



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
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, Esq., Issues Management LLC for the Unions
Aaron Kleinbaum, Esq., Environmental Intervenors

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 23 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 a detailed cost benefit analysis associated with a variety of utility infrastructure upgrades. January 23 Order at 56.

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

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.

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 \$2.5 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.”

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 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 July 2, 2013, I entered an order granting the motions of the New Jersey Large Energy Users Coalition (“NJLEUC”) and AARP to enter the pending matter as intervenors, and the motion of the Unions to participate in the matter.

MOTION TO INTERVENE

On July 8, 2013, a motion to intervene was filed by the Sierra Club – New Jersey Chapter and the New Jersey Environmental Federation (collectively, the “Environmental Intervenors”). In re Petition of Public Service Electric and Gas Company for Approval of The Energy Strong Program, Motion for Intervention by Sierra Club – New Jersey Chapter and New Jersey Environmental Federation, BPU Docket Nos. EO13020155, et al., July 8, 2013 (“Environmental Intervenors’ Motion”).

According to the Motion, the Environmental Intervenors are “conservation and environmental groups dedicated to energy conservation, the preservation of environmentally sensitive areas including wetlands and wildlife habitat, the protection of the state’s rivers and streams and the continued elimination of pollutants from the state’s air.” Id. at 4. The Environmental Intervenors state that out of their concern for these resources, they recognize that improving energy efficiency and demand side management and developing a smart grid, distributed generation, and renewable sources of energy generation are significant ways to improve and protect energy infrastructure, avoid storm related costs, and protect and save resources. They further state that they have participated in the development of New Jersey’s Energy Master Plan (“EMP”) and are committed to New Jersey’s goals of decreased energy demand and increased renewable energy supply.

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.

The Environmental Intervenors argue that they satisfy each element of the intervention standard because (1) the Environmental Intervenors have a significant interest in this matter; (2) the Environmental Intervenors have unique interests in this matter; and (3) the participation of the Environmental Intervenors will not cause confusion or undue delay. Id. at 4-5..

The Environmental Intervenors state that they have a significant interest in these proceedings, pursuant to N.J.A.C. 1:1-16.3(a). They claim that an approach focused solely on physical protection of infrastructure “misses a huge opportunity to address or eliminate the underlying causes of vulnerability.” Id. at 5. Thus, the Environmental Intervenors wish to ensure that investments capitalize on opportunities to reduce energy demand through energy efficiency and other demand side efforts, and the use of a smart grid, distributed generation, and renewable energy sources. Ibid. Secondly, the Environmental Intervenors argue that this proceeding involves significant investments of ratepayer money, in which their ratepayer members will share in the responsibility. Third, the Environmental Intervenors state they have made considerable investments of time and energy in energy efficiency and climate change matters within New Jersey, including implementation of the Energy Master Plan, the Global Warming Response Act, and Regional Greenhouse Gas Initiative. Id. at 4-5.. Fourth, the Environmental Intervenors state that energy efficiency efforts can minimize the need for the construction of new or relocated infrastructure and the destruction or interference with open space or environmentally sensitive lands.

The Environmental Intervenors maintain that they have unique interests in this matter, pursuant to N.J.A.C. 1:1-16.3(a). They claim that no other party in this matter will address the issues of: (1) supporting energy efficiency and addressing climate change to minimize the vulnerability of New Jersey’s energy infrastructure; and (2) protecting the Environmental Intervenors’ rate paying members by addressing the root causes of infrastructure vulnerability in a cost effective manner. Id. at 6. Specifically, the Environmental Intervenors claim that their “interest in addressing root causes of grid vulnerability by addressing the demand side and distributed generation is unique.” Id. at 6 & 7. Furthermore, they state that “while other parties may share to some degree Environmental Intervenors’ interest in ratepayer impacts, none couples this concern with an interest in promoting energy efficiency as a means of addressing underlying infrastructure vulnerability.” Ibid.

