

November 23, 2020

VIA ELECTRONIC MAIL

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

**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:

In accordance with N.J.A.C. 1:1-12.2(c), NRG Energy, Inc. ("NRG"), Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, and Gateway Energy Services Corporation (collectively, "Direct Energy") and Centrica Business Solutions (collectively, the "Market Participants") hereby submit this letter in response to the October 21, 2020 Response to Motions to Intervene and Participate filed by Atlantic City Electric Company ("ACE") for Approval of the Smart Energy Program and Cost Recovery Mechanism and Other Related Relief. As more fully discussed below, the Market Participants respectfully request that the Board grant their Motion to Intervene ("Motion"), on the basis that they will be substantially, specifically and directly affected by the outcome of this 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. See N.J.A.C. 1:1-16.1 and 16.3.

The single most compelling factor supporting intervention in this proceeding by the Market Participants relates to access by third party suppliers and market participants to the customer usage data that will be made available through the deployment of advanced metering infrastructure ("AMI"). Through access to this smart meter data, the Market Participants will have the opportunity to develop innovative products and services in the competitive market. It is critical that access issues are adequately resolved prior to deployment of smart meters. Through full intervention status, the Market Participants will have the opportunity to advocate for a proper set of rules addressing access to smart meter data.

The Motion expounds that NRG is a Fortune 500 company that operates a reliable and efficient electric generation, a demand-side business focusing on demand response and other customer-sited energy efficiency and distributed energy investments, and a retail platform serving residential and commercial businesses. NRG is headquartered in Princeton, New Jersey. NRG has several licensed third party suppliers that actively serve residential, commercial, industrial and institutional customers across New Jersey, including in ACE's service territory.

The Motion describes Direct Energy as 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 roughly 5,000 employees. As third-party suppliers, all four Direct Energy intervening companies hold electric power supplier licenses. Under those licenses, Direct Energy is licensed to sell electricity to customers in ACE's service territory. In addition, through an affiliated division, Direct Energy also offers home energy audits, using customer data to perform analytics and offer recommendations on how to reduce their overall energy consumption.

Further, as noted in the Motion, Centrica Business Solutions, a subsidiary of Centrica plc and affiliate of Direct Energy, integrates localized energy solutions for businesses around the world that leverages its energy insights, onsite generation and demand management capabilities. The energy solutions integrated by Centrica Business Solutions include solar, combined heat and power, energy efficiency, energy insight, demand response, power generation and energy storage. Offering innovative distributed energy solutions, Centrica Business Solutions enables organizations to improve operational efficiency, increase resilience and drive their business vision forward.

In the Motion, NRG, Direct Energy and Centrica Business Solutions explained 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 include: (1) the need to ensure that the data collected from smart meters are owned by the customer, not ACE, and that the customer can freely and easily authorize the release of the data to third parties of their choosing; (2) implementation of a Data Access Plan by ACE while AMI meters are being deployed so that entities offering energy services in the competitive market have real-time and meaningful access to their customers' interval use data (with their consent) as soon as it becomes available, which will facilitate the provision of innovative solutions; and (3) the importance of establishing guidelines for ACE's use of the data from the smart meters for only their poles and wires functions (i.e. outage management, reliability and system planning) and maintaining ACE's focus on its core functions rather than expanding its offerings to include new products and services that are within the domain of third party suppliers and other market participants.¹

¹ Motion at 3-4.

As part of this proceeding involving smart meter deployment, it is critical for the Board to establish parameters regarding access to data by third party suppliers and other market participants, along with use of the data by ACE. Specifically, with respect to access to data, the Board should make clear that the data belongs to the customer, not ACE. Also, if customers have previously authorized release of their usage data to third parties through contracts or other means, the Board should preclude ACE from devising any additional hurdles to gain access. To the extent that customers have not previously consented to the release of their data, the Board should instruct ACE to implement a reasonable process for customers to freely and easily authorize the release of their data to third parties of their choosing. The Board should restrict the use of smart meter data by ACE for any purpose other than fulfilling its distribution, or poles and wires, functions. Through full intervention status, the Market Participants will have the opportunity to fully develop a record for the Board's consideration on their access to smart meter data and the proper use of such data by ACE.

In opposing the intervention of the Market Participants, ACE attempts to minimize the key issues raised in the Market Participants' Motion, claiming that their interests do not manifest a substantial, specific and direct effect from the outcome of this proceeding.² The Market Participants offer products, services and solutions (including demand response, energy efficiency and distributed energy solutions) and their offerings will be specifically, directly and substantially impacted by the use of and access to customer meter data. Granting the Market Participants intervenor status will permit them to advocate for conditions associated with smart meter deployment that are designed to protect their particular business interests and to ensure that the competitive market is not disturbed. Providing any additional details or insights into current or future offerings is not necessary to justify the Market Participants' proposed intervention and would unfairly require the Market Participants to reveal proprietary information about the products and services that they now or plan in the future to offer in the competitive market.

