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October 26, 2020

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

BPU Docket No. EO18101115

VIA BPU ELECTRONIC MAIL

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

RE: PSEG's Opposition to Utilidata, Inc.'s Motion to Intervene or Participate

Dear Secretary Camacho-Welch:

On October 14, 2020, Utilidata, Inc. ("Utilidata") filed a motion to intervene in the above-captioned proceeding pursuant to *N.J.A.C.*, 1:1-16.3 and a letter brief in support of its motion. Public Service Gas and Electric Company ("PSE&G" or "Company"). On October 16, 2020, the New Jersey Division of Rate Counsel ("Rate Counsel") filed a letter in opposition to Utilidata's intervention in this matter on the grounds that Utilidata's entry into the case at this late stage of the proceeding would cause confusion, undue delay and prejudice to the parties in the case, but did not object to participation status for Utilidata. PSE&G joins Rate Counsel in opposing Utilidata's request for intervention, and PSE&G also objects to Utilidata's inclusion in the proceeding as a participant pursuant to *N.J.A.C.* 1:1-16.6.

I. Utilidata's Intervention Or Participation Would Cause Confusion, Undue Delay and Prejudice

The addition of any new party as an intervenor *or* as a participant in this proceeding will cause confusion, delay and prejudice to PSE&G and the various other parties in this proceeding and to the public. Utilidata has specifically requested in its motion and supporting letter brief to file testimony in this proceeding. In accordance with the procedural schedule adopted by Order issued April 1, 2020, the parties in this case have already conducted extensive discovery (PSE&G has responded to approximately 371 requests), the parties have already engaged in two settlement/discovery conferences that occurred months ago, direct and rebuttal testimony has

already been filed, additional settlement conferences are scheduled to occur during mid-November, and evidentiary hearings are being scheduled to occur a mere five weeks from today. It is simply not possible for Utilidata to file testimony in this proceeding or discovery that would be useful in developing the record in this case without either delaying the entire case or prejudicing parties who would not have time to meaningfully engage in discovery and prepare rebuttal to Utilidata's proposed testimony, as Rate Counsel also points out in its opposition response. Additionally, public hearings in this matter were conducted on October 6 and 7, 2020, even prior to Utilidata's untimely motion. Therefore, the public would also be denied an opportunity to provide comment on any positions Utilidata might put forth at this late stage in this matter.

Moreover, Utilidata, a sophisticated business entity, has made no effort in either its motion or its supporting letter brief to explain its delay in seeking to intervene in this matter, which has been pending for over two years. Utilidata's claim that its participation will not delay the matter also appears disingenuous considering both its request to file testimony and its suggestion that this case should be considered in tandem with two other filings for which a procedural schedule has not yet been set.¹ Indeed, Utilidata missed *two* opportunities to file a timely motion to intervene in this case. First, the Board's October 29, 2018 Order retaining jurisdiction in this matter set a bar date of November 16, 2018 for motions to intervene or participate in this proceeding. Second, the Presiding Officer's April 1, 2020 Prehearing Order included a procedural schedule for the fair and orderly administration of this matter that set May 4, 2020 as a deadline for any further motions in this proceeding. Utilidata points out that other entities who filed untimely motions have been granted intervention in this case; however, those interventions were granted by order dated June 4, 2020, well prior to the deadline for responsive direct testimony (filed Aug. 31).

Because of the very late stage of this proceeding, even limiting Utilidata to participation rather than full intervention, or restricting Utilidata to the existing procedural schedule, which would not permit Utilidata to file testimony at this time, would prejudice the parties in this case. Because the case has already proceeded past submission of direct and rebuttal testimony and public input hearings, Utilidata would essentially be seeking to influence the outcome of the case without having participated in any other aspect of the case to date. This should not be permitted, and would set a dangerous precedent for any business entity that might see an opportunity in staying out of a Board proceeding until the last minute, and then have a chance to seek an advantageous outcome by influencing the settlement process and/or the Board's final determination. In short, granting Utilidata's request to participate in this matter in any respect, after having sat idle for over two years and for the major procedural elements of the case, would undermine the orderly due process of this matter and the rights of the other parties.

II. Utilidata Does Not Have An Interest In This Case To Justify Intervention

Utilidata does not have a sufficient direct interest that will add measurably and constructively to the scope of the case and that would overcome the obvious disruption to this matter that such a late-comer would cause. *N.J.A.C.* 1:1-16.3. Utilidata's interests are not unique as those of a market participant in the field of advanced metering infrastructure products and services. There are already similar entities that were granted intervention or participation in this

¹ PSE&G disagrees with any suggestion that this matter be delayed in light of other utility AMI filings. The Board's February 19, 2020 order in Docket No. ER16060524 directing utilities that had not already done so to file AMI proposals did not contemplate any delay or deferral of the Company's CEF-EC petition that had already been pending for over a year at that time. A procedural schedule has been set in this and should proceed accordingly.

matter, well prior to the deadline for filing direct testimony, that can adequately represent this point of view, including Landys & Gyr and Open Systems International.²

In addition to not being unique, Utilidata's expressed interest is not sufficient to warrant intervention or participation at this time. In fact, Utilidata's interest appears to be primarily self-serving – mainly to provide information about the usefulness of the meter-based software products, products it might offer, for future use cases if AMI is adopted. The Board should guard against the use of its proceedings as a platform for the pursuit of competitive business interests, particularly where there are other parties in the case who can provide the point of view of market participants.

Therefore, Utilidata's request to intervene should be denied. PSE&G also respectfully requests that Utilidata should not be granted participant status pursuant to *N.J.A.C. 1:1-16.6*.

Very truly yours,

A handwritten signature in blue ink that reads "Katherine E. Smith". The signature is fluid and cursive, with a long horizontal flourish at the end.

Katherine E. Smith

Attachment
cc: Attached Service List

² Landys & Gyr is a developer and service provider of AMI meters and associated technologies. In fact, Utilidata's supporting letter brief notes its recent partnership with Landys & Gyr, which is already a party. Open Systems International is a developer and service provider of utility automation systems including distribution management, outage management and energy management systems such as SCADA software systems.

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