Finally, the Environmental Intervenors claim that their participation will not cause confusion or undue delay. Id. at 7. They state that their motion to intervene is timely, and their participation will aid the Board in evaluating the need for and cost efficacy of infrastructure investments to mitigate against future storm events and the environmental impacts of these investments. Ibid. The Environmental Intervenors state that they will provide additional information about the benefits of energy efficiency and other demand side management efforts, in part to respond to BPU staff interest in the EDCs’ smart grid efforts that incorporate distribution automation as well as the implementation of dynamic monitoring, smart metering, and other similar technologies. Ibid.

PSE&G RESPONSE TO THE MOTION

Under a cover letter dated July 18, 2013, PSE&G filed a brief in opposition to the Environmental Intervenors' Motion ("PSE&G's Opposition"). No other responses were received. PSE&G states that the Environmental Intervenors' motion to intervene should be denied, or alternatively, the Environmental Intervenors' involvement should be limited to Participant status.

PSE&G claims that the Environmental Intervenors will not be substantially, specifically, and directly affected by the outcome of the case as required by N.J.A.C. 1:1-16.1. PSE&G states that the issues raised by the Environmental Intervenors, namely, "energy efficiency, demand side management, climate change, renewable generation, and other environmental issues . . . are not what these dockets are about." PSE&G Opposition at 4. Rather, PSE&G states that "the Energy Strong proceeding addresses hardening and making more resilient the infrastructure to deliver electricity and gas to customers in extreme storm conditions," and the generic proceeding "addresses actions to address extreme weather and does not address the environmental issues raised by Movants." Id. at 4-5.

PSE&G also claims that the Environmental Intervenors' Motion should be denied because their intervention creates the prospect of confusion and undue delay, stating, "Movant's proposal to inject significant policy issues regarding renewable energy, demand side management, and energy efficiency into these proceedings will likely create confusion or cause undue delay, which is ground for denial of intervention status under N.J.A.C. 1:1-16.3." Id. at 5.

Alternatively, PSE&G states that should the presiding Commissioner decide to allow the Environmental Intervenors' involvement, such involvement should be limited to "Participant status" and that such participation "should be limited to addressing the environmental issues that are actually in or raised by these cases," such as the leakage of methane gas into the atmosphere. Id. at 5 & 6.

ENVIRONMENTAL INTERVENORS' REPLY

On July 25, 2013, the Environmental Intervenors filed a reply to PSE&G's Opposition, maintaining that the Environmental Intervenors satisfy the standard for intervention and should be permitted to intervene ("Environmental Intervenors' Reply").

First, the Environmental Intervenors maintain that their ratepayer members have a significant economic interest in the outcome of these proceedings because their rates will be directly and significantly affected by the Board's decisions regarding future grid hardening efforts. Id. at 4. Second, the Environmental Intervenors state that they possess an institutional interest in the grid resiliency issues in these proceedings because the issues discussed in the Board's instituting orders directly implicate the Environmental Intervenors' demonstrated interest in distributed generation, energy efficiency, and smart grid. Ibid. Third, the Environmental Intervenors reiterate that their interests are sufficiently different from any party such that their participation will add to the scope of the case. Id. at 4-5. Finally, the Environmental Intervenors state that the issues they seek to raise are directly germane to the scope of the docket and will not cause confusion or undue delay. Id. at 5.

The Environmental Intervenors argue that the legislature has determined energy efficiency and other energy and environmental concerns to be necessary and appropriate considerations in this proceeding because (1) the legislature has stated that agencies should make determinations that to "the maximum extent practicable and feasible conform with the energy

master plan.” Id. at 5 (citing N.J.S.A. 52:27F-15(b)); and (2) the 2011 EMP has significant energy reduction and renewable energy goals “that can be addressed through energy efficiency.” Id. at 6. Furthermore, the Environmental Intervenors state that the law governing this matter expressly requires safe, adequate, and proper service in a way that “conserves the quality of the environment and prevent[s] the pollution of the waters, land and air, and furnish[es] service and equipment to enable it to do so at just and reasonable rates.” Id. at 6 (citing N.J.S.A. 48:2-21, 48:2-23).

