



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

IN THE MATTER OF THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY FOR)
APPROVAL OF THE ENERGY STRONG PROGRAM)
)
)

ENERGY

ORDER

DOCKET NO. EO13020155
GO13020156

Parties of Record:

Tamara Linde, Esq., Vice President –Regulatory Affairs, PSEG
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steve Goldenberg, Esq., Fox Rothschild for NJLEUC
Janine G. Bauer, Esq., Szaferman Lakind for AARP
Roger Schwarz, Issues Management LLC for the Unions

BY COMMISSIONER JOSEPH L. FIORDALISO:

On January 23, 2013 the New Jersey Board of Public Utilities (“Board” or “BPU”) issued an Order¹ (“January 23 Order”) addressing five categories of potential improvements to be undertaken by New Jersey’s electric distribution companies (‘EDCs’) in response to large scale weather events. These categories include: 1) Preparedness Efforts; 2) Communications; 3) Restoration and Response; 4) Post Event; and 5) Underlying Infrastructure Issues.

In the January 20, 2013 Order, among other actions, the Board directed the EDCs to take specific actions to improve their preparedness for major storms. As part of this response, the Board required the EDCs to provide detailed cost benefit analysis associated with a variety of utility infrastructure upgrades. The Board further required the EDCs to “carefully examine their infrastructure and use data available to determine how substations can be better protected from flooding, how vegetation management is impacting electric systems, and how Distribution Automation can be incorporated to improve reliability.” January 23 Order at 56.

¹ In the Matter of the Board’s Review of the Utilities Response to Hurricane Irene, Order Accepting Consultants’ Report and Additional Staff Recommendations and Requiring Electric Utilities to Implement Recommendations. BPU Docket No. EO11090543, January 23, 2013.

On February 20, 2013, Public Service Electric and Gas Company (“PSE&G”) petitioned the Board for the recovery of costs to bolster its “electric and gas infrastructure to make them less susceptible to damage from wind, flying debris and water damage in anticipation” of future Major Storm Events (hereafter “Energy Strong”). PSE&G requested approval of approximately \$3.9 billion in infrastructure upgrades, the cost of which is to be collected from ratepayers over a period of five years through the implementation of an “Energy Strong Adjustment Mechanism.” PSE&G further requests that the Board approve this expenditure and recovery mechanism by July 1, 2013.

On March 20, 2013 the Board opened a generic proceeding (hereinafter “Storm Mitigation Proceeding”) to investigate possible avenues to support and protect New Jersey’s utility infrastructure so that it may be better able to withstand the effects of Major Storm Events² and focused on category 5 of the January 23, 2013 Order- Underlying Infrastructure Issues for all utility companies, not exclusively the EDCs. It also invited all regulated utilities to submit detailed proposals for infrastructure upgrades designed to protect the State’s utility infrastructure from future Major Storm Events, pursuant to the terms and at the level of detail requested in the January 23 Order. Additionally, the Board found that the PSE&G Energy Strong petition, and all future petitions within the Storm Mitigation Proceeding, should be retained by the Board for review and hearing as authorized by N.J.S.A. 52:14F-8.

By Order dated June 21, 2013, the Board authorized PSE&G to implement certain Board staff recommendations related to the Energy Strong Station Flood and Storm Surge Mitigation sub-program. That Order also designated me as the as presiding commissioner for the Energy Strong petition with authority to rule on all motions that arise within this proceeding, and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

On April 16, 2013, Local Union 94 of the International Brotherhood of Electrical Workers, Local 855 of the United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Local 601 of the Utility Workers Union of America and Local 153 of the Office and Professional Employees International Union (collectively the “Unions”) filed a motion to participate in this proceeding. In the motion the Unions state that they represent more than five thousand non-management employees who are involved in all aspects of operations at PSE&G. According to the motion, the Unions’ employees will be the workers who will implement the various Energy Strong initiatives; therefore, the issues of this matter substantially, significantly and directly affect the Unions, their members and their families. According to the motion, this makes it appropriate for the Unions to participate in the Energy Strong proceeding.

