which uses customer data to perform analytics and offer recommendations on methods to reduce energy consumption.

Centrica Business Solutions ("Centrica"), an affiliate of Direct Energy, integrates localized energy solutions for business around that world that leverages its energy insights, onsite generation and demand management capabilities. It provides end-to-end energy services across design, manufacture, financing, installation, and maintenance.

NRG argued that it is a leading integrated Fortune 500 power company which operates electric generation, a demand-side business focusing on demand response, and other customer-sited energy efficiency and distributed energy investments serving residential and commercial customers. Just Energy is the parent company of licensed TPSs serving retail customers in New Jersey.

NRG and Just Energy joined in the prior Direct Energy and Centrica submission on essentially the same grounds. The Market Participants provided that there are no other substantive changes to the previously filed Motion. The Market Participants claim that Direct Energy, NRG, and Just Energy, as competitive suppliers, and Centrica as a provider of distributed energy solutions in the private market, give them a unique perspective that is likely to benefit the Board as it reviews the EC-AMI Petition. As such, they argued that the Market Participants measurably and constructively will advance the proceeding and allowing intervention will not result in delay.

The Market Participants claimed that they will be directly affected by the outcome of this proceeding. They asserted that it is critical that their motion be granted so they can adequately guard against being placed at a competitive disadvantage relative to PSE&G in the provision of

products and services to customers. They claimed that the AMI Program is “far more than a proposal to deploy smart meters to all customers.” Instead, they alleged that the Company is “seeking to use ratepayer funded AMI deployment as a platform for launching itself into the role of the predominant energy company to compete with TPSs and other private market participants in developing innovating products and services.” They further claimed that the Company’s efforts to use ratepayer funds to expand its role beyond an electric distribution company will disrupt the effective functioning of private markets where many products and services identified in the EC-AMI Petition are already offered. The Market Participants believe that innovative energy solutions of the types referenced by the Company are best delivered by the competitive marketplace. It is argued that the Company will have a unique opportunity to strengthen its monopoly via the extensive customer outreach and communications described in the EC-AMI Petition. This “constant communication” would allow the Company to serve as the only entity customers interact with on energy issues enabled through AMI.

In addition, Direct Energy’s status as a competitive supplier, and Centrica’s status as a provider of distributed energy solutions in the private market, provides a unique perspective that is likely to benefit the Board in its review of this matter. They are unaware of any other parties to this matter that will adequately represent their interest in this proceeding due to their unique business models and perspectives. As such, both claimed they will measurably and constructively advance the proceeding, and intervention will not result in delay.

The Market Participants also argue that the addition of NRG and Just Energy is still timely notwithstanding the filing on December 6, 2018 because they are seeking to join the Intervention timely filed by Direct Energy and Centrica on November 16, 2018. Additionally, the Market Participants cite In the Matter of the Verified Petition of Jersey Central Power and Light Company and Mid-Atlantic Interstate Transmission, LLC, et. al., Docket No. EM15060733 (Order Dated August 15, 2016) where late intervention was granted when the party’s expertise would contribute to a full record. The parties claimed they are raising no new issues from the original motion, but rather, would “allow the Board to hear, through the single voice of the Market Participants, the perspectives of additional companies in the energy market with unique business models, product and service offerings and experiences.”

By motion dated November 16, 2018, Christopher E. Torkelson Esq., moved for the admission pro hac vice of Karen O. Moury, Esq., and Sarah C. Stoner, Esq. The motion included sworn affidavits by Mr. Torkelson, Ms. Moury, and Ms. Stoner.

Mr. Torkelson stated that Ms. Moury and Ms. Stoner are members in good standing admitted to the Bar of the Commonwealth of Pennsylvania. For the purposes of this proceeding Ms. Moury and Ms. Stoner will be associated with Mr. Torkelson, and Mr. Torkelson will continue to serve as counsel of record for both Direct Energy and Centrica. Mr. Torkelson certified that Ms. Moury and Ms. Stoner have significant experience representing the interests of retail energy providers in regulatory and administrative proceedings, and have a long-standing attorney-client relationship with both Direct Energy and Centrica. Mr. Torkelson represented no delay would occur by their acting as attorneys for Direct Energy and Centrica

On November 16, 2018 via their sworn affidavits, Ms. Moury and Ms. Stoner provided proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

MOTIONS TO PARTICIPATE

JCP&L

On November 14, 2018, JCP&L filed a motion to participate.

