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June 25, 2021

Via Electronic Mail and Interoffice Mail

The Honorable Jacob Gertsman, A.L.J.
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
P.O. Box 049
Trenton, NJ 08625

**Re: In the matter of the Petition of New Jersey Natural Gas Company
for Approval of An Increase in Gas Base Rates and for Changes in its
Tariff for Gas Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1;
and for Changes to Depreciation Rates for Gas Property Pursuant to
N.J.S.A. 48:2-18
OAL Docket No. PUC 04111-21
BPU Docket No. GR21030679**

**In the Matter of the Petition of New Jersey Natural Gas Company
for Approval of A Base Rate Adjustment Pursuant to the NJ RISE
and SAFE II Programs, N.J.S.A. 48:2-21, 48:2-21.1, 48:2-18 and 48:2-13
OAL Docket No. PUC 04113-21
BPU Docket No. GR21030680**

Dear Judge Gertsman:

Please accept for filing this response of the New Jersey Division of Rate Counsel ("Rate Counsel") to the motion to intervene in these matters filed on behalf of the Engineers Labor Employer Cooperative ("ELEC"), the Labor Management Fund of the International Union of Operating Engineers Local 825 (the "Union") and the Motion to Participate filed on behalf of New Jersey Utility Shareholders Association ("NJUSA"). A hard copy will be provided to the

Office of Administrative Law and only if requested by the parties. Thank you for your consideration and assistance.

INTRODUCTION

These consolidated proceedings, involve petitions filed by New Jersey Natural Gas Company (“NJNG”) seeking approval of an increase in its base rates, and seeking a base rate adjustment pursuant to its NJ RISE and SAFE II infrastructure programs. ELEC is a labor-management organization that promotes economic development and investments in infrastructure and construction that provide opportunities for developers, union contractors, and members of the Union, which represents operators of heavy construction equipment. *ELEC Motion, p. 2.* ELEC is seeking intervention based on the economic interests of its members in participating in the construction of NJNG’s Southern Reliability Link (“SRL”) project. *ELEC Motion, p. 2-3.* For the reasons explained below, ELEC and the Union do not meet the legal standards for intervention. However, Rate Counsel does not object to the granting of participant status to these two entities.

Additionally, the New Jersey Utility Shareholders Association (“NJUSA”) is a nonprofit corporation whose members are retail shareholders of investor-owned utilities who reside in New Jersey. *NJUSA Motion p.2.* NJUSA is seeking participant status in this matter in order to address investment and public policy issues associated with cost recovery for major new pipeline investments including the SRL. *NJUSA Motion p.3.* Rate Counsel does not oppose granting participant status to NJUSA.

DISCUSSION

ELEC's Motion to Intervene

Under N.J.A.C. 1:1-16.1(a), intervention is limited to parties that have “a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case” ELEC does not meet this standard. Although its members have an economic interest in performing construction work for NJNG, this is not an interest that will be “specifically and directly affected” by the outcome of these proceedings. These proceedings involve the review of NJNG’s proposed rates and tariff provisions under N.J.S.A. Title 48. ELEC’s members, in their capacities as contractors and laborers on NJNG construction projects, and are not specifically or directly affected by the rates and tariffs that are the subject of these proceedings. The interests asserted in their motion are not legally protected under N.J.S.A. Title 48. While they may have an interest in benefitting from NJNG’s infrastructure projects, Title 48 does not confer any right to such benefits. Under N.J.A.C. 1:1-16.5, motions to intervene are treated, in the alternative, as motions for permission to participate. N.J.A.C. 1:1-16.6(a) allows “[a]ny person or entity with a significant interest in the outcome of the case” to move for participant status. The granting of participant status is within the discretion of the presiding judge, who “shall consider 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(b). Based on ELEC’s asserted interest and expertise, Rate Counsel has no objection to the granting of participant status to ELEC.

Rate Counsel’s position on ELEC’s motion is consistent with the disposition of the Union’s and ELEC’s motions to intervene in the Public Service Electric and Gas Company (“PSE&G”) Energy Strong and Gas System Modernization Programs (“GSMP”) proceedings.

