



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)	ORDER AND DECISION ON MOTION
SERVICE ELECTRIC AND GAS COMPANY FOR)	TO PARTICIPATE
APPROVAL OF AN INFRASTRUCTURE)	
ADVANCEMENT PROGRAM (IAP))	DOCKET NOS. EO21111211 &
)	GO21111212
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Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Danielle Lopez, Esq., Public Service Electric and Gas Company
Steven S. Goldenberg, Esq., Giordano, Halleran and Ciesla, P.C. for New Jersey Large Energy Users Coalition

BY COMMISSIONER MARY-ANNA HOLDEN:

I. BACKGROUND AND PROCEDURAL HISTORY

On November 4, 2021, Public Service Electric and Gas Company ("PSE&G" or "Company") filed a petition with the Board of Public Utilities ("Board") seeking approval of its Infrastructure Advancement Program ("IAP" or "Program") and an associated cost recovery mechanism pursuant to N.J.A.C. 14:3-2A ("Petition"). The Company proposed a four (4)-year Program with a total investment level of approximately \$848 million. The Program involved the replacement of aging overhead and underground electrical equipment, modernization of electric distribution substation equipment, upgrading of gas metering and regulating stations, and installation of electric vehicle infrastructure to support the Company's transition to an electric fleet. According to the Petition, the IAP would improve last mile reliability while supporting the electrification of the transportation sector and increased use of Distributed Energy Resources.

On December 15, 2021, the Board executed an Order designating myself, Commissioner Mary-Anna Holden, as Presiding Commissioner, with the authority to rule on all motions that arise during the pendency of these proceedings, and to modify any schedules that may be set as necessary

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to secure a just and expeditious determination of the issues.¹ The Board further ordered that entities seeking to intervene or participate in this matter must file the appropriate application with the Board by January 14, 2022, and any party wishing to file a motion for admission of counsel *pro hac vice* should do so concurrently with any motion to intervene or participate.

On March 1, 2022, I issued a Prehearing Order wherein, among other things, I ruled on all motions to intervene, participate, and admission *pro hac vice*.²³ Notwithstanding the January 14, 2022 deadline, I considered all motions filed up and until January 24, 2022. While I was under no obligation to consider the out-of-time motions, I did so because, in part, the proceeding just began, there were no objections, and there was no prejudice to the other parties and/or participants because the ten (10) day delay did not cause undue delay or confusion.⁴

II. ATLANTIC CITY ELECTRIC COMPANY'S MOTION TO PARTICIPATE

On April 8, 2022, nearly three (3) months after the bar date established in the December 15, 2021 Order, Atlantic City Electric Company ("ACE") filed a Motion to Participate. ACE argued that the three (3)-month delay is irrelevant because N.J.A.C. 1:1-16.2(a) allows parties to file a motion at any time after a case is initiated. ACE claimed it should be granted participant status because this matter might "significantly influence" or "have a precedential effect on" the positions taken by parties involved in ACE's other proceedings. ACE further stated that its participation will not cause undue delay or confusion because, "ACE intends to participate only in order to receive copies of testimony, briefs, and other materials; to monitor the proceedings; and possibly file briefs or exceptions." ACE also mentions its desire to "monitor developments and be apprised of potential policy developments" in a timely manner.

III. DISCUSSION AND FINDINGS

In ruling on a Motion to Participate, N.J.A.C. 1:1-16.6 requires the decision maker to consider the following: (1) whether the movant has a significant interest in the outcome of the case; and (2) whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion. N.J.A.C. 1:1-16.6. Application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative

¹ In re the Petition of Public Service Electric and Gas Company for Approval of an Infrastructure Advancement Program (IAP), Order Designating Commissioner and Setting Manner of Service and Bar Date, BPU Docket Nos. EO21111211 and GO21111212, Order dated December 15, 2021 ("December 2021 Order").