According to its motion, JCP&L is an electric utility primarily engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to approximately 1.1 million residential, commercial and industrial customers located within 13 counties and 236 municipalities of the State of New Jersey.

JCP&L argued that the Board's decision in this matter will have a precedential effect not only on PSE&G, but also New Jersey's other electric and gas utilities, including JCP&L and its customers. A variety of issues that will be addressed in this case may have an impact on JCP&L by serving as precedent for JCP&L. JCP&L will therefore likely be directly and specifically affected by the relief provided in this proceeding.

According to JCP&L, its service territories, customers, and operations are distinct from other parties or participants in this case. Thus, JCP&L claims no other party will represent the interests of JCP&L in this case. JCP&L indicated it has a history of coordinating its activities in dockets at the Board with other similar entities where appropriate. JCP&L represents it will coordinate its representation with other similarly situated entities in this matter to the extent it finds such action appropriate. JCP&L also stated that due to its experience in the electric industry, its participation is likely to add constructively to the proceeding. JCP&L further represented it will abide by any schedule set for this proceeding and the granting of its motion will not cause undue delay or confusion.

ACE

On November 15, 2018, ACE filed a motion to participate.

According to its motion, ACE is a New Jersey public utility engaged in the transmission, distribution and sale of electric energy for residential, commercial, and industrial purposes within New Jersey. ACE's service territory comprises eight counties located in southern New Jersey and includes approximately 553,000 customers.

ACE argued that as only one of four (4) investor-owned electric utilities in New Jersey servicing retail customers, it has a significant interest in this proceeding. ACE claimed that as an investor owned electric utility serving retail customers, ACE's interests are materially different from PSE&G and from consumer interests who are represented by the Board and Rate Counsel. According to ACE, no other party will represent the interests of ACE in this case. ACE further represented it will abide by the procedural schedule set for this proceeding.

Open Systems International ("OSI")

On November 14, 2018, OSI filed a motion to participate in this proceeding.

OSI is a Minnesota corporation that develops and delivers utility automation systems, including distribution management, outage management, and energy management systems. OSI has been a strategic supplier to PSE&G since 2002 in the supply of Supervisory Control and Data Acquisition system and other products. According to the motion, OSI assists utilities like PSE&G

to improve safety, reliability and efficiency of its distribution system and provides timely and reliable data about power system conditions and outages.

Pursuant to its motion, OSI's experience in distribution systems and outage management will constructively assist the Board in evaluating the value of the AMI Program. Additionally, it is likely that OSI will be retained to perform services in support of the AMI Program, and as such, has an interest in the outcome of this matter.

Therefore, OSI argued that the issues to be decided in this matter substantially, significantly and directly affect it, and that its participation will not cause confusion or delay the matter.

RECO

On November 14, 2018, RECO filed a motion to participate.

According to its motion, RECO is a New Jersey public utility engaged in the distribution and sale of electric energy for residential, commercial, and industrial purposes in the northern parts of Bergen and Passaic Counties and small areas in the northeastern and northwestern parts of Sussex County, New Jersey. RECO serves approximately 72,000 electric customers in New Jersey.

Much like ACE, RECO argued that as only one of four (4) investor-owned electric utilities in New Jersey servicing retail customers, it has a significant interest in this proceeding. RECO claimed that as an investor owned electric utility serving retail customers, RECO's interests are materially different from PSE&G. According to RECO, its interests will contribute to a complete record for consideration by the Board without causing delay. RECO further represented it will abide by the procedural schedule set for this proceeding.

RESPONSES

PSE&G and Market Participants

On November 26, 2018, PSE&G submitted a letter in opposition to the November 16, 2018 Motion to Intervene filed on behalf of Direct Energy and Centrica.

PSE&G alleged that Direct Energy and Centrica cannot demonstrate that they will be substantially, specifically and directly affected by the outcome of the case. PSE&G argued that Direct Energy and Centrica's claim that they must "adequately guard against being placed at a competitive disadvantage relative to a regulated utility in the provision of products and services to customers" is "misguided" because the foundation of the AMI Program is the deployment of AMI in PSE&G's electric service territory. Furthermore, the 22 Use Cases of AMI deployment, the only ones before the Board, "represent core utility functions that do not infringe on the province of TPSs or 'other private market participants.'" PSE&G attested that there is nothing about the Company's planned AMI deployment, or advanced meters, that will suppress and/or intrude upon competitive markets. Additionally, PSE&G stated that Direct Energy and Centrica's claim that the Company's outreach campaign will provide PSE&G with an opportunity to strengthen its monopoly relationship with customers does not warrant intervention. The Company claimed it must effectively communicate with its customers before removing and installing 2.2 million meters.

