



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PETITION OF)
ELIZABETHTOWN GAS COMPANY TO IMPLEMENT)
AN INFRASTRUCTURE INVESTMENT PROGRAM)
("IIP") AND ASSOCIATED RECOVERY MECHANISM)
PURSUANT TO N.J.S.A. 48:2-21 AND N.J.A.C. 14:3-)
2A)

ORDER ON MOTIONS TO
INTERVENE OR PARTICIPATE
DOCKET NO. GR23120882

Parties of Record:

Dominick DiRocco, SJI Utilities, Inc., on behalf of Elizabethtown Gas Company
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Giordano, Halleran and Ciesla, P.C. for New Jersey Large Energy Users Coalition

BY COMMISSIONER MICHAEL BANGE:

I. BACKGROUND AND PROCEDURAL HISTORY

On December 11, 2023, Elizabethtown Gas Company ("ETG" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval of an Infrastructure Investment Program ("IIP," or "Program") and an associated cost recovery mechanism pursuant to N.J.A.C. 14:3-2A ("Petition").¹ The Company proposed a five (5)-year Program beginning on July 1, 2024 with a total investment level of approximately \$625 million.

According to the Petition, ETG's proposed Program includes the following: 1) installing approximately 250 miles of new main, and retirement of approximately 274 miles of at-risk cast iron, vintage steel and vintage plastic mains and associated services; 2) upgrading the low

¹ On December 19, 2017, the Board adopted new regulations for utility "Infrastructure Investment and Recovery" supporting the implementation of an IIP, which allows a utility to accelerate its investment in the construction, installation, and rehabilitation of certain non-revenue producing utility plant and facilities that enhance safety, reliability, and/or resiliency. The rules are codified at N.J.A.C. 14:3-2A.1 et seq. and became effective on January 16, 2018.

pressure system to elevated pressure; and 3) installing approximately 35,000 excess flow valves on the upgraded system.²

In the Petition, ETG proposed to recover Program costs through annual rate adjustment filings. According to the Company, the costs would include: 1) depreciation expense providing for the recovery of the invested capital over its useful book life; and 2) a return on the net investment, which will be calculated as the gross investment, plus Allowance for Funds Used During Construction and Independent Monitor costs, less depreciation expense and deferred income taxes. The return on the net investment would be calculated utilizing the after-tax Weighted Average Cost of Capital, which is predicated on the rate of return approved in the Company's most recent base rate case. As proposed by ETG, any change in the rate of return authorized by the Board in a future base rate case would be reflected in the subsequent monthly revenue requirement calculations.

ETG provided that the estimated initial bill impact of the proposed rates effective on October 1, 2025 to the typical residential customer using 1,000 therms annually is an increase of approximately \$38.10 annually, or approximately 3.1%. Additionally, the estimated cumulative bill impact following the fifth year of the proposed Program on the typical residential customer using 1,000 therms annually is an increase of approximately \$190.90 annually, or approximately 15.6%.

On January 31, 2024, the Board designated myself, Commissioner Michael Bange, as Presiding Commissioner, with the authority to rule on all motions that arise during the pendency of the proceedings, and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.³ The Board further ordered that any entities seeking to intervene or participate must file the appropriate application with the Board by February 29, 2024, 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.

II. **THE MOTIONS**

Motions to Intervene

New Jersey Large Energy Users Coalition

On February 6, 2024, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a Motion to Intervene.

According to its motion, NJLEUC is an association whose members include large natural gas distribution customers served by ETG. NJLEUC stated that it has consistently been granted intervenor status in ETG's regulatory, merger, rate and infrastructure proceedings. NJLEUC argued that it would be directly affected by the rate increases that will result from this proceeding given its capacity as an association of large end-use customers of ETG.

² The Company also proposed to relocate inside meter sets, but these costs, like all other meter costs, would not be recovered through the IIP.

³ In re the Petition of Elizabethtown Gas Company to Implement an Infrastructure Investment Program ("IIP") and Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A, Order Designating Commissioner and Setting Manner of Service and Bar Date, BPU Docket No. GR23120882, Order dated January 31, 2024.

NJLEUC further argued that the interests of its members are unique from those of any other party. Specifically, NJLEUC stated that its members employ thousands of New Jersey residents and are a bedrock of the State's business community and economy. According to NJLEUC, its members continually assess the competitiveness of their New Jersey operations, and these assessments consider the outcome of regulatory proceedings such as this matter.

Additionally, NJLEUC stated that the issues to be decided in this proceeding "substantially, specifically and directly affect" it, thereby making it appropriate for NJLEUC to intervene as a party. Further, NJLEUC stated that it would "measurably and constructively" advance this proceeding because of the unique, well-informed status of its members. Therefore, NJLEUC requested that it be permitted to intervene in this proceeding with full procedural and substantive rights.