Secondly, the Environmental Intervenors claim that they will be directly affected by the outcome of these proceedings. They state that they will be directly affected economically because “Sierra Club – New Jersey Chapter and New Jersey Environmental Federation are composed of members who will be paying the rates determined pursuant to the outcome of this matter.” Id. at 6. The Environmental Intervenors also claim that they will be directly affected because of their demonstrated interests in energy efficiency, distributed generation, and smart grid issues. Id. at 7. The Environmental Intervenors state that the Board’s January 23 and March 20 Orders and PSE&G’s February 20 Petition raise issues directly affecting these demonstrated interests. Specifically, the Environmental Intervenors point to references in the Board’s January 23 and March 20 Orders addressing “distributed generation,” “smart grid,” “storm hardening,” and “reliability projects” as areas that require further review and analysis. Ibid. The Environmental Intervenors cite to studies, reports, and statements of utility executives to argue that the Environmental Intervenors’ demonstrated interests in energy efficiency, distributed generation and smart grids tie directly to infrastructure hardening. Id. at 8. The Environmental Intervenors argue that “PSE&G avoids these important considerations and . . . mischaracterize[s] Environmental Intervenors’ interest as purely ‘environmental.’” Id. at 10.

Finally, the Proposed Environmental Intervenors argue that their intervention will not cause confusion or undue delay. Ibid. They state that the direct relevance of distributed generation, efficiency, and demand response to the nature and scope of the required infrastructure hardening investments, will not cause confusion for the Board’s consideration of expenditure proposals, but rather will be significantly beneficial. Id. at 11. Additionally, Environmental Intervenors have timely moved to intervene and have not requested extensions of any case management dates, and Environmental Intervenors fully intend to comply with all deadlines in the proceeding. Ibid.

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 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. 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 filed by the Environmental Intervenors and the opposition of the petitioner PSE&G, I **HEREBY FIND** that the Environmental Intervenors have not shown that they will be directly affected by the outcome of the Energy Strong Proceeding other than as ratepayers, an interest already represented in this matter. However, I am persuaded that the Environmental Intervenors can provide a prospective on proposals to increase the resiliency of PSE&G's infrastructure and the reliability of its electric and gas delivery services under extreme weather conditions (the focus of this proceeding) that is different from the other parties in this matter, and that they have committed to sharing their experience and expertise. Therefore, in the interest of developing a full record, I **HEREBY FIND** that the Environmental Intervenors should be granted participant status so that they will have an opportunity to raise their issues of concern, to the extent that they are relevant to these proceedings. See Order, I/M/O Atlantic City Electric Company, BPU Docket No. ER02080510 (January 15, 2003).

Therefore, based on my review of the Environmental Intervenors' motion to intervene and the objections received, and for the reasons explained above, I **HEREBY DENY** the motion to intervene, but in the alternative, as permitted by N.J.A.C. 1:1-16.5, I **HEREBY GRANT** the Environmental Intervenors permission to participate under N.J.A.C. 1:1-16.6 limited to the filing of statements or briefs, provided that the Environmental Intervenors comply with the schedule adopted for this proceeding and work cooperatively with the other parties to this proceeding to the fullest extent possible.

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: August 2, 2013

BY:



