



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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ENERGY

|                                           |   |                        |
|-------------------------------------------|---|------------------------|
| IN THE MATTER OF THE PETITION OF ATLANTIC | ) | PREHEARING ORDER WITH  |
| CITY ELECTRIC COMPANY FOR APPROVAL OF A   | ) | PROCEDURAL SCHEDULE    |
| VOLUNTARY PROGRAM FOR PLUG-IN VEHICLE     | ) | AND ORDER ON MOTIONS   |
| CHARGING                                  | ) | TO INTERVENE OR        |
|                                           | ) | PARTICIPATE AND MOTION |
|                                           | ) | TO STAY                |
|                                           | ) |                        |
|                                           | ) | DOCKET NO. EO18020190  |

**Parties of Record:**

**Andrew McNally, Esq.**, Atlantic City Electric Company  
**Stefanie Brand, Esq.**, Director, NJ Division of Rate Counsel  
**Murray E. Bevan, Esq.**, Bevan, Mosca & Giuditta P.C. on behalf of ChargePoint, Inc.  
**Raghu Murthy, Esq.**, Eastern Environmental Law Center on behalf of Natural Resources Defense Council

**BY COMMISSIONER UPENDRA J. CHIVUKULA:**

On February 23, 2018, Atlantic City Electric Company ("ACE" or "Company") filed a petition ("PIV Petition") with the New Jersey Board of Public Utilities ("Board") for approval of a Voluntary Program for Plug-In Vehicle ("PIV") Charging ("PIV Program"). By Board Order dated March 26, 2018, the Board retained jurisdiction over the original matter, and designated myself as the presiding officer.<sup>1</sup> On or about December 17, 2019, ACE filed an amended petition ("Amended Petition"), proposing 13 offerings designed to accelerate PIV adoption in New Jersey.

The Amended Petition proposes a multi-year, \$42.107-million-dollar PIV program to incentivize off-peak charging of PIVs, develop PIV infrastructure, provide grants to foster innovation in electrifying the transportation sector, and support for electrifying school buses. ACE's Amended Petition includes initiatives that consist of Time of Use ("ToU") rates for residential customers who charge their PIVs during off peak hours. Additionally, ACE proposes working to have properly sited PIV charging infrastructure to alleviate "range anxiety", as well as infrastructure accessible to customers living in multi-family dwellings units ("MDUs") as well as low- to-moderate income communities ("LIC") and environmental justice ("EJ") communities.

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<sup>1</sup> I/M/O the Petition of Atlantic City Electric Company For Approval of a Voluntary Program For Plug-In Vehicle Charging, BPU Docket No. EO18020190, Order dated March 26, 2018 ("March 2018 Order").

ACE is seeking to recover \$42.107 million dollars via a base rate case. ACE first proposes that all capital investments related to the PIV be added to rate base as it is placed in service, for recovery in a future base rate proceeding. Second, ACE seeks to establish a regulatory asset ("PIV Regulatory Asset") which would capture the Company's non-capital costs associated with the program. The PIV Regulatory Asset would also capture the incremental revenues ACE would receive from use of its public chargers under Offerings 7 and 8, offsetting costs to ratepayers.

As proposed by ACE, the PIV Regulatory Asset and the undepreciated book value of the new capital placed in service would accrue at the Company's full authorized return from inception and would be recoded into regulatory assets. Again, the Company would seek recovery of the PIV Regulatory Asset amortization expense in a future base rate case.

ACE estimates that a typical residential customer using 679 kWh per month will pay an additional 54 cents per month for the recovery of the PIV Program costs. The impact, the Company hopes, will be mitigated by other beneficial impacts.

By the March 2018 Order, the Board designated the undersigned as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

Rate Counsel filed a Motion to Stay, which was joined by Charge Point, Inc. ("ChargePoint"). In response, ACE filed opposition to Rate Counsel's motion, to which Rate Counsel filed a reply.