Engineers Labor-Employer Cooperative

On February 27, 2024, the Engineers Labor-Employer Cooperative ("ELEC") filed a Motion to Intervene.

As stated in its motion, ELEC is a labor-management organization that promotes economic development, investments in infrastructure, and construction to provide opportunities for developers, union contractors, and members of the International Union of Operating Engineers Local 825. Additionally, ELEC stated that it represents more than 7,000 experienced operating engineers and over 1,000 contractors throughout the State of New Jersey and the lower counties of the State of New York. According to its motion, ELEC is in a unique position to provide insight on the impact of the Program from both a contractor and operating engineer perspective, speaking to the costs and feasibility of the continued energy infrastructure improvements, the related economic impact, and the impact of the future and long-term costs of the Program, in addition to providing insight on manpower requirements of the Program, the market for operating engineers, and any additional specific training that may be necessary for operating engineers to perform work under the Program.

In support of its motion, ELEC stated that it would be substantially, specifically, and directly affected by the outcome of this proceeding. According to ELEC, its member contractors and operating engineers will be directly impacted by the Program because ELEC member contractors and operating engineers will be performing work called for in the Petition. Additionally, ELEC argued that its interest will add measurably and constructively to the proceeding. Specifically, ELEC stated that it has a substantial interest in knowing, understanding, and reviewing the intricacies of the Program as discussed in this proceeding so it has the opportunity to provide input on any additional or specialized training necessary for completing the work. ELEC also stated that it has a history of successful efforts on behalf of other energy and pipeline projects, including participating in prior BPU proceedings.

Further, ELEC argued that its interests are not adequately represented by any other party to this proceeding, as ELEC is in a unique position to provide insight on the impact of the Program from both a contractor and operating engineer perspective, with each constituency having an interest in the outcome of this proceeding. Additionally, ELEC asserted that its inclusion as an intervenor will not cause delay or confusion.

Motions to Participate

Public Service Electric and Gas Company

On January 23, 2024, Public Service Electric and Gas Company (“PSE&G”) filed a Motion to Participate.

As stated in its motion, PSE&G is New Jersey public utility engaged in the purchase, distribution, and sale of natural gas for more than 1,900,000 customers. PSE&G stated that the Board’s decision in this proceeding is likely to have a precedential effect on not only ETG and its customers, but also upon PSE&G and the other New Jersey utilities. Additionally, PSE&G stated that its service territories, customers, and operations are distinct from those of other parties in this case and, therefore, no other party will represent the interests of PSE&G in this matter. According to PSE&G, it has a history of coordinating its activities in dockets at the Board with those of other utilities where appropriate. Further, PSE&G argued that its participation is likely to add constructively to the proceeding due to its experience in the gas industry.

Utility and Transportation Contractors Association of New Jersey

On February 27, 2024, the Utility and Transportation Contractors Association of New Jersey (“UTCANJ”) filed a Motion to Participate.

According to its motion, UTCANJ is a nonprofit trade association headquartered in Wall Township, New Jersey that represents approximately 1,000 member firms in the public and private sectors active in all phases of heavy, highway, utility, and marine construction, as well as site work including remediation of brownfields and contaminated sites. UTCANJ stated that it would be substantially, specifically, and directly impacted by the issues that will be addressed in this proceeding, and no other party or participant will represent its interests. UTCANJ further stated that its participation is likely to add constructively to the proceeding while not resulting in delay.

Skoda Contracting Co.

On February 28, 2024, Skoda Contracting Co. (“Skoda”) filed a Motion to Participate.

According to its motion, Skoda is a utility contractor based in Flanders, New Jersey employing approximately 200 direct and indirect employees that work on the ETG/South Jersey Industries system. Skoda further stated that it would be substantially, specifically, and directly impacted by the issues that will be addressed in this proceeding. Further, Skoda stated that no other party or participant will represent its interests and that its participation is likely to add constructively to the proceeding.

New Jersey Laborers-Employers Cooperation and Education Trust

On February 29, 2024, New Jersey Laborers-Employers Cooperation and Education Trust (“NJLECET”) filed a Motion to Participate.

As stated in its motion, NJLECET is a nonprofit labor management fund representing more than 25,000 laborers in New Jersey and their signatory contractors. NJLECET further stated that its membership comprises local unions engaged in the construction and heavy highway construction industry. Additionally, NJLECET stated that its board comprises representatives from large New Jersey construction contractors that work for many of New Jersey’s largest private corporations

as well as New Jersey's largest utility companies. NJLECET stated that its membership has extensive experience with New Jersey large-scale construction, and the surrounding political and regulatory environment, and is therefore uniquely positioned to evaluate the potential impact of the Program.