The Union moved to intervene in the first Energy Strong proceeding; both the Union and ELEC moved to intervene in the first GSMP proceedings; and ELEC moved to intervene in the GSMP II and Energy Strong II proceedings. In all of these proceedings, the motions to intervene were denied, and the Union and/or ELEC were granted participant status. I/M/O the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Dkt. Nos. EO13020155 & GO13020156, Order of Comm’r Fiordaliso at 7 (Sept. 30, 2013)¹ (A0007); I/M/O the Public Service Electric and Gas Company for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism, BPU Dkt. No. GR15030272, Order of Comm’r Fiordaliso at 8-9 (July 2, 2015) (A0016-17); I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Gas System Modernization Program an Associated Cost Recovery Mechanism (“GSMP II”), BPU Dkt. No. GR17070776, Order of Comm’r Fiordaliso at 10 (Nov. 9, 2017) (A0027); I/M/O the Petition of Public Service Electric and Gas Company for Approval of the Second Energy Strong Program (Energy Strong II), BPU Dkt. Nos. EO18060629 & GO18060630, Order of Pres. Fiordaliso at 16 (Nov. 30, 2018) (A0048).

NJUSA’s Motion to Participate

With regard to participation in matters before the OAL, N.J.A.C. 1:1-16.6(a) states that “any person or entity with a significant interest in the outcome of a case may move for permission to participate.” As a nonprofit organization representing utility shareholders, NJUSA appears to have only a generalized interest in this proceeding. Although it is unclear whether NJUSA meets the standard for participation, Rate Counsel will not object to its participation in these matters.

¹ The cited Orders are provided in the attached Appendix.

CONCLUSION

For the foregoing reasons (1) ELEC's motion to intervene should be denied, (2) Rate Counsel does not object to participant status for ELEC, and (3) Rate Counsel does not object to participate status for NJUSA.

Respectfully submitted,

Stefanie A. Brand, Esq.
Director, Division of Rate Counsel

By: */s/ Sarah H. Steindel*
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

SHS

c: OAL Service List

APPENDIX

I/M/O the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Dkt. Nos. EO13020155 & GO13020156, Order of Comm’r Fiordaliso (Sept. 30, 2013)A0001

I/M/O the Public Service Electric and Gas Company for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism, BPU Dkt. No. GR15030272, Order of Comm’r Fiordaliso (July 2, 2015)A0009

I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Gas System Modernization Program an Associated Cost Recovery Mechanism (“GSMP II”), BPU Dkt. No. GR17070776, Order of Comm’r Fiordaliso (Nov. 9, 2017)A0018

I/M/O the Petition of Public Service Electric and Gas Company for Approval of the Second Energy Strong Program (Energy Strong II), BPU Dkt. Nos. EO18060629 & GO18060630, Order of Pres. Fiordaliso (Nov. 30, 2018)A0033



STATE OF NEW JERSEY
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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:

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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

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.

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 Order, among other things, 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 analyses 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.

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 would be collected from ratepayers over a period of five years through the implementation of an “Energy Strong Adjustment Mechanism.” PSE&G further requested that the Board approve this expenditure and recovery mechanism by July 1, 2013.

On March 20, 2013 the Board opened a generic proceeding (hereafter “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 Events.² The Storm Mitigation Proceeding will focus on category 5 from the January 23 Order, Underlying Infrastructure Issues for all utility companies, not exclusively the EDCs. Accordingly, the Board invited all regulated utilities to submit detailed proposals for 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 directed 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 granted the motions of the New Jersey Large Energy Users Coalition (“NJLEUC”) and AARP to enter the pending matter as intervenors, and granted the motion of the PSE&G Unions³ to participate in the matter. In addition, I issued a Prehearing Order which provided that any parties wishing to intervene or participate in this matter must submit a motion to intervene or participate by August 12, 2013.

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.

³ The Unions include 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.