## **THE MOTIONS**

### **NRDC Motion to Intervene**

On April 12, 2018, The Natural Resources Defense Council ("NRDC") a global nonprofit membership organization with more than three (3) million members, 12,000 of which are in New Jersey, filed a motion to intervene. NRDC Motion at 3.

NRDC asserts that it satisfies the Board's requirements for intervention. Id. at 9. NRDC maintains that ACE's petition will have a direct impact on NRDC and its members, specifically in that the nonprofit has an interest "in ensuring that, if approved, the Plug-In Vehicle Program is implemented in a manner that lowers the cost of integrating renewable energy into the grid, lower electricity rates, and deploys charging infrastructure strategically." Id. at 10. NRDC further states that the "economic interests, environmental interests, and health of NRDC and its members (especially those within New Jersey) will be substantially, specifically and directly affected by the outcome of this case." Id. at 9.

NRDC points out that the Board has granted intervenor status to it in several clean energy and energy efficiency program petitions, due to NRDC's expertise in these fields.

NRDC argues that it has a unique position as a nonprofit organization working to use partnerships, best practices and market mechanisms to inform energy policy that benefits the environment." Id. at 11. NRDC claims that it would "provide material and unique contributions to this matter, particularly with respect to strategic deployment of charging infrastructure, load management, consumer pricing protections, public education on PIVs, data collection and performance metrics." Id. at 6.

### ChargePoint, Inc. Motion to Intervene

On April 13, 2018, Charge Point, Inc. (“ChargePoint”), a large electric vehicle (“EV”) charging network with over 7,000 customers nationwide, filed a motion to intervene. PIV stations in ChargePoint’s network are almost exclusively owned and operated by charging station site hosts, which provide charging services to EV drivers. According to its petition, ChargePoint has over 670 charging spots in New Jersey. ChargePoint Motion at 2.

ChargePoint seeks intervenor status, asserting that its customers are “directly affected by these proceedings.” Id. at 2. ChargePoint argues that ACE’s “proposal to own an extensive network chargers and operate them as a regulated entity in a competitive market, with ACE ratepayers bearing the full installation costs and risks, is unnecessarily complex and expensive approach that will negatively impact the existing competitive charging market.” Id. at 3. ChargePoint is concerned that the “outcome of this proceeding will affect the competitive market for charging stations in the ACE service territory— a market which ChargePoint is an active participant.” Ibid.

ChargePoint further attests that its interests in the proceeding cannot be adequately represented or protected by any other party. Id. at 3,4. ChargePoint’s motion briefly details the testimony and supporting evidence it plans on submitting which is “necessary for the Board to fully evaluate” the proposed program, and would not otherwise be available. Id. at 4. Due to this “substantially different” testimony, ChargePoint asserts that it will clarify certain issues and contribute to the development of a complete record. Id. at 5.

### Tesla, Inc. Motion to Intervene

On February 21, 2020, Tesla, Inc. (“Tesla”) a developer and manufacturer of EVs, EV charging stations, and energy storage facilities, filed a motion to intervene in response to ACE’s Amended Petition. Tesla’s motion to intervene was filed by its General Counsel, Kevin Auerbacher. Although Mr. Auerbacher is an attorney he is not authorized to practice in New Jersey and therefore may not represent Tesla before the Board without filing an appropriate motion pursuant to N.J.A.C 1:1-5.2. Consequently, I will not consider Tesla’s motion at this time.

### Greenlots, Inc. Motions to Participate and Intervene

On April 13, 2018, Greenlots, Inc. (“Greenlots”), a provider of EV charging software and services, filed a motion to participate. Greenlots states that it has a “significant interest in the growth of EV charging infrastructure, the role of utilities, the scale of the market for electric vehicle charging infrastructure, and in regulatory developments that affect this landscape.” Greenlots Motion at 2.

Greenlots asserts that it will constructively add to the case by offering its “deep and broad experience in developing electric vehicle charging infrastructure based upon our work with a wide array of clients and partners, including automakers, utilities, cities, the public and other stakeholders.” Id. at 2. Additionally, Greenlots argues that, as an EV equipment, software and service provider, it has a direct and substantial interest in this proceeding that will not be adequately represented by any other party. Ibid.

