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January 31, 2022

Via Electronic Mail

Honorable Mary Anna Holden, Commissioner
New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
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**Re: In the Matter of the Petition of Public Service Electric and Gas
Company for Approval of an Infrastructure Advancement Program (IAP)
BPU Docket No.: EO21111211 and GR21111212**

Dear Commissioner Holden:

Please accept for filing this response on behalf of the Division of Rate Counsel ("Rate Counsel") to the following motions filed in the above-referenced matter: (1) motion to intervene and for *pro hac vice* admission of Paul Forshay, Esq. dated December 20, 2021 filed on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"); (2) motion to participate dated January 3, 2022 on behalf of South Jersey Gas ("SJG") and Elizabethtown Gas Company ("ETG"); (3) motion to intervene dated January 19, 2022 on behalf of the New Jersey Laborers and Employers Cooperation and Education Trust ("NJLECET"); (4) motion to intervene, or in the alternative to participate, dated January 20, 2022 on behalf of Ferreira Construction Company; (5) motion to participate filed January 20, 2022 on behalf of Waters and Bugbee, Inc. ("W&B"); (6) motion to participate dated January 21, 2022 on behalf of J. Fletcher Cramer and Son, Inc. ("JFCS"); (7) motion to intervene dated January 21, 2022 on behalf of Burns & McDonnell Engineering Company, Inc. ("BMcD"); (8) motions to participate and for leave to

permit the late filing dated January 21, 2022 filed on behalf of International Brotherhood of Electrical Workers (“IBEW Local Union 94”); and (9) motion to intervene and for leave to permit late filing dated January 21, 2022 on behalf of the Engineers Labor-Employer Cooperative (“ELEC”) the Labor Management Fund of the International Union of Operating Engineers Local 825.

As directed by the Board’s Order in Docket No. EO20030254, dated March 19, 2020, Rate Counsel hereby submits this filing via email only to Commissioner Holden, the Board Secretary and service list. Thank you for your consideration and attention to this matter.

DISCUSSION

On November 4, 2021, Public Service Electric and Gas Company (“PSE&G”) filed the above-referenced Petition seeking approval of a proposed Infrastructure Advancement Program (“IAP”) and an associated rate recovery mechanism. The IAP is a four-year \$848 million capital program which PSE&G states will modernize its electric and natural gas distribution systems, build an electric vehicle infrastructure for its fleet of vehicles. PSE&G proposes to recover the \$848 million from ratepayers using the cost recovery mechanism under the Board’s Infrastructure Investment Programs (“IIPs”) regulations, N.J.A.C. 14:3-2A.

On December 15, 2021, the Board issued an order designating Commissioner Mary-Anna Holden as presiding commissioner and ordering all motions to intervene or participate be filed with the Board by January 14, 2021.¹

Rate Counsel notes that the motions filed by NJLECET, Ferriera, W&B, JFCS, BMcD, IBEW Local 94 and ELEC Local 825 were all filed beyond the time set by the Board’s December 15th Order. Rate Counsel will not object to the late filing of the motions.

¹ Order Designating Commissioner and Setting Manner of Service and Bar Date, Docket Nos. EO21111211 and GO21111212 (December 15, 2021).

Rate Counsel is aware that the regulatory ten-day time period to respond to the motions submitted by NJLEUC and SJG and ETG has expired but requests the Board's indulgence to allow Rate Counsel to respond to all pending motions to intervene and to participate at this time.

Rate Counsel would also like to note that six (6) of the parties moving to intervene or participate in the matter, Ferreira, NJLECET, W&B, BMcD, JFCS and ELEC, are large scale construction companies or organizations representing large scale construction companies and their employees; therefore the argument that each movant's interests are significantly different than those of any other party is substantially diminished.

Rate Counsel's responses to the nine (9) pending motions are as follows:

(1) NJLEUC Motion to Intervene and for *pro hac vice* admission of Paul Forshay

NJLEUC's motion to intervene states that it is an organization of large energy users whose members include large volume customers on either PSE&G's electric distribution system or PSE&G's natural gas distribution system, or both, that will be directly affected by the rate impacts of the proposed IAP. *NJLEUC Motion*, par. 1.

Rate Counsel has no objection to NJLEUC's intervention based on the foregoing representation. NJLEUC was allowed to intervene in the prior Energy Strong matters. I/M/O the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Dkt Nos. EO13020155 & GO13020156, Order at 2-3, 4 (July 2, 2013) ("Energy Strong July 2013 Order on Interventions"). Rate Counsel has no objection to the admission of Paul F. Forshay, Esq., *pro hac vice*.

(2) SJG and ETG

SJG and ETG are New Jersey natural gas distribution public utilities with combined service to approximately 693,000 natural gas customers in New Jersey. *SJG and ETG Motion*, par.2. SJG and ETG allege that if PSE&G's petition is approved its impact will substantially, specifically and directly impact New Jersey's other utilities- including SJG and ETG. *Id.* at par.5. SJG and ETG also state they have a history of coordinating activities in Board dockets with other utilities where appropriate and will coordinate its representation with similarly situated parties where appropriate in this docket. *Id.* at par. 7. Rate Counsel has no objection to SJG's and ETG's participation.

