

92DC42
PO Box 6066
Newark, DE 19714-6066

302.429.3105 - Telephone
302.429.3801 - Facsimile
philip.passanante@pepcoholdings.com

500 N. Wakefield Drive
Newark, DE 19702

atlanticcityelectric.com

November 16, 2020

VIA ELECTRONIC MAIL
aida.camacho@bpu.nj.gov
board.secretary@bpu.nj.gov

Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: In the Matter of the Petition of Atlantic City Electric Company for Approval of the Smart Energy Network Program and Cost Recovery Mechanism and Other Related Relief
BPU Docket No. EO20080541

Dear Secretary Camacho-Welch:

The undersigned attorney is Assistant General Counsel to Atlantic City Electric Company (“ACE” or the “Company”) in connection with the above referenced matter. Please accept this letter in lieu of a more formally styled filing in response to the following Motions for Intervention and/or to Participate in this matter¹:

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

¹ Although this response is being submitted out of time, ACE respectfully requests that it be accepted for filing in accordance with the letter and spirit of *N.J.A.C. 1:1-1.3 (b)*, which states that “procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice.” The alternative would deny the Company an opportunity to respond to these Motions. Rest assured that after-admitted parties (appropriate to their status) will receive any data request responses that are or have been served in the interim.

In summary, ACE respectfully submits that (i) it has no objection to the Motions to Participate filed by PSE&G, SJG, and EEA-NJ; (ii) it objects to the Motion to Intervene filed by the Market Participants, but does not object to granting the Market Participants Participant status; and (iii) the Company *does* object to the Motion to Intervene filed by Utilidata, as well as Utilidata's Motion being treated, in the alternative, as a Motion to Participate.

**Utilidata Does Not Have an Interest in This Proceeding Sufficient
to Justify Intervention *or* Participation**

Utilidata does not satisfy the standard for intervention and it does not have a statutory right to intervene. *N.J.A.C. 1:1-16.1(a)*. Moreover, Utilidata has not demonstrated that it will be “substantially, specifically and directly affected by the outcome” of ACE’s proceeding. *Id.*; *N.J.A.C. 1:1-16.3(a)*. Utilidata seeks intervenor status on the grounds that it is a vendor of software for AMI meters. Specifically, it claims it is substantially, specifically, and directly affected by ACE’s filing, because Utilidata’s product could potentially be deployed in conjunction with an AMI rollout. That business opportunity is not a basis for intervention. Utilidata should instead attempt to market its product to ACE through normal business channels and not leverage a formal administrative proceeding to either market its product to the Company by regulatory fiat or gain a leg up on its competitors.

Further, ACE respectfully submits that granting full Intervenor status to Utilidata will invite confusion, cause delay, and introduce other issues in contravention of *N.J.A.C. 1:1-16.3(a)*. Among these:

- 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; and
- the ability to reach settlement might be impaired by the interjection of issues related to the Utilidata’s concerns as a vendor that do not concern ACE, its programs or its cost recovery.

For all the foregoing reasons, Utilidata does not meet the standards of *N.J.A.C. 1:1-16.3* for intervention in this proceeding. As a vendor seeking to sell its product, Utilidata probably does not have a “significant” interest, other than a purely competitive interest, in the outcome of this case. *N.J.A.C. 1:1-16.6*.

Having failed to satisfy the standards of intervention, Utilidata’s motion may be treated in the alternative as a motion to participate. *N.J.A.C. 1:1-16.5*. Nevertheless, ACE respectfully submits that Utilidata’s expressed interest is not sufficient to warrant intervention *or* participation. Utilidata’s interest is not in the outcome of this proceeding. *N.J.A.C. 1:1-16.6*. In fact, Utilidata’s interest appears to be primarily self-serving – to provide information about the usefulness of the meter-based software products, products it might offer for future use cases if the Company’s Smart Energy Network proposal (or AMI generally) is adopted. Utilidata’s inclusion, even as a Participant, will frustrate the administrative process. The Board of Public Utilities (the “Board” or “BPU”) should guard against the use of its proceedings as a platform for the pursuit of competitive business interests. Therefore, the Company respectfully requests that Utilidata’s request to intervene be denied. ACE also submits that Utilidata should not be granted Participant status pursuant to *N.J.A.C. 1:1-16.6*.

