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ATTORNEYS AT LAW

October 21, 2020

**Via Email**

Hon. Robert Gordon, Commissioner  
Hon. Aida Camacho-Welch, Secretary  
Board of Public Utilities  
44 South Clinton Avenue  
Suite 314, 3<sup>rd</sup> Floor  
Trenton, NJ 08625-0350

Re: I/M/O the Verified Petition of Jersey Central Power & Light Company For Approval of An Advanced Metering Infrastructure (AMI) Program (JCP&L AMI) BPU Docket No. EO20080545

Dear Secretary Camacho-Welch:

On behalf of the Petitioner Jersey Central Power & Light, enclosed please find Jersey Central Power & Light Company's response to the motions to intervene and for participant status.

Pursuant to the Board's March 19, 2020 Order regarding the COVID-19 pandemic (Docket No. EO20030254), this letter is being electronically filed by email with the Secretary and served by email upon the attached service list; no paper copies will follow.

Kindly have the Office of the Secretary or the Office of Case Management confirm receipt by email to the undersigned.

Thank you for your courtesy and cooperation.

Respectfully submitted,

*/s/ James C. Meyer*

James C. Meyer

cc: Attached Service List (by email)  
Christopher E. Torkelson (via email: [ctorkelson@eckertseamans.com](mailto:ctorkelson@eckertseamans.com) (NRG, Direct Energy, Centrica))  
Alice M. Bergen (via email: [abergen@decotiislaw.com](mailto:abergen@decotiislaw.com) (Utilidata))  
Erin Cosgrove (via email: [Ecogrove@ecofnj.org](mailto:Ecogrove@ecofnj.org) (EEA-NJ))  
Katherine E. Smith (via email: [Katherine.Smith@pseg.com](mailto:Katherine.Smith@pseg.com) (PSE&G))

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

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In the Matter of the Verified Petition of <b>Jersey Central Power &amp; Light Company</b> For Approval of An Advanced Metering Infrastructure (AMI) Program ( <b>JCP&amp;L AMI</b> )	:	BPU Docket No. EO20080545
	:	
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	:	
	:	<b>JCP&amp;L’S RESPONSE TO MOTIONS TO INTERVENE AND PARTICIPATE</b>

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**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

In accordance with N.J.A.C. 1:1-12.2, Jersey Central Power & Light Company (“JCP&L” or “Company”) submits this response to the New Jersey Board of Public Utilities (“Board”) to the following motions to intervene and participate in the above referenced proceeding:

- Motion to Participate of Public Service Electric and Gas Company (“PSE&G”);
- Motion to Participate of Energy Efficiency Alliance of New Jersey (“EEA-NJ”);
- Motion to Intervene of Utilidata, Inc. (“Utilidata”); and
- Combined Motion to Intervene of (i) NRG Energy, Inc. (“NRG”); (ii) Direct Energy Business, LLC (“Direct Business”), Direct Energy Business Marketing, LLC (“direct Marketing”), Direct Energy Services, LLC (“Direct Services”), and Gateway Energy Services Corporation (“Gateway”), (collectively, “Direct Energy”);, and (iii) Centrica Business Solutions (collectively, the “Market Participants”).

JCP&L does not oppose the motions to participate of PSE&G and EEA-NJ. On the other hand, JCP&L objects to the motions to intervene of Utilidata and the Market Participants, neither

of which has satisfied the requirements for intervention. JCP&L does not object to those parties being granted participant status.

### **MOTION TO INTERVENE OF UTILIDATA**

Utilidata does not satisfy the standard for intervention. It does not have a statutory right to intervene. N.J.A.C. 1:1-16.1(a). Nor has it demonstrated that it will be “substantially, specifically and directly affected by the outcome” of JCP&L’s case. Id.; N.J.A.C. 1:1-16.3 (a).

Utilidata seeks intervener status on the grounds that it is a vendor of software for AMI meters. (Melanson Cert., 4-6). Specifically, it claims it is substantially, specifically and directly affected because the case will have an effect on its business operations in JCP&L service territory since its product could potentially be deployed in conjunction with an AMI rollout. (Id., ¶7.) Indeed, it argues that it wishes to “explain how its technology can assist JCP&L with its goals.” (Id., ¶9).

That is not a basis for intervention. Utilidata should attempt to market its product to JCP&L through normal business channels, and not use this contested litigation as a means to either foist its product on JCP&L by regulatory fiat or gain a leg up on its competitors. That is the opposite of the role of a proper party intervenor.

Further, the approval of intervention for Utilidata will sow confusion, cause delay, and introduce other problems in contravention of N.J.A.C.1:1-16.3, for several reasons:

- Adding other parties with no substantial, direct interests burdens the case, which has a short time frame, with unnecessary and voluminous discovery, motions and testimony;
- The ability to reach settlement may be impaired by interjection of issues related to the Utilidata’s concerns as a software vendor that do not concern JCP&L, its programs, or its cost recovery;
- Utilidata references the Electric Vehicles Act, but never references what issues it would address related to electric vehicles in this proceeding, or what its interest is with regard to electric vehicles.

- Utilidata several times refers to “use cases,” which is a term used by PSE&G, suggesting Utilidata’s interest does not lie in this case and its intervention would interject issues regarding other utilities’s filings and cause confusion.