(3) NJLECET Motion to Intervene

NJLECET states it is a nonprofit labor management fund which represents laborers and their signatory contractors. *NJLECET Motion*, p.1, par.1. In addition, NJLECET has a management component of its Board which is comprised of representatives of both labor and the Associated Construction Contractors of New Jersey ("ACCNJ"), which represents some of the largest construction firms that work for PSE&G and other New Jersey utilities. *Id.* at p.3, par.1. NJLECET also states that because it is a non-profit which seeks to identify new and emerging markets, its interests are significantly different than those of any other party. *Id.* at p. 3, par.1. It also argues that its membership has experience with large-scale construction, and the political and regulatory environment associated with large-scale construction, that would provide a unique perspective and insight into the cost and feasibility of planned infrastructure projects, construction best practices and the economic impact of infrastructure investment which are

factors to be considered and are which are necessary for the IAP to be cost-effective. Id. at p.3, par.1, 2. In addition, NJLECET asserts that its members will be directly affected by the outcome of the proceeding as the IAP is projected to create hundreds of jobs which will expand the construction jobs market. Id. at p.3, par. 3.

Rate Counsel opposes intervention by NJLECET. The interest of this organization and their members in participating in construction projects, either undertaken by PSE&G or resulting from infrastructure upgrades, are not interests that are legally protected under N.J.S.A. Title 48. Thus, contrary to the assertions in their motions, this organization, as a representative of labor and management involved in the construction industry, does not have direct interests that would be substantially affected by the outcome of these proceedings. Id. at p. 3, par. 3.

Rate Counsel would not object to the granting of participant status to NJLECET in this proceeding. Rate Counsel notes that NJLECET was denied intervenor status and granted participant status in the Energy Strong II proceeding. In that proceeding Commissioner Fiordaliso held that NJLECET's focus on economic arguments pertaining to the possibility that its members would perform Energy Strong II work did not warrant intervention. Commissioner Fiordaliso granted participant status. In the Matter of the Petition of Public Electric and Gas Company for Approval of the Second Energy Strong Program (Energy Strong II), Docket Nos. EO18060629 and GO18060630, Order at 16 (November 30, 2018).

(4) Ferreira Motion to Intervene and Alternative Motion to Participate

Ferreira's states that it is a large construction company specializing in transportation infrastructure, utility related construction, solar installation and construction management. *Ferreira Motion*, par. 1. Ferreira also states it has a substantial interest in the outcome of this

matter as PSE&G seeks to utilize outside contractors for the work proposed in this IAP. Id. at p. 3, par. 10 (citing Direct Testimony of Wade Miller, p. 17, par.4-7); and it is interested in being awarded some of that work by PSE&G. Id. at P. 3, par. 12. Ferreira states “it’s interest and expertise is with regard to the heavy infrastructure projects (and attendant jobs) that will be created as a result of the IAP.” Id. at p. 4, par. 13 (emphasis added). On this basis, Ferreira moves to intervene.

Alternatively Ferreira moves for participant status in the proceeding. Id. at p. 4, par. 16, citing its status as a large-scale heavy infrastructure construction company that has worked on exact projects proposed in this IAP provides it with a “unique expertise and distinctive viewpoint” in regards to the proposed program compared to other parties. Id. at p. 4, par. 18

Rate Counsel objects to Ferreira’s motion to intervene. While Ferreira has an economic interest in participating in PSE&G construction projects, Ferreira does not assert a legally protected right under N.J.S.A. Title 48 to receive work from PSE&G. Thus, contrary to the statement in Ferreira’s motion, Ferreira does not have a concrete and current interest that will be “specifically and directly” affected by the outcome of this matter and therefore should not be granted intervenor status. However, Rate Counsel does not object to the granting of participant status to Ferreria as was allowed in the Energy Strong II proceeding. Commissioner Fiordaliso held that he was not persuaded that the primary pecuniary interests of Ferreira would add to the proceeding and denied intervention but granted participation. Energy Strong II, Order at 16 (November 30, 2018)

(5) W&B

W&B is a New Jersey utility infrastructure installation company with experience in electrical and natural gas distribution construction. *W&B Motion*, par.2. W&B states it has and

is working on other PSE&G construction projects and believes that its participation will contribute to the development of a complete record for this matter if granted its request to participate. *W&B Motion*, par. 3,4. W&B does not explain how it will help to develop a complete record. Rate Counsel does not object to the granting of participant status to W&B and acknowledges that W&B was granted participant status. Energy Strong II, Order at 16.

