

STATE OF NEW JERSEY
Board of Public Utilities
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**IN THE MATTER OF THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY FOR)
APPROVAL OF THE CONSTRUCTION OF THE)
MASON SUBSTATION DAMAGED DURING)
SUPERSTORM SANDY)**

ENERGY

**PREHEARING ORDER
DOCKET NO. E016080788**

Parties of Record:

Matthew M. Weissman, Esq. and Hesser G. McBride, Esq., on behalf of Public Service Electric and Gas Company, Petitioner
Stefanie A. Brand, Esq., Director, on behalf of New Jersey Division of Rate Counsel
Jessica Goldstein, Esq., on behalf of New Jersey Transit Corporation
Steven Goldenberg, Esq., on behalf of the New Jersey Large Energy Users

BY COMMISSIONER JOSEPH L. FIORDALISO:

On August 15, 2016, Public Service Electric and Gas ("PSE&G" or "Company"), filed a petition with the State of New Jersey, Board of Public Utilities ("Board"), seeking approval to construct, own and operate a New Substation ("New Substation") at the site of the current Mason and Building 9 ("Existing Substation") substations which are located adjacent to each other in Kearny, New Jersey. The Existing Substation[s] are currently owned by New Jersey Transit Corporation ("NJ Transit"), however PSE&G is seeking authorization to construct a New Substation to replace the Existing Substation[s]. PSE&G will own, operate and maintain the New Substation.

The Company is also seeking approval of a revised High Tension Service ("HTS") tariff to include a special provision for services provided to the new substation and a cost-recovery mechanism entitled Substation Adjustment Mechanism ("SAM"). New rates to be determined at a later date. By BPU Order dated September 23, 2016, the Board designated me as the Presiding Commissioner with authority to rule on all motions that arise during the proceeding, and to set a schedule that will secure a just and expeditious determination of the issues.

Accordingly, I HEREBY ISSUE the following as the Prehearing Order for this matter:

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

In this proceeding, PSE&G is seeking approval to construct, own and primarily operate a new substation (“New Substation”) at the site of the current Mason and Building 9 (“Existing Substation”); seeking proposed changes to the High Tension Service (“HTS”) tariff; and approval of a Substation Adjustment Mechanism (“SAM”) cost recovery mechanism.

Issues to be Resolved

- a. Whether the New Substation should be considered transmission or distribution infrastructure;
- b. Whether it is proper and lawful for the Petitioner to recover the cost of the New Substation through distribution rates;
- c. Whether the New Substation is cost effective and necessary as a storm resiliency measure;
- d. Whether PSE&G’s proposed revisions to the HTS tariff are reasonable and lawful;
- e. Whether the Petitioner’s proposed Substation Adjustment Mechanism (“SAM”) cost recovery mechanism is reasonable and lawful;
- f. Whether the proposal for PSE&G to own, operate and construct the New Station is reasonable and prudent;
- g. Whether the proposed cost estimate to construct the New Substation is reasonable;
- h. Whether the proposed cost recovery mechanism is reasonable; and
- i. Whether the proposed revisions to the HTS tariff are reasonable.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:

PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:

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No change in designated trial counsel shall be made without leave if such change will interfere with the date for hearing. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:

Six public hearings will be held over three days in the Company's service territory as follows:

January 10, 2017 in the Burlington County Administration Building, Mt. Holly, N.J. at 4:30 PM and 5:30 PM.

January 12, 2017 in the Middlesex County Administration Building, New Brunswick, N.J. at 4:30 PM and 5:30 PM.

January 13, 2017 in the Bergen County Administration Building, Hackensack, N.J. at 4:30 PM and 5:30 PM.

Notice of the public hearings will be published in newspapers of general circulation within PSE&G's service territory.

4. SCHEDULED HEARING DATES, TIME AND PLACE:

The evidentiary hearings will be held on May 2, 3, 4 and 5, 2017, 10:00 AM to 4:30 PM at 44 South Clinton Avenue, 1st Floor Multi-Purpose Room, Trenton, N.J.

5. **PROCEDURAL SCHEDULE:**

In addition, I have reviewed the proposal for a preliminary schedules submitted by the parties and the schedule recommended by staff after discussion with all parties at the Pre Hearing Conference run by staff on November 21, 2016, after giving due consideration to the positions of all parties, I **HEREBY ISSUE** the attached as the Pre Hearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

6. **STIPULATIONS:**

None at this time.

7. **SETTLEMENT:**

The parties are encouraged to engage in settlement discussions. Several settlement conferences are scheduled in late January in the attached Procedural Schedule (Exhibit A). Additional settlement discussions may be scheduled, if necessary, at a later date.

8. **AMENDMENTS TO PLEADINGS:**

None at this time.

9. **DISCOVERY AND DATES FOR COMPLETION:**

Petitioner will update and complete discovery in accordance with the Procedural Schedule, Exhibit A, and this pre-hearing order.

10. **ORDER OF PROOFS:**

Petitioner bears the burden of proof and shall proceed first followed by Rate Counsel, NJ Transit, NJLEUC and Board Staff.

11. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

12. **EXHIBITS MARKED IN EVIDENCE:**

All exhibits which the parties intend to use in this matter shall be pre-marked, and a list of the pre-marked exhibits shall be provided to the undersigned at the beginning of the hearing. Petitioner's exhibits shall be marked P-1, P-2, etc.; Board Staff exhibits shall be marked as S-1, S-2, etc.; Rate Counsel exhibits shall be marked RC-1, RC-2, etc.; NJ Transit exhibits shall be marked NJT-1, NJT-2, etc.; NJLEUC's exhibits shall be marked NJL-1, NJL-2, etc.; Joint exhibits as J-1, J-2, etc. All Exhibits for admission shall be on 3 hole punched paper.

13. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

Petitioner has pre-filed the written testimony of witnesses:

Jorge Cardenas

Steven Swetz

Rate Counsel will present witnesses and shall pre-file its testimony consistent with this order of:

Andrea Crane

Bob Fagan

Max Chang

Charlie Salamone

14. **MOTIONS:**

On August 16, 2016, New Jersey Transit Corporation (“NJ Transit”), and on September 27, 2016 the New Jersey Large Energy Users Coalition (“NJLEUC”) filed motions to intervene. NJLEUC also filed a *pro hac vice* motion on behalf of Paul Forshay, Esq.

NJ Transit

DAG Jessica Goldstein filed a motion to intervene in this proceeding on behalf of NJ Transit. The motion states that NJ Transit is New Jersey’s public transportation corporation providing bus, rail and light rail in New Jersey. The Mason Substation and Building 9 Substation are located in the same general area in the NJ Transit Meadows Maintenance Complex (“MMC”) in Kearny, N.J. The two substations are proposed to be combined by the project. Mason substation is a traction substation facility on the NJ Transit System which provides traction power for all electric trains on the Morris & Essex (“M&E”) line tracks, provides traction power for the electrified portion of the Montclair/Boonton Line between Great Notch Yard in Little Falls and the Roseville Junction with the M&E Line in Newark and provides backfeed power.

It further states that Building 9 Substation is a critical facility providing operations support to the MMC, NJ Transit Rail Operation’s major maintenance facility serving the entire fleet of rail coaches, locomotives, equipment cars and construction equipment. The Mason Substation is also unique as it currently acts as a flow-through 230kV substation which splits the 230kV PSE&G transmission line that terminates at the PSE&G Athenia and Essex substation. NJ Transit owns and is currently responsible for maintaining the 230kVh high voltage equipment located on NJ Transit Property. The PSE&G facilities that split into the Existing Substation provide power to areas across PSE&G’s Northern New Jersey service territory.

The petition states the Mason and Building 9 substations are two of six substations substantially damaged during Superstorm Sandy. In 1983 PSE&G and NJ Transit entered into an agreement which gave PSE&G right to operate, test and adjust certain elements of the substation. The repair of the damage from Superstorm Sandy requires power outages necessary to accomplish maintenance and repairs that are now precluded. NJ Transit began a multi-year design project, consulting with PSE&G, and has concluded that a new substation is necessary and that PSE&G is in a better position to construct and own the new substation in a way that ensure ensures reliability of electric service in PSE&G’s service territory. On June 22, 2016 NJ Transit and PSE&G executed a Memorandum of Understanding

Regarding a Collaboration to Explore Opportunities to Enhance Reliability and Resiliency through PSE&G's Ownership, Design, Construction, Maintenance, and Operation of a New Substation ("MOU") which will allow the technical and operational coordination activities required for PSE&G to assume ownership and responsibilities relating to the construction of the new substation. PSE&G will be relying on the ground work investigation to develop the project, and the design and construction of the new substation will require involved and close technical coordination between PSE&G and NJ Transit, therefore is necessary to as a party to this matter.

No opposition was filed in response to NJ Transit's motion.

NJLEUC Motion to intervene and for Admission *Pro Hac Vice*

By letter dated September 27, 2017, Steven S. Goldenberg, Esq. filed a motion to intervene in this proceeding on behalf of NJLEUC. According to the motion, NJLEUC is an association of large volume customers which, among other things, monitors regulatory proceedings on behalf of its members, including those serviced by PSE&G. The motion states that NJLEUC's members, as large end-use customers of electricity and gas on the PSE&G system, will be directly and immediately affected by the significant impact on the cost of the electric service provided by PSE&G to the members of NJLEUC as well as the State's energy regulatory policies. NJLEUC maintains that it has a unique perspective to otherwise represented, and that its participation in this matter will constructively and measurably advance this proceeding, as required by N.J.A.C. 1;1-16.3(a). NJLEUC also commits to working cooperatively with the other parties to this proceeding, to the extent possible.