On August 2, 2013, I denied the motion of the Sierra Club and the New Jersey Environmental Federation (“Proposed Environmental Intervenors”) to intervene in this proceeding and granted them participant status under N.J.A.C. 1:1-16.6, limited to the providing of statements or briefs (“August 2 Order”).

On August 12, 2013, the Proposed Environmental Intervenors filed a request for interlocutory review of the August 2 Order, asking the Board to accept interlocutory review and overturn my denial of their motion to intervene, and to grant them full intervenor status. On September 18, 2013, the Board accepted interlocutory review of the August 2 Order, and affirmed my decision to deny the Environmental Intervenors’ motion to intervene and grant them participant status, but modified the August 2 Order by granting them the additional right to present oral arguments.

Six additional motions to intervene have been filed. On August 9, 2013, the International Union of Operators and Engineers, Local 825 (“Local 825”) and New Jersey Laborer’s-Employers Cooperation and Trust (“NJLECET”) filed their motions. On August 12, 2013, Cooper’s Ferry Partnership (“CFP”), the Environmental Defense Fund (“EDF”) and Ferreira Construction Co. (“Ferreira”) filed motions to intervene. J. Fletcher Creamer & Son, Inc. (“Creamer”) filed its motion to intervene, on August 21, 2013, nine days beyond the final date set in the Prehearing Order.

Local 825

Local 825 states that it is a union of 6500 members, in New Jersey and New York, who operate heavy equipment such as cranes, bulldozers, front-end loaders, backhoes and graders. According to the motion, Local 825 members have worked on many large construction projects in the region, including the PSE&G High Line and Susquehanna-Roseland projects. Local 825 Motion to Intervene at 2-3. Local 825 argues that “it should be permitted to intervene so as to properly represent and protect its interests and the interests of its members, many of whom will be substantially affected by Energy Strong because they will perform the work required by the different initiatives.” Id. at 3. Local 825 states that “it is the only party that can provide key and essential information regarding manning requirements, training requirements, and construction expertise... to implement Energy Strong.” Ibid.

Local 825 asserts that its interests are sufficiently different from, and not adequately represented by, any other party to the proceeding due to its past history with PSE&G and its familiarity with the practical implementation of the initiatives proposed by PSE&G. Id. at 4.

Local 825 maintains that PSE&G in its supporting testimony for the petition stated that it will be using internal labor and outside contractors to complete engineering, construction and construction management work. Because the outside contractors will use Local 825’s hiring halls, Local 825 contends that approval of the petition will have a direct economic impact on its members through the payment of wages and on the operation of its union hall. Ibid. Local 825 argues that it has a substantial interest in knowing, understanding and reviewing the intricacies of Energy Strong in this proceeding so it can provide specifically tailored training for its members. Ibid.

NJLECET

NJLECET, a nonprofit labor management fund, states that it represents 25,000 union laborers engaged in the construction and heavy highway construction industry. NJLECET Motion to Intervene at 1. NJLECET argues that its participation would measurably and constructively

advance the proceeding as its membership is experienced in building and highway construction. According to the motion, NJLCET's board is comprised of representatives from large New Jersey construction companies. Id. at 2.

NJCELET claims a unique perspective on the feasibility of large-scale infrastructure projects, including issues of costs and feasibility of planned infrastructure, related economic impacts, and the impact of current financing and amortized costs on long-term construction projects. Id. at 3.

NJLECET also argues that Energy Strong will have a direct impact on its membership, as PSE&G estimates that 5,800 jobs will be created in New Jersey's construction industry, and on its members' residential and commercial construction projects which will be directly impacted by the proposed improvements to energy infrastructure. Ibid.

CFP

According to its motion, CFP is a "private, nonprofit corporation charged with planning and implementing redevelopment projects within the City of Camden to increase the tax base for the City and provide jobs for the residents." CFP Motion to Intervene at 2. CFP states that its mission is "tied to reliable [electric and gas delivery] services for the residents and businesses of Camden," and that success in future endeavors could be heavily impacted by the implementation of Energy Strong. CFP asserts that it serves the residents of the City of Camden, who in turn "purchase gas and electric services from New Jersey's regulated electric and gas companies." Id. at 3. Therefore, CFP argues that it has an interest in the outcome of this proceeding because its customers "stand to be directly affected by the preparedness of these companies for future storms." Ibid.