(6) JFCS Motion to Participate

JFCS² is a construction company with experience in heavy highway construction and utility installation for PSE&G Energy Strong and GSMP projects. *JFCS Motion*, par. 4. JFCS argues that, due to its significant experience in the utility construction sector, its insight will be of great value to the Board as it will be able to leverage its experience with PSE&G to provide the Board assistance in assessing the most “effective strategies for the successful implementation of the IAP.” *Id.* at pars. 12, 15. JFCS is seeking participant status based on its interest in participation in planned construction work under this IAP. *Id.* at par. 12 6. Rate Counsel does not object to the granting of participant status to JFCS, and acknowledges that JFCS (appearing as CSJV at the time) was granted participant status in Energy Strong II. Energy Strong II Order at 16.

(7) BMcD Motion to Intervene

BMcD states it is a national utility design and construction firm which provides grid modernization strategy and consulting construction services throughout North America. *BMcD Motion*, par. 2, 3. BMCD states it is currently participating in transportation electrification

² JFCS advises that it has participated in prior Board matters in conjunction with Creamer-Sanzari Joint Venture (“CSJV”) including PSE&G Energy Strong I and II and the GSMP but is moving here to participate as JFCS. *JFCS Motion*, par. 2.

system projects for ComEd, DTE, Evergy, Liberty, Midwest Energy, New York Power Authority, Portland General Electric and SCE, with SCD's projects focused on electric vehicle charging infrastructure. *BMcD Motion*, p.3, par.6 BMcD also states is was granted intervention in the Board's electric vehicle matter, In re the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future-Electric Vehicle and Energy Storage ("CEF-EVES") Program, Docket No. EO18101111 (Order April 22, 2020).

BMcD states it has a distinct viewpoint concerning IAP as compared to other parties due to its broad knowledge of electric and gas markets, and its status as a large-scale heavy infrastructure company. *Id.* at p. 3, par. 3. BMcD requests participant status if its motion to intervene is not granted, *Id.* at p. 4, par. 3.

Rate Counsel opposes intervention by BMcD, as its interest in offering its perspective on construction services is not required, nor is its experience unique to that of several of the other movants and to PSE&G engineering staff, BMcD interests' are not legally protected under N.J.S.A. Title 48. Rate Counsel would not object to the granting of participant status to BMcD as it is similarly situated to Ferreira, and JFCS whose motions to participate Rate Counsel is not objecting to in this proceeding.

(8) IBEW Local Union 825 Motion to Participate

IBEW Local Union 825 represents non-management PSE&G employees engaged in all aspects of utility operations including performing the proposed IAP work. The union asserts that issues to be decided in this matter substantially, significantly and directly impact IBEW Local Union 94. *IBEW Motion*, par.2,4,5.

Rate Counsel does not oppose participation by IBEW Local Union 94 and notes it was granted participant status, in the Energy Strong II proceeding. Energy Strong II, Order at page 16.

(9) ELEC Motion to Intervene

ELEC is a labor-management organization that works to provide work to developers, union contractors and members of the International Union of Operating Engineers Local 825 (Union”) by promoting economic development, investments in infrastructure and construction. *ELEC Motion*, par. 2. ELEC represents operating engineers and contractors from New Jersey and New York who perform work for PSE&G and other utilities, and argues it is in a unique position to assist the Board with insight on the impact of this PSE&G IAP from the contractor and operating engineer perspective. *ELEC Motion*, par. 6, 9. ELEC argues that its members will be directly, substantially and specifically affected by the decision in this matter due to the statement by PSE&G that it will be hiring outside contractors to perform the work identified in the petition. *ELEC Motion*, par. 12, 13 citing Direct Testimony of Wade Miller, p. 17, par.4-7.

Rate Counsel objects to ELEC’s motion to intervene. While ELEC has an economic interest in participating in PSE&G construction projects, it does not assert a legally protected right under N.J.S.A. Title 48 to receive work from PSE&G. Thus, contrary to the statement in ELEC’s motion, it does not have a concrete and current interest that will be “specifically and directly” affected by the outcome of this matter and therefore should not be granted intervenor status.

Rate Counsel does not object to the granting of participant status to ELEC and acknowledges ELEC was granted participant status in Energy Strong II.

CONCLUSION

For the foregoing reasons, Rate Counsel recommends that (1) NJLEUC should be allowed to intervene and Paul Forshay should be admitted *pro hac vice*, (2) SJG and ETG should be allowed to participate, (3) NJLECET should not be allowed to intervene but should be allowed to participate, (4) Ferreira should not be allowed to intervene but should be allowed to participate, (5) W&B should be allowed to participate, (6) JFCS should be allowed participate, (7) BMcD should not be allowed to intervene but should be allowed to participate, and (8) IBEW Local Union 825 should be allowed to participate, and (9) ELEC should not be allowed to intervene but should be allowed to participate. Rate Counsel also recommends that any movants granted participant status should be limited to the right to make an opening statement, or file a statement or brief, as set out in N.J.A.C. 1:1-16.6(c).

Respectfully submitted,

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Approval of an Infrastructure
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BPU Docket Nos. EO21111211 &
GO21111212

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