Mr. Goldenberg also moved pursuant to N.J.A.C. 1:1-5.2 and 1:21-2 for the admission *pro hac vice* of Paul F. Forshay, Esq. a member in good standing of the bar of the District of Columbia. Mr. Forshay filed an affidavit with the motion asserting that there is good cause for his admission since he has considerable experience representing marketers and large end users in proceedings before the Board and the Federal Energy Regulatory Commission, he has been requested by NJLEUC to appear in these proceedings, and that he is associated in this matter with Mr. Goldenberg who is New Jersey counsel of record. The affidavit also indicates that Mr. Forshay has satisfied all of the conditions for admission as set forth in R. 1:21-2(a), and that the fees required by R. 1:20-1(b) and 1:28-2 have been paid to the Disciplinary Oversight Committee and the New Jersey Lawyers Fund for Client Protection.

No Opposition was filed in response to NJLEUC's motion to intervene, or motion for *pro hac vice* submitted on behalf of Mr. Forshay. However, in course with previous matters counsel for NJLEUC on December 6, 2016, supplied a list of some of NJLEUC's members which received service from PSE&G, and agreed to update that list should any of the entities listed cease to be PSE&G customers.

DISCUSSION AND FINDINGS:

Motions to Intervene

In ruling on a motion to intervene, N.J.A.C. 1: 1-16.3(a) requires that I 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.

As the Board has 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 intervener'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. See, Order, I/M/O the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), NJ Transit, as owner and entity responsible for the maintenance of the 230kVh high voltage equipment on the property, NJ Transit will be directly affected by the outcome of the this proceeding, is a necessary party to this matter and is necessary for development of a full and complete record for review by the Board in its evaluation of this matter. Therefore, I **HEREBY FIND** that NJ Transit has met the standards for intervention in the PSE&G Mason Substation matter, as it has an interest in this proceeding that is not represented by another party. Accordingly, I **HEREBY GRANT** NJ Transit's motion for intervention.

After consideration of the papers, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), the PSE&G large end customer members of NJLEUC will be directly affected by the outcome of the this proceeding, and that NJLEUC's should contribute to the development of a full and complete record for review by the Board in its evaluation of this matter. Therefore, I **HEREBY FIND** that NJLEUC has met the standards for intervention in the PSE&G Mason Substation matter, as it has an interest in this proceeding that is not represented by another party.

Based on review of the motion for admission *pro hac vice* of Mr. Forshay, Esq., and supporting affidavit, and no objections have being been received, I **HEREBY FIND** that Mr. Forshay, Esq., has satisfied the conditions for admission, and **HEREBY GRANT** the motion of admission to practice before the Board for this proceeding in the understanding that Mr. Forshay shall:

1. Abide by the Board's rules and all applicable New Jersey Court rules, and all disciplinary rules;
2. Submit proof of payment of the fees required by R.1:20-1(b) and 1:28-2;
3. Consent to the appointment of the Clerk of the Supreme Court as agent upon who service of process may be made for all actions against him and may arise out of his participation in this matter;
4. Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
5. Have all pleadings, briefs and other papers filed with the Board signed by the attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the attorney admitted by this Order.

As of the date of this Order, parties to this matter include Petitioner, Rate Counsel, Board Staff, NJ Transit and NJLEUC.

15. OTHER SPECIAL MATTERS:

Petitioners shall file pre-filed testimony of expert witness(es) as set forth in Exhibit A.

Consistent with the Board's September Order, I **HEREBY DIRECT** that all documents be served by electronic mail, while still providing hard copies to the Board for those documents which must be filed with the Board, and a hard copy to each party unless otherwise requested.

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: December 15, 2016

BOARD OF PUBLIC UTILITIES

BY:



Joseph L. Fiordaliso
Commissioner

Procedural Schedule-Exhibit A

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF THE CONSTRUCTION OF THE MASON SUBSTATION DAMAGED DURING SUPERSTORM SANDY DOCKET NO. E016080788

November 18, 2016	Company to file direct testimony
December 9, 2016	First round of discovery requests are due*
December 23, 2016	All first round data responses are due
January 10, 12 & 13, 2017	Public Hearings to be held at 4:30 PM and 5:30 PM in Mt. Holly, New Brunswick and Hackensack, NJ respectively.
January 11, 2017	Second round/final discovery requests are due
January 25, 2017	PSE&G provides all outstanding data responses
January 26 & 27, 2017	Discovery/Settlement Conference
February 17, 2017	Rate Counsel/Intervenor Direct Testimony due
February 24, 2017	Discovery requests propounded on Rate Counsel/Intervenor Direct Testimony
March 10, 2017	Rate Counsel/Intervenor responses to discovery requests are due
March 24, 2017	Rebuttal Testimony filed by parties
April 5, 2017	Discovery requests propounded on Rebuttal Testimony
April 17, 2017	Responses to discovery requests on rebuttal Testimony due
May 1, 2 3 & 4 2017	Evidentiary hearings, with live Surrebuttal at 44 South Clinton Avenue, Trenton, NJ, MP Room, 1 st Floor
TBD	Initial Briefs
TBD	Reply Briefs

*Rolling discovery throughout proceeding

**IN THE MATTER OF THE VERIFIED PETITION OF PUBLIC SERVICE ELECTRIC & GAS
COMPANY FOR APPROVAL OF THE CONSTRUCTION OF THE MASON SUBSTATION
DAMAGED DURING SUPERSTORM SANDY**

BPU DOCKET NO. EO16080788

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