² For a complete list providing the Intervenor and Participants, see In re the Petition of Public Service Electric and Gas Company for Approval of an Infrastructure Advancement Program (IAP), Prehearing Order with Procedural Schedule and Order on Motions to Intervene or Participate and Admission Pro Hac Vice, BPU Docket Nos. EO21111211 and GO21111212, Order dated March 1, 2022 ("Prehearing Order") at p. 8-12.

³ The Prehearing Order was subsequently amended on March 3, 2022. However, the determinations regarding motions to intervene, participate, and admission *pro hac vice* were not modified.

⁴ See Prehearing Order at p. 9.

proceedings.⁵ As described herein, I find that ACE fails to satisfy the standards enumerated in N.J.A.C. 1:1-16.6, and as such, its Motion to Participate is denied.

First, granting ACE participant status will cause undue delay. ACE's Motion to Participate was untimely, not by ten (10) days, but by three (3) months. Although ACE is correct that its motion is permitted under N.J.A.C. 1:1-16.2(a), that provision is, however, limited to the ability of parties to file after a proceeding has begun; it does not bear upon the merits of the filing or upon how the Board should rule. Precedent dictates that when faced with an untimely motion, filed months after the filing deadline, resulting in the party missing numerous hearings and investigatory milestones, the Board denies such motion.⁶ Here, as a result of the three (3) month delay, ACE missed numerous dates significant to this proceeding including, but not limited to, the deadline to file motions, the first, second, and third rounds of discovery, and numerous settlement conferences. A three (3) month delay in filing is, by nature, an undue delay. At this time, with settlement negotiations already underway, significant time and effort would have to be expended to make ACE current. Therefore, I **HEREBY FIND** that granting ACE's Motion to Participate would cause undue delay of this matter. See N.J.A.C. 1:1-16.6.

Second, ACE failed to demonstrate that it has a significant interest in the outcome of this matter. See N.J.A.C. 1:1-16.6. ACE seeks participation to "receive copies of testimony, briefs, and other materials" and "*possibly* to file briefs and/or exceptions." (emphasis added) By merely receiving documents and testimony, ACE plans to act as an outside observer. By its own admission, ACE does not intend to add constructively to this matter, but rather, intends to sit by and "monitor developments" which may influence ACE's unrelated matters. A party need not be a participant to monitor the developments of a case. All relevant documents and proceedings from these matters are publicly available, and anyone may appear and speak at the Public Hearings and/or provide comments to the Board. Therefore, I **HEREBY FIND** that ACE does not have a significant interest in the outcome of this case to warrant granting participant status in this matter. See N.J.A.C. 1:1-16.6.

As such, after careful review of the individual facts, circumstances, and law, I **HEREBY FIND** that ACE failed to satisfy the legal requirements necessary to grant participation. Accordingly, I **HEREBY DENY** ACE's Motion to Participate for failure to meet the standards provided in N.J.A.C. 1:1-16.6.

⁵ See In the Matter of the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control of Public Service Electric and Gas Company and Related Authorizations, BPU Docket No. EM05020106, Order dated June 8, 2005.

⁶ See In re the Board's Investigation into the Continuing Outage of the Salem Nuclear Generating Station, BPU Docket Nos. ES96030158 and ES96030159, Order dated December 18, 1996, at 27-28. (Deciding that, where the movant in a Motion to Intervene filed nine months after initiation of the matter and after missing several important investigatory milestones and hearings relevant to the case, allowing such an untimely intervention would lead to confusion and "undue and inappropriate delay.")

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 5/20/2022

A handwritten signature in cursive script that reads "Mary-Anna Holden".