On May 20, 2013, the New Jersey Large Energy Users Coalition (“NJLEUC”) filed a motion to intervene. NJLEUC maintains that its members are large end use customers of electricity and gas that will be directly and immediately affected by the rate relief sought in this proceeding, and that the interests of its members are substantially different from those of any other party seeking intervention. NJLEUC asserts that its participation in the proceeding will measurably and

² “Major Storm Event” is defined as sustained impact on or interruption of utility service resulting from conditions beyond the control of the utility that affect at least 10 percent of the customers in an operating area.

constructively advance the case and that it will work cooperatively with the other parties in this proceeding where possible and practical. PSE&G submitted a letter on May 30, 2013 responding to NJLEUC's motion stating that NJLEUC is not a formal legal entity and therefore does not have standing to intervene on its own. PSE&G further commented that any intervention to NJLEUC be conditioned on NJLEUC providing the BPU and PSE&G with a complete list of its members including identifying those members that are current customers of PSE&G. By letter dated June 6, 2013, NJLEUC represented that its members taking service in PSE&G's electric territory include Anheuser-Busch, Merck, Johnson-Matthey, Soundview Paper Company, Princeton University and NuStar Asphalt.

Mr. Steven Goldenberg, Counsel of record for NJLEUC, also moved for the admission pro hac vice of Paul F. Forshay, Esq., a member of the bar of the District of Columbia. Mr. Goldenberg represented that Mr. Forshay has had significant experience representing the interests of large end-use customers, and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represented that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and that he agrees to abide by the other requirements for admission pro hac vice.

On June 18, AARP filed a motion to intervene in both the Storm Mitigation Proceeding generally, and in PSE&G's Energy Strong Proceeding. AARP argues that its members, aged 50 and over, include hundreds of thousands members residing in PSE&G territory who purchase utility service from NJ's regulated utilities and therefore will be substantially and specifically affected by the outcome of both the Generic Proceeding and PSE&G's Energy Strong Petition. AARP asserts that its members are particularly vulnerable to the effects of utility rate increases and changes of service as many of their members spend a far greater proportion of their income on home energy costs than younger households, are less mobile and less able to move out of their residences during power outages and are living on fixed incomes. Therefore AARP maintains that its members are unique from and not adequately represented by any other party, and the issues to be decided in the Storm Mitigation Proceeding and the PSE&G Energy Strong petition will directly affect the quality of life for its members/ratepayers.

DISCUSSION AND FINDINGS

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, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

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, In re 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 and given the lack of any objections, I HEREBY FIND, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of the Unions in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I HEREBY GRANT the Motion to Participate submitted on behalf of the Unions, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

After consideration of the papers and given the lack of any objections, I HEREBY FIND, pursuant to N.J.A.C. 1:1-16.6(b), that the members of NJLEUC and AARP will be directly affected by the outcome of the Energy Strong Proceeding. Therefore, I HEREBY FIND that NJLEUC and AARP have met the standards for intervention in the Energy Strong Proceeding as both have an interest in this proceeding that is not represented by another party. Accordingly, I HEREBY GRANT the motions for intervention of NJLEUC and AARP in the Energy Strong Proceeding pursuant to the authority granted to me by the Board under the June 21, 2013 Order.

In light of this grant of intervention to NJLEUC, I have reviewed NJLEUC's motion and the supporting affidavit of Steven S. Goldberg, Esq., for admission pro hac vice of Paul F. Forshay, Esq., and no objections to it having been received after due notice to the parties, I FIND that Mr. Forshay has satisfied the conditions for admission, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, IS HEREBY admitted to practice before the Board pro hac vice in the above-captioned matter provided that he shall:

- (1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) have all pleadings, briefs and other papers filed with the Board signed by an 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 admitted attorney therein.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching just determination in this proceeding.

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

DATED: July 2, 2013

BY:



JOSEPH L. FIORDALISO
COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL OF THE ENERGY STRONG PROGRAM
BPU DOCKET NOS. EO13020155 AND GO13020156

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