Specifically with respect to the issues cited by ACE as potentially adding confusion and delay to the proceeding regarding access to data and supplier consolidated billing ("SCB"),³ they are directly relevant to the deployment of smart meters, which will result in valuable customer usage data being made available. As discussed above, access to this data by third parties is critical to ease the ability of third party suppliers to utilize this data in developing innovative product and service offerings. It is appropriate for third party suppliers to advocate in this proceeding for the implementation of SCB that would enable them to utilize the smart meter data to provide customized energy solutions to customers in the competitive market. To the extent that issues are raised that are viewed as being beyond the scope of this proceeding, ACE may later move to limit the scope of this proceeding but placing any limitations on the Market Participants at this time is unwarranted.

² ACE Response at 3-4.

³ ACE Response at 5.

ACE disingenuously claims that the Market Participants' intervenor status in the Public Service and Gas Company ("PSE&G") AMI proceeding confirms that they do not merit intervention in this proceeding.⁴ While ACE is correct that the Market Participants were granted intervenor status following a motion for reconsideration,⁵ that does not detract from the fact that Commissioner Mary-Anna Holden ultimately decided that granting the Market Participants' intervenor status "will add measurably and constructively to the record" in PSE&G's AMI proceeding.⁶ The Market Participants have added measurably and constructively to PSE&G's AMI proceeding through the submission of testimony and discovery requests and responses. PSE&G's AMI proceeding was not limited in scope to exclude the topic of SCB,⁷ just as the topic has not been explicitly excluded from this proceeding. To maintain consistency among AMI proceedings, the Market Participants should be permitted to address the topic of SCB in this proceeding. SCB is directly relevant to the deployment of smart meters and it is imperative that issues related to SCB be resolved prior to deployment of smart meters. Contrary to ACE's claims, intervention by the Market Participants would not confuse the issues in this proceeding or impede settlement discussions. Rather, their interventions would ensure that a more complete record is developed about matters affecting the competitive market. In light of the fact that the Market Participants were granted intervention status in PSE&G's AMI proceeding based on a showing that they would be substantially, specifically and directly affected by the outcome of the case, the same determination should be reached here based on logical reasoning and for consistency purposes.

ACE finds it problematic that the Market Participants consist of six companies and insincerely claims that their participation in the proceeding will significantly burden movement of the case.⁸ ACE's claims should be disregarded. The Market Participants have unified interests in this proceeding, collectively moved to intervene in this proceeding, and will participate in this proceeding on a collective basis. The Market Participants' involvement in other proceedings before the Board has not caused any delay or confusion and ACE presented no evidence that would support denial of their intervention on that basis.

Finally, a grant of participant status is inadequate in that it would limit the Market Participants to, at most, (i) the right to argue orally, (ii) the right to file a statement or brief, and (iii) the right to file exceptions to the initial decision with the agency head. N.J.A.C. 1:1-16.6.

⁴ ACE Response at 3-4

⁵ ACE Response at 4.

⁶ *In the Matter of the Petition of Public Service Electric & Gas Company for Approval of its Clean Energy Future-Energy Cloud Program on a Regulated Basis*, Docket No. FO18101115, Order on Motion for Reconsideration; Motions to Intervene and Participate; and Removal of Pro Hac Vice (by Mary-Anna Holden, June 4, 2020).

⁷ Both the Market Participants and PSE&G submitted testimony on SCB. *In the Matter of the Petition of Public Service Electric & Gas Company for Approval of its Clean Energy Future-Energy Cloud Program on a Regulated Basis*, Direct Testimony of Leah Gibbons on Behalf of the Market Participants served August 31, 2020 and Rebuttal Testimony of Terrence J. Moran on Behalf of PSE&G served October 5, 2020.

⁸ ACE Response at 5.

Because participant status would prevent the Market Participants from actively participating in all aspects of this proceeding, including the service of discovery, submission of testimony and cross-examination of witnesses during the evidentiary hearings, they would be deprived of an opportunity to fully develop the record on the issues they have identified and to protect their direct and substantial business interest in the outcome of this proceeding. While the Market Participants should not be limited in any way at this stage of the proceeding, they do not intend to challenge the cost estimates for ACE's proposed AMI Program, its proposed cost recovery mechanism or its proposed accounting treatment. In conclusion, the Market Participants respectfully request intervenor status so that they may contribute measurably and constructively to this proceeding.

Respectfully Submitted,



Christopher E. Torkelson

CET:

cc: Hon. Upendra Chivukula, Commissioner
Service List (via e-mail only)