MARY-ANNA HOLDEN
COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL OF AN INFRASTRUCTURE ADVANCEMENT PROGRAM (IAP)

DOCKET NOS. EO21111211 AND GO21111212

SERVICE LIST

<u>Public Service Electric and Gas Company</u> PSEG Services Corporation 80 Park Plaza, T5 Post Office Box 570 Newark, NJ 07102 Joseph Accardo, Jr., Esq. joseph.accardojr@pseg.com Danielle Lopez, Esq. danielle.lopez@pseg.com Michele Falcao michele.falcao@pseg.com Matthew M. Weissman, Esq. matthew.weissman@pseg.com Caitlyn White caitlyn.white@pseg.com Kenneth T. Maloney Cullen and Dykman LLP 1101 14th St., NW Suite 750 Washington, DC 20005 kmaloney@cullenllp.com <u>New Jersey Division of Rate Counsel</u> 140 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003 Brian O. Lipman, Esq., Director blipman@rpa.nj.gov T. David Wand, Esq. dwand@rpa.nj.gov Maura Caroselli, Esq. mcaroselli@rpa.nj.gov	<u>Board of Public Utilities</u> 44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625-0350 Carmen Diaz, Acting Secretary board.secretary@bpu.nj.gov Robert Brabston, Esq., Executive Director robert.brabston@bpu.nj.gov Stacy Peterson, Deputy Executive Director stacy.peterson@bpu.nj.gov <u>Division of Energy & Water</u> Mike Kammer, Director mike.kammer@bpu.nj.gov Paul Lupo, Bureau Chief paul.lupo@bpu.nj.gov David Brown david.brown@bpu.nj.gov Ryan Moran ryan.moran@bpu.nj.gov <u>Counsel's Office</u> Abe Silverman, Esq., General Counsel abe.silverman@bpu.nj.gov Carol Artale, Esq., Deputy General Counsel carol.artale@bpu.nj.gov Heather Weisband, Esq. heather.weisband@bpu.nj.gov <u>Economist Office</u> Dr. Benjamin Witherell, Chief Economist benjamin.witherell@bpu.nj.gov
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<u>New Jersey Division of Rate Counsel (Cont.)</u>	<u>Board of Public Utilities (Cont.)</u>
Brian Weeks, Esq. bweeks@rpa.nj.gov Robert Glover, Esq. rglover@rpa.nj.gov Sarah Steindel, Esq. ssteinde@rpa.nj.gov Bethany Rocque-Romaine, Esq. bromaine@rpa.nj.gov Kurt Lewandowski, Esq. klewando@rpa.nj.gov Megan Lupo, Esq. mlupo@rpa.nj.gov Debora Layugan dlayugan@rpa.nj.gov Karen Forbes kforbes@rpa.nj.gov	Christine Lin christine.lin@bpu.nj.gov Dr. Son Lin Lai son.lai@bpu.nj.gov Jackie O'Grady jackie.ogrady@bpu.nj.gov
<u>Rate Counsel Consultants</u> Acadian Consulting Group 5800 One Perkins Drive Bldg. 5, Suite F Baton Rouge, LA 70808 David Dismukes, Ph.D. daviddismukes@acadianconsulting.com Michael Deupree michaeldeupree@acadianconsulting.com Taylor Deshotels taylordeshotels@acadianconsulting.com Emily Mouch emilymouch@acadianconsulting.com	<u>New Jersey Division of Law</u> Richard J. Hughes Justice Complex Public Utilities Section 25 Market Street, P.O. Box 112 Trenton, NJ 08625 Pamela Owen, ASC, DAG pamela.owen@law.njoag.gov Michael Beck, DAG michael.beck@law.njoag.gov Matko Ilic, DAG matko.ilic@law.njoag.gov Daren Eppley, DAG daren.eppley@law.njoag.gov <u>New Jersey Large Energy Users Coalition</u> Steven S. Goldenberg Giordano, Halleran & Ciesla, P.C. 125 Half Mile Road, Suite 300 Red Bank, NJ 07701-6777 sgoldenberg@ghclaw.com Paul F. Forshay Eversheds Sutherland (US) LLP 700 Sixth Street, N.W., Suite 700 Washington, DC 20001-3980 paulforshay@eversheds-sutherland.com