On March 13, 2020 Greenlots filed a motion to Intervene. Greenlots asserts that has a direct and substantial economic interest in the growth of New Jersey’s EV and EV Infrastructure markets and that it’s interest will be affected by the Board’s determination in this proceeding. Greenlot’s

Motion at 3. Greenlots additionally argues that its interest are significantly different from that of any party and will add measurably and constructively to the scope of the case. Ibid.

#### PSE&G Motion to Participate

On March 9, 2018, Public Service Electric and Gas Company (“PSE&G”), a New Jersey public utility involved in the purchase, transmission, distribution, and sale of electric energy with more than 2 million residential, commercial and industrial electric customers in the state, filed a motion to participate.

PSE&G is seeking participant status and asserts that issues to be addressed in the case may have an impact of establishing precedent, and therefore, the company will be directly and specifically affected by this docket. PSE&G Motion at 3. PSE&G claims that no other party or participant will represent its interests as the operations of the company are distinct from those of other parties and participants. Ibid. PSE&G also asserts that its experience in the electric industry will add constructively to the proceeding.

PSE&G affirms that it will abide by the schedule set for the proceeding and will coordinate with other similarly-situated parties to coordinate its representation. Lastly, PSE&G insists that its participation will not cause undue delay or confusion. Id. at 3-4.

#### JCP&L Motion to Participate

On March 30, 2018, Jersey Central Power & Light Company (“JCP&L”), a New Jersey electric public utility, primarily engaged in the purchase, transmission, distribution and sale of electric energy for over 1.1 million residential, commercial and industrial customers in the state, filed a motion to participate.

JCP&L contends that the Board’s decision in the case will have a precedential effect and impact on other New Jersey electric utilities, not just ACE, therefore, JCP&L will be directly and specifically affected by the proceeding. JCP&L Motion at 1. Further, the company believes that no other party will represent its interests in the case since its service territories are distinct from the other participants in the case. Due to JCP&L’s experience in the electric industry, it asserts that its participation is likely to add constructively to the proceeding. Id. at 2.

JCP&L attests that it will coordinate its activities in this docket with other similar entities where appropriate, that is will abide by any schedule set for this proceeding and that its participation would not cause any undue delay or confusion. Id. at 2.

### **RESPONSES**

The Board has not received any response to the motions to intervene or participate.

#### **Motion to Stay**

On April 6, 2018, Rate Counsel filed a Motion to Stay ACE’s petition with the Board arguing that the petition filed by ACE presents many significant unresolved policy questions. Rate Counsel argues that since the Board convened the EV Stakeholder Group (“EVSG”) that it is prudent to await stakeholder input to assist the Board in the development of its EV policies. Rate Counsel claims that ACE’s petition presumes that the Board will decide fundamental questions in a certain way, usurping the Board’s role in guiding this new industry. Rate Counsel submits that a stay will

not prejudice ACE as they are one of the electric distribution utility (“EDC”) companies that is actively participating in the EVSG and that there is ample time to complete the EVSG process. For these reasons Rate Counsel requested the Board stay ACE’s petition for approval of its PIV Program and hold the matter in abeyance until the conclusion of the Board’s EVSG process.

On April 16, 2018, ACE submitted opposition to Rate Counsel’s Motion to Stay, which was joined by PSE&G, asserting that Rate Counsel’s arguments mischaracterize the proposed PIV program and ignore clear-cut policy priorities articulated by Governor Murphy. First, ACE states that the EVSG and the PIV program are complementary and not mutually exclusive and that the proposal is in the public interest and will complement the Board’s on-going policy initiatives. Second, ACE asserts that the Board’s PIV policy will need to be realistic, flexible and agile. ACE claims that Rate Counsel’s position that the EVSG will result in immutable PIV policies that will be universally applied is misguided, as PIVs are a rapidly evolving technology that will require the Board to reexamine its policies periodically to ensure proper market development. ACE also argues that Rate Counsel’s exclusive focus on customers’ bills ignores the very real impacts of climate change that are already affecting utility customer. For these reasons ACE encouraged the Board to deny Rate Counsel’s motion to stay and to consider the factors in their petition as well as their opposition to move the PIV program forward.