For all the foregoing reasons, Utilidata does not meet the standards of N.J.A.C.1:1-16 for intervention in this proceeding. As a vendor seeking to sell its product, Utilidata probably does not have a “significant” interest in the outcome of this case either. N.J.A.C. 1:1-16.6. Nonetheless, JCP&L does not object to participant status so it can monitor the proceeding.

### **MOTION TO INTERVENE OF MARKET PARTICIPANTS**

Market Participants also do not satisfy the standard for intervention. They do not have a statutory right to intervene. N.J.A.C. 1:1-16.1(a). Nor have they demonstrated that they will be “substantially, specifically and directly affected by the outcome” of JCP&L’s case. Id.; N.J.A.C. 1:1-16.3 (a).

The crux of NRG and Direct Energy’s alleged interest is that, as competitive retail providers, they have an interest in meter “data” issues (i.e., meter data ownership, meter data use by JCP&L, and the timing of meter data availability to third parties). (Motion, ¶6). While that may constitute a “significant” interest sufficient for participant status, it does not manifest a substantial, specific and direct affect” from the outcome of JCP&L’s case. Indeed, as a participant, they can simply and plainly state their positions on these policy issues in their post-hearing comments; there is no need for further “party” status. Centrica Business Solutions claimed interest suffers the same deficiency as Utilidata. It is a vendor of “energy solutions” that seeks to capitalize on the profit potential from AMI, and it should pursue this goal through normal business channels. (Motion, ¶3).

Further, it is apparent that the Market Participants’ real interest lies in an issue that is outside the scope of this proceeding. Specifically, they candidly seek to address issues regarding Supplier Consolidated Billing (“SCB”) that arises from a separate 1999 docket and request a Board

decision “directing SCB to be implemented...”. (Motion, ¶ 23, citing *I/M/O the Electric Discount and Energy Competition Act of 1999 Customer Account Services*, BPU Docket No. EX99090676).

The Market Participant’s attempt to use this case to address an issue that is entirely separate from JCP&L’s AMI filing (and involving multiple utilities in a separate generic docket) cannot establish any substantial, specific and direct affect from the outcome of JCP&L’s case.

Finally, Market Participant’s reference to their party status in the pending PSE&G AMI proceeding is misleading and confirms they do not warrant intervention here. (Motion ¶20). Although Market Participants reference a June 4, 2020 Order, they fail to advise that the Order was issued on their motion for reconsideration.<sup>1</sup> Their admission as full party was based entirely on a concession by PSE&G that Market Participants could be substantially, specifically and directly affected while the matter is pending before the Board. Order, p. 8. On reconsideration, Commissioner Holden stated: “This is a key element of fact.” That fact is not present here. JCP&L does not concede Market Participants will warrant intervenor status at any point in this proceeding.

Before that fact arose, which is missing here, in the same PSE&G docket Commissioner Holden denied Market Participants intervenor status in her April 1, 2020 Prehearing Order With Procedural Schedule And Order on Motions to Intervene or Participate And for Pro Hac Vice (at p. 13):

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

<sup>1</sup> *I/M/O the Matter of the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future-Energy Cloud on a Regulated Basis*, Docket No. EO18101115, Order on Motion for Reconsideration, Motions to Intervene and Participate, and Removal of Pro Hac Vice (by Mary-Anna Holden, June 4, 2020).

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).

Although Market Participants have modified their asserted interests in this case, presumably to avoid the precedent of that PSE&G decision, their claimed interests here are equally lacking.

Further, the approval of intervention for Market Participants will sow confusion, cause delay, and introduce other problems in contravention of N.J.A.C.1:1-16.3, for several reasons:

- Adding other parties with no substantial, direct interests burdens the case, which has a short time frame, with unnecessary and voluminous discovery, motions and testimony;
- Indeed, although the Market Participants submit a single motion, there are actually six companies embedded in the group, and represent the prospect of significant burdens on the movement of the case;
- Market Participants already seek to introduce consolidated billing issues beyond the scope of the proceeding, ensuring delay and confusion, and motion practice.
- The ability to reach settlement may be impaired by interjection of unrelated issues that do not concern JCP&L, its programs, or its cost recovery;

For all the foregoing reasons, Market Participants do not meet the standards of N.J.A.C.1:1-16 for intervention in a proceeding. JCP&L does not object to participant status.

In view of the above, whether the Board grants Market Participants full party status (which it should not do) or participant status, the following conditions should be imposed to avoid confusion and delay:

- 1) The Market Participants must proceed as a group, since that is how they present themselves to the Board (e.g., as an intervenor they would submit a collective set of discovery, a collective piece of testimony, and a collective brief);
- 2) The Market Participants are precluded from raising issues not involving this proceeding, including specifically, issues of supplier consolidated billing related to the 1999 Customer Account Services proceeding;
- 3) Market Participants are precluded from addressing “JCP&L’s cost estimates for its proposed AMI Program, its proposed cost recovery mechanism, [or] “its proposed accounting treatment” since their motion (¶6) states they have no interest in those issues.

### **CONCLUSION**

For the reasons set forth above, JCP&L respectfully submits that (1) PSE&G and EE-NJ be granted participant status, (2) Utilidata and Market Participants be denied intervenor status and be granted the alternate status of participants.

Respectfully submitted,

By:     /s/James C. Meyer      
James C. Meyer

Dated: October 21, 2020