CFP asserts that "[f]undamental fairness and due process considerations" favor its inclusion in the proceedings because the result will impact the residents of the City of Camden, and, because the residents of the City of Camden will be affected, the issues decided in this proceeding will substantially, specifically, and directly affect CFP." Id. at 4. Lastly, CFP states, consistent with N.J.A.C. 1:1-16.3(a), it would "measurably and constructively advance" the petition as an intervenor. Id. at 4.

Ferreira

According to its motion, Ferreira is a private construction company specializing in transportation infrastructure, utilities, marine work, buildings, interior renovations, solar installation and construction management which has been hired by PSE&G for past projects. Ferreira argues that it has a substantial interest in the outcome of Energy Strong because it specializes in large-scale heavy infrastructure projects and has demonstrated expertise and experience in the field of storm-resistant construction. Ferreira Motion to Intervene at 1, 2.

Ferreira states that there is no other party to the proceeding with a concrete and specific interest in the heavy infrastructure projects and attendant jobs that will be created by Energy Strong. Id. at 3. Finally, Ferreira states that its intervention is not likely to cause any confusion or delay as it will coordinate with similarly situated parties as appropriate and will abide by the proceeding schedule. Ferreira requests that if its motion to intervene is not granted, the Board grant it participant status pursuant to N.J.A.C. 1:1-16.6. Id. At 4.

EDF

According to its motion, EDF is a national non-profit membership organization, with 10,000 members in New Jersey, which links science, economics and law to create solutions to urgent environmental problems. EDF states that it has programs at the state and national levels aimed at advancing “smart” electric and gas systems and ensuring grid investments maximize the potential to create a cleaner, more resilient electric and gas system. EDF Motion at 2.

EDF argues that it works with a variety of stakeholders around “the country and in this region to evaluate, improve and advance electric and gas system investment plans so that they realize a full range of resiliency, environmental, economic and consumer benefits.” EDF claims “expertise in understanding the scope of methane leakage in local distribution networks and techniques for reducing leakage rates.” Id. at 3. EDF states its goal in seeking intervenor status is to ensure that Energy Strong provides optimal environmental and consumer outcomes. Ibid.

EDF outlines its involvement in, and support of, a number of national environmental studies involving gas and electric system modernization, particularly studies focusing on methane gas leakage and “smart” electric grid upgrades. Id. at 9-10. EDF argues that these studies are sufficiently on point to support its position that it will be able to add constructively to the case.

EDF states that it and its members will be substantially, specifically and directly affected by the outcome of this matter because Energy Strong goes to the heart of EDF’s mission with regard to electric and gas system modernization. Id. at 13. Further, this mission will be harmed if the outcome of Energy Strong, with respect to electric delivery does not promote the development and integration of clean and renewable energy, and with respect to gas delivery, does not achieve 1% or less leakage throughout the gas supply chain. Id. at 14.

EDF argues that Board precedent supports allowing an environmentally interested organization intervenor status. In 2005, in the PSE&G/Exelon Merger matter,⁴ the Board overturned the decision by Administrative Law Judge Richard McGill to grant participant status to the Natural Resource Defense Council (“NRDC”) and granted NRDC intervenor status. Ibid.

Creamer

According to its motion, Creamer is a New Jersey heavy highway construction and utilities installation corporation that has performed extensive work for PSE&G on past projects. Creamer argues that it will be substantially, specifically and directly affected by the outcome of Energy Strong based on its expectation of being retained by PSE&G for future construction work. Creamer Motion to Intervene at 2.

Creamer filed its motion to intervene on August 21, 2013, nine days after the deadline I set for such motions in the August 2 Order. Creamer provides no justification for this delay but cites N.J.A.C. 1:1-16.2(a) that states that a motion to intervene may be filed at any time after a case is initiated.