On April 23, 2018, Rate Counsel filed a reply to ACE’s opposition arguing that ACE does not present any compelling arguments to deny Rate Counsel’s motion. Rate Counsel further argued that it concurs with the Board’s EVSG approach whereby important policy questions regarding PIV are addressed in a structured fashion with input from various stakeholders with divergent interests. Additionally, Rate Counsel contended that the utility-by-utility approach advocated by ACE would subvert the stakeholder approach and that the EVSG is a necessary first step in the formulation of the EDC’s role in the EV sphere.

On April 26, 2018, ChargePoint joined Rate Counsel’s Motion to Stay and filed a response to ACE’s opposition. ChargePoint argued that any expansion of the traditional role of regulated utilities must complement New Jersey’s existing competitive market, support customer choice in EV charging equipment and should be informed by New Jersey-specific data. ChargePoint argued that ACE presumes that has Board approval to provide competitive services but has yet to actually file a petition to do so. ChargePoint Reply pg. 5. ChargePoint stated that there is a competitive market for the provisions of EV charging stations, and that ChargePoint and other competitive entities are already actively engaged in this competitive service. *Id.* at 5. ChargePoint offered that utilities can and should play a role in supporting utility customers to adopt efficient technologies, however the way such a program is designed and implemented can have very different impacts to site host choice and control or charging stations. *Ibid.* Thus, ChargePoint supports Rate Counsel’s motion and requested the Board Stay ACE’s petition as it is in opposition to the policy goals adopted in Electric Discount and Energy Competition Act (“EDECA”).

## **DISCUSSIONS AND FINDINGS**

### **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 intervenor's 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 re 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 and given the lack of any objection, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3 NRDC, ChargePoint and Greenlots and its members will be directly affected by the outcome of this proceeding and will be measurably and constructively contribute to the scope of the case. I **HEREBY FIND** that NRDC, ChargePoint, and Greenlots and its members have met the standards for intervention as they have a sufficient interest in this proceeding. Accordingly, having received no objection, I **HEREBY GRANT** the motions for intervention of NRDC, ChargePoint, and Greenlots pursuant to the authority granted to me by the Board under the March 2018 Order.

With regard to the motions to participate filed by PSE&G, JCP&L, and Greenlots, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of PSE&G and JCP&L 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 PSE&G and JCP&L, 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). I **HEREBY DENY** the motion filed by Greenlots to Participate.

#### Rate Counsel's Motion to Stay

The Board carefully considered Rate Counsel's motion, ACE's opposition, and Rate Counsel's reply, as well as ChargePoint's motion to join the Stay. In considering Rate Counsel's motion, the Board is mindful that a stay is an extraordinary equitable remedy which "will be granted only for good cause shown." N.J.A.C. 14:1-8.7(d).

Pursuant to N.J.A.C. 14:1-8.7(c) "Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof shall be deemed denied, unless the parties are otherwise notified in writing by the Board or its Secretary." The Board here did not send the parties notice that it tolled the motion. During the pendency of this Petition the

EVSG has met and discussed the proper role of utilities in the EV market. Further, Governor Murphy on January 17, 2019 signed S-2252, codified N.J.A.C. 14:25-1 et seq., which requires the Board to create a rebate program to support electric vehicle purchases, and set a State goal of having 330,000 registered light-duty, PIVs in New Jersey by December 31, 2025 and at least 2 million EVs registered in New Jersey by December 31, 2035.

As to Rate Counsel's Motion to the Stay the Petition the same has been deemed denied by the operation of N.J.A.C. 14L1-8.7(c). In addition, I **HEREBY DENY** the motion as there is no good cause at this time to stay the petition.