The Company also argued that if granted intervention, Direct Energy and Centrica would delay the matter and cause confusion. The Company noted that their moving papers discuss issues outside the scope of the EC-AMI Petition, and thus, would require the introduction of topics that have no bearing on the ultimate decision.

On December 3, 2018, Direct Energy and Centrica submitted a letter in response to PSE&G's opposition, claiming, *inter alia*, that they will be "substantially, specifically and directly affected by the outcome of this contested case" and that their "business interests are sufficiently different from that of any party so as to add measurably and constructively to the scope of the case."

They argued the importance of access by TPSs and market participants to the customer usage data that will be made available through AMI. They discussed being able to develop "innovative products and services in the competitive market." They also noted that Direct Energy is a PSE&G customer at its corporate location in Iselin, New Jersey.

Direct Energy and Centrica reiterated that intervention in this proceeding is "necessary to protect their direct and substantial business interests in the outcome of this proceeding. Key issues identified by the motion to intervene include: 1) access by TPSs and other market participants to smart meter data; 2) use of smart meter data by PSE&G; 3) adverse effect on private market participants of allowing PSE&G to use ratepayer funds to develop and promote new programs; and 4) the need to avoid establishing a framework that gives PSE&G a competitive advantage over third party suppliers and other market participants."

Direct Energy and Centrica contested PSE&G's description that the EC-AMI Petition is "a utility filing about utility meters, plain and simple." Instead, they argued that it proposes to use the smart meter technology as a platform enabling PSE&G to become a "leading smart energy services company." Direct Energy and Centrica claimed that it is the Company's position to directly compete with TPSs, and thus, intervention will allow them to protect their business interests.

Direct Energy and Centrica acknowledged the "22 Use Cases of AMI deployment" but claimed that the Company omitted "the use cases that would enable PSE&G to intrude upon competitive markets, such as enhanced customer engagement and communications including data analytics (#1), interactive energy demand and bill management (#4), customer segmentation and behavioral analysis (#5), customer energy efficiency programs (#7), and customer distributed energy resources (#9)."

Direct Energy and Centrica noted that it is "imperative that the Board establish a framework now that ensures that PSE&G does not use the smart meter deployment to intrude upon competitive markets," which they argue is the Company's intent. While Direct Energy and Centrica Business Solutions argued that entry as a participant would be too limiting, and although they should not be limited in any way, they do not intend to challenge the benefits/costs of AMI or PSE&G's proposed cost recovery mechanism.

After receipt of the Market Participant's Supplemental Motion to Intervene, on December 17, 2018, PSE&G submitted a letter in opposition to the Market Participants' Supplemental Motion to Intervene. The Company incorporated its arguments previously set forth in its November 26, 2018 opposition, but now with respect to NRG and Just Energy. Additionally, the Company claimed that the Supplemental Motion to Intervene was untimely as the deadline for filing said motions was November 16, 2018. And finally, the Company argued that the Motion should be denied because it has caused, and will continue to cause, confusion and undue delay.

On December 19, 2018, the Market Participants submitted a letter in response to PSE&G's opposition to the Supplemental Motion to Intervene. The Market Participants alleged that their business interests are sufficiently different from that of any party so as to add measurably and constructively to the scope of the case. The Market Participants claimed that their intervention would not confuse the issues or cause delay. Rather, it would ensure that there is a more complete record about matters affecting the competitive market.

The Market Participants explained that they all have customers in New Jersey, and as such, they intend to jointly litigate the case as a single entity. Therefore, any claims by PSE&G regarding confusion and undue delay are unfounded.

Furthermore, the Market Participants argued the supplemental motion is timely. It is solely the addition of NRG and Just Energy to the Motion filed by Direct Energy and Centrica. They intend to present a unified position in the proceeding so as to not require changes to the number of parties or the procedural schedule. The interests of NRG and Just Energy are aligned, and therefore, the Market Participants argue that there will be no delay.

DISCUSSION

Motions to Intervene or Participate

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, file a statement or brief, file exceptions, or all of these as determined by the trier of fact.

As the Board stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenors' interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In the Matter of the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

After consideration of the papers, I **HEREBY FIND** the members of NJLEUC and EELC who represent large and identifiable customer groups of PSE&G will be directly affected by the outcome of this proceeding. I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that NJLEUC and EELC have met the standards for intervention, having received no objection to NJLEUC, and EELC, I **HEREBY GRANT** the Motions for Intervention of NJLEUC and EELC pursuant to the authority granted to me by the Board under the October 29, 2018 Order.