**The Market Participants Lack a Statutory Right to Intervene
But Could Be Accorded Participant Status**

Similarly, the Market Participants do not satisfy the standard for full intervention in this proceeding and do not have a statutory right to intervene. *N.J.A.C.* 1:1-16.1(a). Moreover, they have not demonstrated that they will be “substantially, specifically and directly affected by the outcome” of ACE’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 ACE, and the timing of meter data availability to third parties). (Motion, ¶6). While that may constitute a “significant” interest in the outcome sufficient for Participant status, this interest alone does not manifest a “substantial, specific and direct” affect from the outcome of the Company’s case. Indeed, as a Participant, the Market Participants will be able to state their positions on these policy issues in their post-hearing comments. The Market Participants have no need for further “party” status.

An affiliate of Direct Energy, Centrica Business Solutions’ claimed interest suffers the same deficiency as Utilitdata. It is a vendor of “energy solutions” that seeks to capitalize on the profit potential from AMI. 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 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, ¶ 29, citing *I/M/O the Electric Discount and Energy Competition Act of 1999 Customer Account Services*, BPU Docket No. EX99090676.) The Market Participants’ attempt to use this case to address an issue that is entirely separate from ACE’s AMI filing (and involving multiple utilities in a separate generic docket that is over two decades old) cannot establish any substantial, specific, and direct affect from the outcome of the Company’s case.

Finally, the Market Participants’ reference to their party status in the pending PSE&G AMI proceeding is misleading and only confirms ACE’s position that they do not warrant full Intervenor status here.² (Motion ¶26.) Although the Market Participants reference a June 4, 2020 Order, their Motion neglects to advise that the Order was issued on a motion for reconsideration. Their admission as a full party was based entirely on a concession by PSE&G that the Market Participants could be substantially, specifically, and directly affected by a fact dispute pending before the Board as part of the reconsideration. Order at 8. On reconsideration, Commissioner Holden stated: “This is a key element of fact.” That fact is not present here. More significantly, ACE does not concede that the Market Participants will warrant Intervenor status at any point in this proceeding.

² *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*, BPU 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).

Before that fact arose, in the same PSE&G docket, Commissioner Holden *denied* the Market Participants Intervenor status in an 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 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 the Market Participants have modified their asserted interests in this case (presumably, to avoid the precedent of the Order quoted above), their claimed interests in the ACE AMI proceeding are equally lacking.

Further, the approval of full Intervenor status for the Market Participants will invite confusion, cause delay, and introduce other problems in contravention of *N.J.A.C. 1:1-16.3*:

- 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;
- 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;
- the Market Participants already seek to introduce consolidated billing issues beyond the scope of the proceeding, ensuring delay, confusion, and motion practice; and
- the ability to reach settlement might be impaired by interjection of unrelated issues that do not concern ACE, its programs or its cost recovery.

For all the foregoing reasons, the Market Participants do not meet the standards of *N.J.A.C. 1:1-16* for intervention in a proceeding. As was stated at the outset, however, the Company does not object to Participant status.

In view of the above, whether the Board grants the Market Participants full Intervenor status (which ACE respectfully submits 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 that are not involved in this proceeding, including specifically, issues of supplier consolidated billing related to the 1999 Customer Account Services proceeding; and 3) the Market Participants are precluded from addressing “ACE’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, ACE respectfully submits that (1) PSE&G, SJG and EEA-NJ be granted Participant status; (2) Utilidata be denied Intervenor or Participant status; and (3) the Market Participants be denied Intervenor status and be granted the alternate status of Participants, subject to the conditions listed herein.

Consistent with the Order issued by the Board in connection with *In the Matter of the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations*, BPU Docket No. EO20030254, Order dated March 19, 2020, this document is being electronically filed with the Secretary of the Board, the New Jersey Division of Rate Counsel, and the Service List. No paper copies will follow.

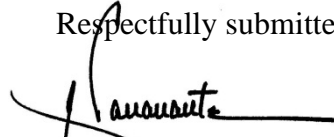
Aida Camacho-Welch

November 16, 2020

Page 6

Thank you for your cooperation and courtesies. Feel free to contact me with any questions or if I can be of further assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Passanante", with a long horizontal line extending to the right.

Philip J. Passanante
An Attorney at Law of the
State of New Jersey

cc: Service List (electronic mail only)
Katherine Smith, Esquire (electronic mail only)
Van L. McPherson, III, Esquire (electronic mail only)
Erin Cosgrove (electronic mail only)
Christopher E. Torkelson, Esquire (electronic mail only)
Alice M. Bergen, Esquire (electronic mail only)