⁴ In re: Public Service Electric and Gas Company, Docket No. EM05020106, 2005 (PSE&G/Exelon Merger).

By letter dated August 22, 2013, PSE&G stated that it did not object to any of these motions to intervene but reserved its right to object to any of these entities raising issues beyond the scope of the petition. No other responses to the motions were received.

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).

The arguments advanced by Local 825 and NJLECT, that their memberships will be substantially affected by the outcome of Energy Strong and that the in depth knowledge and understanding they will gain from participation in Energy Strong will enable them to properly prepare and train their membership to work for PSE&G are economic arguments based on PSE&G's estimate of 5,800 construction jobs to be created by Energy Strong. As such, participation by these entities may add some delay and confusion to the case as they will be inclined to advance the projects in their own particular areas of expertise rather than those that most efficiently effectuate the major goal of the storm mitigation proceedings – infrastructure hardening to promote resiliency in the face of future Major Storms. NJLECT's argument that its membership's residential and commercial contractors' residential and commercial projects will be directly impacted by the proposed improvements to energy infrastructure goes to the potential for impacts on utility rates, a different issue but one which is already represented by NJLEUC.

Ferriera and Creamer, the two construction companies, have identical arguments which focus on their economic interest in construction jobs which will potentially be created by Energy Strong. I am persuaded by their motions that Ferreria and Creamer do have years of experience in utility construction, including direct expertise in projects similar to those under

consideration in this matter. Considering that the arguments presented by the two construction companies are almost identical, Creamer's intervention would not be sufficiently different from Ferreira, if Ferreira's motion to intervene is granted. Creamer filed its motion nine days beyond the date I set for filing motions to intervene with no justification for the delay, other than to argue that it may move to intervene at any time during the proceeding under N.J.A.C. 1:1-16 (a). However, the general rule does not override a clear bar date set in the Prehearing Order.

EDF's interest in the case is similar to the interests of the Sierra Club and NJ Environmental Federation (now, "Environmental Participants"), which have been granted participant status. EDF's expressed interest focusing on advancing "smart" electric and gas systems and ensuring grid investments maximize the potential to create a cleaner, more resilient electric and gas system mirror those presented by the Environmental Participants in their motion to intervene and Request for Interlocutory Review.⁵ While the Board has supported distributed generation and energy efficiency and demand response programs and will continue to do so, there is concern that adding those issues to the current proceeding may veer from the primary purpose of the generic storm mitigation proceedings, which is improving the resiliency of utility infrastructure and its ability to withstand severe weather events, and addition of these issues may unduly confuse and delay this matter. As previously stated, on September 18, 2013, the Board upheld my Order denying the Environmental Participants intervenor status and granting them participant status, modifying the August 2 Order by adding the right to argue orally.

Notwithstanding that EDF's interests mirror the Environmental Participants in the area of electric system modernization, I FIND EDF's extensive interest and knowledge and its involvement with multiple national research projects, including the National Academy of Sciences "Methane Study," may add constructively to the case, thereby justifying its participation in this matter in the same manner as the Environmental Participants.

CPF contends that its interest in this matters stems from the need of the residents of Camden to have safe, adequate and reliable electric and gas service. Under N.J.S.A. 48:2-23, all utility customers are entitled to safe, adequate and proper service. Therefore, CPF does not represent an interest that is sufficiently different from that of other parties so as to add measurably and constructively to the case.

Accordingly, after consideration of the papers, I HEREBY FIND that the union/construction industry movants, Local 825 and NJLECT, may be affected by the outcome of Energy Strong, but no differently than will be the membership of the Unions that are already a participant in this matter. Further, their likely interest in advancing projects that will employ their members may distract from the purpose of this proceeding, to improve the resiliency of the electric and gas distribution system. Therefore, I HEREBY FIND that, Local 825 and the NJLECT have not met the standards for intervention in the Energy Strong Proceeding, and I HEREBY DENY the motions for intervention of Local 825 and the NJLECT in Energy Strong.