After consideration of the papers of the Market Participants, including the initial and supplemental Motions for Intervention, and the opposition filed by PSE&G, and the Market Participants' responses thereto, I am persuaded by the Company's position that the Market Participants fail to satisfy the legal requirements to warrant intervention. Specifically, I am not persuaded that the Market Participants demonstrated that they will be substantially, specifically and directly affected by the outcome of the case. The Market Participants claim that they must be able to "adequately guard against being placed at a competitive disadvantage relative to a regulated utility in the provision of products and services to customers." I agree with the Company that this claim is "misguided" because the only Use Cases currently before the Board "represent core utility functions that do not infringe on the province of third party suppliers or 'other private market participants.'" Therefore, I agree with PSE&G that there is nothing about the Company's planned Release 1 AMI deployment, or advanced meters, that will suppress and/or intrude upon competitive markets at this time. Additionally, I am not persuaded that the Company's communications with its customers here will be to the competitive disadvantage of Market Participants. PSE&G's argument that it must effectively communicate with its customers before removing and installing 2.2 million meters has merit.

Therefore, I **HEREBY DENY** the Motion to Intervene filed by the Market Participants, and pursuant to N.J.A.C. 1:1-16.5, I treat this motion, in the alternative, as a Motion to Participate. Considered under this standard, I **HEREBY FIND** that the Market Participants are likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** participant status to the Market Participants, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

The arguments advanced by Google in support of its motion focus on technology and its cloud-based services and products, including those that impact the utility industry. I am persuaded that Google has vast experience and expertise regarding the much anticipated new technology that will be necessary as a part of the AMI Project. However, I am not persuaded that Google will be directly affected by the outcome of this proceeding. Instead, I believe that Google's vast technological knowledge and expertise could add measurably to this proceeding in an advisory role.

Therefore, I **HEREBY DENY** the Motion to Intervene filed by Google, and pursuant to N.J.A.C. 1:1-16.5, I treat this motion, in the alternative, as a Motion to Participate. I **HEREBY FIND** that the participation by Google is likely to contribute additional perspectives to the case without causing undue delay or confusion. Accordingly, to allow Google to share its expertise where appropriate, I **HEREBY GRANT** participant status to Google, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

The arguments advanced by Enel X for intervention provide that it will be affected by the outcome of this proceeding because it manages a network of metering infrastructure with its Demand Response and DER customers. As such, Enel X claimed that changes to PSE&G's infrastructure or technology platforms that would impact any communications between Enel X, its customers,

and PSE&G, are of vital interest to Enel X. I am persuaded that Enel X has significant experience in the areas of Demand Response and DER, as such, and similar to Google, I am persuaded that they would serve more in an advisory role regarding this one aspect of the AMI Project.

Therefore, I **HEREBY DENY** the Motion to Intervene filed by Enel X, and pursuant to N.J.A.C. 1:1-16.5, I treat this motion, in the alternative, as a Motion to Participate. I **HEREBY FIND** that the participation by Enel X is likely to contribute additional perspectives to the case without causing undue delay or confusion. Accordingly, to allow Enel X to share its expertise where appropriate, I **HEREBY GRANT** participant status to Enel X, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

With regard to the Motions to Participate filed by JCP&L, ACE, and RECO I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that these entities have similar if not identical interests in this proceeding, and that the participation of JCP&L, ACE, and RECO in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motions to participate filed on behalf of JCP&L, ACE, and RECO limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

In addition, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), OSI, as the supplier of SCADA systems and other products to PSE&G, combined with its expertise in distribution systems and outage management, will add constructively to the case without causing undue delay or confusion. Therefore, I **HEREBY FIND** that OSI has met the standards for participation in the AMI Program. Accordingly, I **HEREBY GRANT** the Motion to Participate of OSI on the basis of their representation that they will adhere to the scope of the issues to be addressed in this proceeding, and limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