JOSEPH 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**

SERVICE LIST

<p>PSE&G:</p> <p>Tamara L. Linde, Esq. Vice President – Regulatory Matthew M. Weissman, Esq. Martin C. Rothfelder, Esq. Public Service Electric and Gas Company 80 Park Plaza, T5 P.O. Box 570 Newark, New Jersey 07102 (973) 430- 8058(phone)(Linde) (973) 430- 7052(phone)(Weissman) (973) 430- 6479(phone)(Rothfelder) (973) 430-5983(fax) tamara.linde@pseg.com matthew.weissman@pseg.com martin.rothfelder@pseg.com</p> <p>Dennis M. Toft, Esq. John G. Valeri, Jr., Esq. Wolff & Samson PC One Boland Drive West Orange, New Jersey 07052 Phone: (973) 325-1500 Fax: (973) 325-1501 dtoft@wolffsamson.com jvaleri@wolffsamson.com</p> <p>Constance Lembo PSEG Services Corp. 80 Park Plaza, T5C Newark, NJ 07102 constance.lembo@pseg.com</p> <p>Board of Public Utilities: 44 South Clinton Avenue, 9th floor Post Office Box 350 Trenton, NJ 08625-0350</p>	<p>RATE COUNSEL:</p> <p>Stefanie Brand, Esq., Director, Division of Rate Counsel, by Felicia Thomas-Friel, Esq., Ami Morita, Esq., Sarah H. Steindel, Esq., Henry Ogden, Esq., Diane Schulze, Esq., Kurt Lewandowski, Esq., James Glassen, Esq., Brian Weeks, Esq. Division of Rate Counsel 140 East Front Street, 4th Floor P.O. Box 003 Trenton, N.J. 08625 (609) 984-1460 (phone) 609-292-2923 (fax) sbrand@rpa.state.nj.us fthomas@rpa.state.nj.us amorita@rpa.state.nj.us hogden@rpa.state.nj.us ssteinde@rpa.state.nj.us dschulze@rpa.state.nj.us klewandowski@rpa.state.nj.us jglassen@rpa.state.nj.us bweeks@rpa.state.nj.us</p> <p>Deputies Attorney General: Caroline Vachier, DAG Alex Moreau, DAG T. David Wand, DAG Department of Law & Public Safety 124 Halsey Street P.O. Box 45029 Newark, N.J. 07102 (973)648-3709 (phone) (Vachier) (973) 648-3762 (phone) (Moreau) (973) 648-3441(phone) (Wand) (973) 648-3555 (fax) Caroline.vachier@dol.lps.state.nj.us Alex.Moreau@dol.lps.state.nj.us david.wand@dol.lps.state.nj.us</p>
--	--

Division of Energy

Jerry May, Director
Alice Bator
Tom Walker
Rosalie Serapiglia
Robert Schultheis
Nanik Aswani
David Ballengee
Rene Demuynck
Henry Rich
Ricky John

Counsel's Office

Tricia Caliguire, Esq.
Bethany Rocque-Romaine, Esq.
Jason Sison

Economist Office

Mark Beyer
Christine Lin
Dr. Son Lin Lai
Jackie O'Grady

NJLEUC

Steven S. Goldenberg, Esq.
Fox Rothschild LLP
997 Lenox Drive, Bldg. 3
Lawrenceville, New Jersey 08648
sgoldenberg@foxrothschild.com

Paul Forshay, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004
Paul.forshay@sutherland.com

The Unions

Roger Schwarz
Issues Management, LLC
100 Overlook Center- 2nd Floor
Princeton, NJ 08540
rschwarz@issuesllc.com

John G. Gerrity
IBEW Local Union 94
219 Franklin Street
Hightstown, NJ 08520
Chip@ibew94.org

AARP

Jim Dieterle, New Jersey State Director
Evelyn Liebman, Associate State Director for
Advocacy
AARP
101 Rockingham Row Forrestal Village
Princeton, NJ 08540
JDieterle@aarp.org
ELiebman@aarp.org

Janine G. Bauer, Esq.
Szaferman, Lakind, Blumstein & Blader, P.C.
101 Grovers Mill Road, Suite 200
Lawrenceville, NJ 08648
jbauer@szaferman.com

Barbara Alexander
83 Wedgewood Dr.
Winthrop, ME 04364
Telephone: 207-395-4143
barbalex@ctel.net

ENVIRONMENTAL INTERVENORS

Aaron Kleinbaum, Esq.
Eastern Environmental Law Center
744 Broad Street, Suite 1525
Newark, NJ 07102
(973)424-1166
akleinbaum@easternenvironmental.org

Sierra Club
Attn: Joshua Berman
50 F St. NW, 8th Floor
Washington, D.C. 20001
Josh.Berman@sierraclub.org