NJLECET argued that its participation would measurably and constructively advance this proceeding. According to NJLECET, its membership includes large-scale and commercial contractors whose projects and businesses will be directly impacted by the Program. NJLECET also noted that it has previously been granted participant status by the BPU in similar proceedings, and stated that its entry as a participant would add constructively to this proceeding without causing undue delay or confusion.

III. **RESPONSES TO THE MOTIONS**

New Jersey Division of Rate Counsel

On February 2, 2024, the New Jersey Division of Rate Counsel ("Rate Counsel") filed a letter stating that it had no objection to PSE&G's Motion to Participate.

On April 16, 2024, Rate Counsel submitted additional comments in response to the subsequent motions received. Specifically, Rate Counsel stated that it had no objection to NJLEUC's intervention in this proceeding. With respect to ELEC's Motion to Intervene, Rate Counsel stated that ELEC has failed to demonstrate that it is entitled to intervenor status. Additionally, Rate Counsel stated that ELEC has not asserted a legally protected right under N.J.S.A. Title 48 to receive work from ETG. However, Rate Counsel did not object to the granting of participant status to ELEC. Further, Rate Counsel was not opposed to the Motions to Participate filed by UTCANJ, Skoda, and NJLECET.

ETG

On March 1, 2024, ETG submitted a letter stating that it did not oppose the motions filed by PSE&G, NJLEUC, UTCANJ, ELEC, Skoda, or NJLECET.

IV. **DISCUSSION AND FINDINGS**

Motions to Intervene and/or Participate

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition

of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, file a statement or brief, file exceptions, or all of these as determined by the trier of fact.

As the Board stated in previous proceedings, 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 proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case.⁴

Motions to Intervene

NJLEUC

After consideration of NJLEUC's Motion to Intervene, and given the lack of any objections, I **HEREBY FIND** the members of NJLEUC, who represent large and identifiable customer groups of ETG, will be directly and substantially affected by the outcome of this proceeding. I **FURTHER FIND**, pursuant to N.J.A.C. 1:1-16.3(a), that NJLEUC has met the standards for intervention as it has a significant interest in this proceeding, its interest is different from that of any other party, and it will add measurably and constructively to the proceeding without causing delay. Accordingly, I **HEREBY GRANT** NJLEUC's Motion to Intervene.

ELEC

The arguments advanced by ELEC in support of its Motion to Intervene provide, among other things, that its operating engineers and contractors will be substantially, specifically, and directly affected by the outcome of the proceeding because its members may perform the work related to the Program. ELEC further argued that it will add measurably and constructively to the proceeding by offering input on the market for operating engineers. However, I am not persuaded that these interests are sufficient to warrant intervention. This information does not add measurably and constructively to the scope of the case or assist the Board in determining whether the Program will enhance safety, reliability, and/or resiliency.⁵ Considering the limited nature and extent of ELEC's interest, I **HEREBY DENY** ELEC's Motion to Intervene. However, I **HEREBY FIND** that ELEC is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to ELEC.

Motions to Participate

In reviewing motions to participate, I consider whether the movant's interest in the matter is significant and whether participation is likely to add constructively to the case without causing undue delay or confusion. See N.J.A.C. 1:1-16.6.

⁴ In re 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.

⁵ See N.J.A.C. 14:3-2A.1 et seq.

With regard to the Motions to Participate filed by PSE&G, UTCANJ, Skoda and NJLECET, and after careful review of the individual facts and circumstances detailed in each motion, I **HEREBY FIND** that these entities' interest in this proceeding is sufficient to merit participation and that such participation is likely to add constructively to this matter without causing undue delay or confusion. Accordingly, and having received no objection, I **HEREBY GRANT** the Motions to Participate filed on behalf of PSE&G, UTCANJ, Skoda and NJLECET.

Summary of Rulings

The following entity is **HEREBY GRANTED** Intervenor status:

- NJLEUC

The following entities are **HEREBY GRANTED** Participant status, which I determine shall be limited, as to each participant, pursuant to N.J.A.C. 1:1-16.6(c), to the right to argue orally and file a statement or brief:

- PSE&G;
- UTCANJ;
- ELEC;
- Skoda; and
- NJLECET

I **FURTHER 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: 4/25/2024

BY:



MICHAEL BANGE
COMMISSIONER

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY TO IMPLEMENT
AN INFRASTRUCTURE INVESTMENT PROGRAM (“IIP”) AND ASSOCIATED RECOVERY
MECHANISM PURSUANT TO N.J.S.A. 48:2-21 AND N.J.A.C. 14:3-2A

DOCKET NO. GR23120882

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