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

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, ACE seeks approval of a Voluntary Program for Plug-In Vehicle ("PIV") Charging ("PIV Program"). ACE proposes a multi-year, \$42.107-million-dollar PIV program to incentivize off-peak charging of PIVs, develop PIV infrastructure, provide grants to foster innovation in electrifying the transportation sector, and support for electrifying school buses. ACE's Amended Petition includes initiatives that consist of Time of Use ("ToU") rates for residential customers who charge their PIVs during off peak hours. ACE is seeking to recover \$42.107 million dollars via a base rate case. ACE first proposes that all capital investments related to the PIV be added to rate base as it is placed in service, for recovery in a future base rate proceeding. ACE estimates that a typical residential customer using 679 kWh per month will pay an additional 54 cents per month for the recovery of the PIV Program costs. The impact, the Company hopes, will be mitigated by other beneficial impacts.

#### **Issues to be Resolved**

- A. The cost effectiveness and cost efficiency of the proposed activities and programs.
- B. The lawfulness of the proposed program offerings.
- C. 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 ACE'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 9, 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 ACE 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:**

On December 17, 2019 ACE filed an amended petition with the Board.

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 – ACE

Second – Rate Counsel

Third – EELC

Fourth – ChargePoint

Fifth – NRDC

Sixth – Greenlots

Seventh – 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:**

ACE will present the following witnesses: Kevin M. McGowan, Policy Overview, PIV program's support for State policies and acceleration of PIV Adoption; Jennifer M. Grisham, PIV overview, description of program offerings, data collection; Michael Normand, Proposed rate design, cost recovery; and Mark Warner, Methodology and results of Benefit-Cost analysis performed for ACE's proposed PIV program.

Rate Counsel will present the following witnesses: Ezra D. Hausman, Ph.D. and Brian Kalcic. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

EELC, Greenlots, ChargePoint, and Tesla's 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 9, 2020

  
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UPENDRA J. CHIVUKULA  
COMMISSIONER

**IN THE MATTER OF THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR  
APPROVAL OF A VOLUNTARY PROGRAM FOR PLUG-IN VEHICLE CHARGING  
BPU DOCKET NO. EO18020190**

**SERVICE LIST**

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## EXHIBIT A

IN THE MATTER OF THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY FOR  
APPROVAL OF A VOLUNTARY PROGRAM FOR PLUG-IN VEHICLE CHARGING  
DOCKET NO. EO18020190

### Procedural Schedule

|                                                                   |                                             |
|-------------------------------------------------------------------|---------------------------------------------|
| Bar Date – Pending Motions to Intervene                           | March 13, 2020                              |
| Motion for Interventions Decision                                 | March 20, 2020                              |
| Motions Filed by any Party                                        | April 13, 2020                              |
| Opposition to Motions filed                                       | May 4, 2020                                 |
| Reply to Opposition Motions Filed                                 | May 18, 2020                                |
| Decision on Motions                                               | June 10, 2020                               |
| First round discovery requests propounded                         | June 24, 2020                               |
| First round discovery responses                                   | July 9, 2020                                |
| Discovery Settlement Conference                                   | Week of July 20, 2020                       |
| Second round discovery requests propounded                        | July 27, 2020                               |
| Second Round responses                                            | August 11, 2020                             |
| Discovery/Settlement Conference                                   | August 17, 2020                             |
| Rate Counsel/Intervenor Direct Testimony Due                      | September 2, 2020                           |
| Discovery propounded on Rate Counsel/Intervenors Direct Testimony | September 10, 2020                          |
| Responses to Discovery on Testimony                               | September 25, 2020                          |
| Rebuttal Testimony filed by parties as appropriate                | October 2, 2020                             |
| Discovery Requests propounded on Rebuttal Testimony               | October 14, 2020                            |
| Public Hearing                                                    | TBA                                         |
| Responses to discovery requests on Rebuttal Testimony             | October 29, 2020                            |
| Settlement conference, if necessary                               | Week of November 2, 2020                    |
| Evidentiary Hearings, with oral surrebuttal                       | Week of November 9, 2020*                   |
| Initial Briefs Due                                                | TBD by Commissioner at evidentiary hearings |

\*- subject to Presiding Commissioner availability.