Motions for Admission Pro Hac Vice

I reviewed the Motions of NJLEUC, Arron Kleinbaum, Esq., and Christopher Torkelson, Esq., and the supporting affidavits of Mr. Forshay, Mr. Finnigan, Ms. Moury, and Ms. Stoner, Esq. I agree that this proceeding involves a complex field of law. I am persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC, Mr. Finnigan specializes in this area and has an attorney-client relationship with EDF, and that EDF, Sierra Club, and NRDC have requested his representation, and Ms. Moury and Ms. Stoner specialize in this area and have an attorney-client relationship with the Market Participants. Having received no objections to the motion after due notice to the parties, I **FIND** that Mr. Forshay, Mr. Finnigan, Ms. Moury and Ms. Stoner satisfied the conditions for admission pro hac vice, submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, **ARE HEREBY ADMITTED** to practice before the Board pro hac vice in this matter provided that they shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) Notify the Board immediately of any matter affecting his/her standing at the bar of any other jurisdiction; and

- (4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

In addition, I reviewed the proposal for a preliminary schedule, which has been agreed to by Board Staff, Rate Counsel and the Company. I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, PSE&G seeks approval to implement and administer its AMI Program and its associated cost recovery mechanism. The Company proposes a five (5) year program with an initial expenditure of \$721 million in infrastructure investments and \$73 in O&M costs. The initial investment would encompass the first 22 of 70 proposed “use cases.” This initial phase would establish the foundation for the AMI Program, focusing on approximately 2.2 million advanced meters supported by certain communications and back-office systems. PSE&G proposes a cost recovery mechanism consistent with the Board’s infrastructure investment regulations, and is seeking approval to defer, as a regulatory asset, an estimated \$219 million (net book value) in stranded costs that will result from the replacement of currently-utilized electric meters with AMI meters.

Issues to be Resolved

- A. The cost effectiveness and cost efficiency of the activities and programs proposed for the five (5) years of the proposed AMI program;
- B. Is the Program non-revenue producing, accelerated capital spending pursuant to the requirements of N.J.A.C. 14:3-2a 1, et. seq.;
- C. Is the AMI Program necessary accelerated capital spend;
- D. Is the eligible AMI Program spending above the baseline spending level and incremental in nature; and
- E. The reasonableness and lawfulness of the proposed cost recovery mechanism.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in PSE&G's service territory. The dates, times, and locations of the public hearings are to be determined.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Evidentiary hearings are tentatively scheduled for the week of November 30, 2020 at a time and location to be determined based upon the availability of the parties and myself.

5. **STIPULATIONS:**

The Staff of the Board of Public Utilities, the Division of Rate Counsel and PSE&G have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 or as provided in Exhibit A.

9. **ORDER OF PROOFS:**

PSE&G has the burden of proof. The hearings will be conducted by topic in the following order:

First – PSE&G

Second – Rate Counsel

Third – NJLEUC

Fourth – EELC

Fifth – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

PSE&G will present the following witnesses: Gregory Dunlap, Vice President, Customer Operations, PSE&G; Donna M. Powell, Assistant Controller, PSE&G, PSEG Services Corporation; and Stephen Swetz, Senior Director, Corporate Rate and Revenue Requirements, PSEG Services Corporation. Additional witnesses may be identified by PSE&G as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel will present the following witnesses: Paul Alvarez; Matthew Kahal; and David Peterson. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

NJLEUC and EELC witnesses are to be determined.

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

All pending motions to intervene and/or participate have been addressed.

14. **SPECIAL MATTERS:**


None at this time.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: April 1, 2020



MARY-ANNA HOLDEN
COMMISSIONER

**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

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EXHIBIT A

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

BPU Docket No. EO18101115

PSE&G to Amend Petition as necessary	April 1, 2020
Motions filed by Any Party	May 4, 2020
Responses to Motions Filed	May 18, 2020
Decision Rendered on Motions	June 1, 2020
Discovery requests served (rolling)	June 18, 2020
Company responses to discovery due	July 6, 2020
Discovery Conference	Week of July 6, 2020
Second Round Discovery (rolling)	July 20, 2020
Responses to second round discovery	August 3 , 2020
Discovery/Settlement Conference	Week of August 10 , 2020
Intervenor/respondent testimony due	August 31, 2020
Settlement Conferences	Week of August 31
Discovery requests on intervenor/respondent testimony	September 7 , 2020
Public hearings	Six total (three evenings) TBD
Responses to discovery on intervenor/respondent testimony	September 21, 2020
Rebuttal testimony	October 5, 2020
Discovery requests on rebuttal testimony	October 19 , 2020
Company responses to discovery on rebuttal testimony	November 2, 2020
Settlement conferences	Weeks of November 9 and November 16, 2020
Evidentiary hearings (if necessary) with live surrebuttal	Week of November 30, 2020
Initial and Reply Briefs	TBD by Commissioner after evidentiary hearing

* Evidentiary hearing dates subject to Commissioner Holden’s availability