<u>Rate Counsel Consultants (Cont.)</u> Rod Walker & Associates Consultancy 201 Cherokee Blvd., Suite 101 Chattanooga, TN 37405 Rod Walker rwalker@rwalkerconsultancy.com Jeremy Walker jwalker@rwalkerconsultancy.com Andrea Crane The Columbia Group, Inc. 2805 East Oakland Park Boulevard, #401 Fort Lauderdale, FL 3306 ctcolumbia@aol.com Max Chang Synapse Energy Economics, Inc. 485 Massachusetts Ave., Suite 3 Cambridge, MA 02139 mchang@synapse-energy.com Marlon Griffing, Ph.D PCMG and Associates 22 Brookes Drive Gatthersburg, MD 20785 mgriffing@pcmgregcon.com Ezra Hausman, Ph.D Ezra Hausman Consulting 77 Kaposia Street Newton, MA 02466 ezra@ezrahausman.com <u>New Jersey Laborers - Employers Cooperation and Education Trust</u> Bradley M. Parsons, Esq. Kroll Heineman Ptasiwicz & Parsons, LLC Metro Corporate Campus One 99 Wood Avenue South, Suite 307 Iselin, NJ 08830 bparsons@krollfirm.com	<u>South Jersey Gas Company and Elizabethtown Gas Company</u> Deborah M. Franco, Esq. Vice President, Rate, Regulatory & Sustainability South Jersey Industries, Inc. 520 Green Lane Union, NJ 07083 dfranco@sjindustries.com Sheree L. Kelly, Esq. Regulatory Affairs Counsel South Jersey Industries, Inc. 520 Green Lane Union, NJ 07083 skelly@sjindustries.com Cindy Capozzoli Director, Rates SJI Utilities, Inc. 1 South Jersey Place Atlantic City, NJ 08401 ccapozzoli@sjindustries.com Carolyn A. Jacobs Regulatory Compliance Specialist Sr. Rates & Regulatory Affairs 1 South Jersey Place Atlantic City, NJ 08401 cjacobs@sjindustries.com <u>Engineers Labor – Employer Cooperative</u> Elizabeth K. Schlax, Esq. Susanin, Widman & Brennan, PC 1001 Old Cassatt Rd., Suite 306 Berwyn, PA 19312 eschlax@swbcounsellors.com <u>Burns & McDonnell Engineering Company</u> James H. Laskey Norris McLaughlin, P.A. 400 Crossing Blvd, 8th Floor Bridgewater, NJ 08807 jlaskey@norris-law.com
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Ferreira Construction Company

Louis A. Modugno
Trif & Modugno LLC

89 Headquarters Plaza, North Tower
Suite 1201
Morristown, NJ 07960
lmodugno@tm-firm.com

IBEW

Scott Campbell
IBEW Local Union 94
299 Ward Street
East Windsor, NJ 08520
scott@ibew94.org

Paul A. Montalbano, Esq.
Cohen, Leder, Montalbano &
Connaughton, LLC
669 River Drive, Suite 125
Elmwood Park, NJ 07407
montalbanoemail@yahoo.com

Atlantic City Electric Company

92DC42
500 N. Wakefield Drive
P.O. Box 6066
Newark, DE 19714-6066

Philip Passanante, Esq.
Assistant General Counsel
Philip.Passanante@pepcoholdings.com

**Burns & McDonnell Engineering Company
(cont.)**

Laura M. Miller
Norris McLaughlin, P.A.
400 Crossing Blvd, 8th Floor
Bridgewater, NJ 08807
lmiller@norris-law.com

Lindsay Grise
Legal Counsel
Burns & McDonnell Engineering Company, Inc
9400 Ward Parkway
Kansas City, MO 64112
lgrise@burnsmcd.com

J. Fletcher Creamer & Son

Gibbons P.C.
50 West State Street
Suite 1104
Trenton, NJ 08608

Michael D. DeLoreto, Esq.
mdeloreto@gibbonslaw.com

Kevin G. Walsh, Esq.
kwash@gibbonslaw.com

Courtney A. Johnson, Esq.
cjohnson@gibbonslaw.com