However after consideration of the papers, I HEREBY FIND that the participation of the Local 825 and the NJLECT is likely to add constructively to the case without causing undue delay or confusion and will allow them to share their expertise with the other parties and allow them to know what is happening in the Energy Strong proceeding so that they can share that information with their members. Accordingly, I HEREBY GRANT participant status to Local 825

⁵ In re the Petition of Public Service Electric & Gas Company for Approval of the Energy Strong Program, Request for Interlocutory Review, Order dated 9/18/13.

and NJLECT with the ability to argue orally and file a statement or brief.

With regard to the motion of EDF, I HEREBY FIND that EDF's interests are not sufficiently different from those of the Environmental Participants, and that granting them intervenor status may interject issues outside of the focus of this proceeding. Accordingly, I HEREBY DENY EDF's motion for intervention. However, after consideration of the papers, I HEREBY FIND that the participation of EDF is likely to add constructively to the case, particularly in the area of gas infrastructure and methane gas leakage prevention, without causing undue delay or confusion. Accordingly, I HEREBY GRANT participant status to EDF with the ability 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), provided that the issues raised remain within the scope of this proceeding.

I am not persuaded that the identical and primarily pecuniary interests of the two construction companies, Ferriera and Creamer will add measurably to the Energy Strong proceeding. However, after consideration of the papers, I HEREBY FIND that the participation of a New Jersey based and long established construction company, such as Ferreira, is likely to add an additional perspective to the case without causing undue delay or confusion if that participation is intended to share the company's expertise with the other parties. Accordingly, I HEREBY GRANT participant status to Ferreira with the ability 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).

I also HEREBY FIND that Creamer filed its motion out of time with no justification, and its interest is not sufficiently different from that of participant Ferreria so as to add measurably and constructively to the scope of the case. Accordingly, I HEREBY DENY the motion for intervention of Creamer in Energy Strong.

I HEREBY FIND that CFP is not likely to add constructively to the case as it does not represent the residents and ratepayers of the City of Camden in any official capacity, and has not articulated an interest in this matter which differs from the interests of all ratepayers in receiving safe, adequate and proper service. . Therefore, I HEREBY FIND that CFP has not met the standards for intervention or participation in this matter. Accordingly, I HEREBY DENY the motion for intervention or participation of CFP in Energy Strong.

The parties added to the proceeding by this Order are directed to work cooperatively with the other parties to the fullest extent possible in the interests of reaching a 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: September 30, 2013

BY:



JOSEPH L. FIORDALISO
COMMISSIONER



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IN THE MATTER OF PUBLIC SERVICE ELECTRIC) ORDER
AND GAS COMPANY FOR APPROVAL OF A GAS)
SYSTEM MODERNIZATION PROGRAM AND)
ASSOCIATED COST RECOVERY MECHANISM) DOCKET NO. GR15030272

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Daniel J. Brennan, Esq., Susanin Widman & Brennan, P.C., for ELEC
Kevin G. Walsh, Esq., Gibbons, P.C., for CSJV
Vincent M. Giblin, Esq., Pitta & Giblin, L.L.P., for Local 825

BY COMMISSIONER JOSEPH L. FIORDALISO:

On February 27, 2015, Public Service Electric and Gas (“PSE&G” or ‘Company’) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking approval to implement and administer a Gas System Modernization Program (“GSMP”) and to implement an associated cost recovery mechanism. The Company seeks approval to spend up to \$1.594 billion in GSMP investment across its gas service territory over five and a half (5.5) years. According to the petition, the GSMP will replace cast iron mains, replace unprotected steel mains and services, abandon district regulators associated with cast iron and unprotected steel plant and relocate inside meter sets. The Company anticipates that these expenditures will result in the replacement of approximately 810 miles of cast iron and unprotected steel mains, 55,000 unprotected steel services, and associated district regulators.

The Company proposes to implement the same cost-recovery methodology and rate design as used for the Energy Strong Program (“ESP”)¹, including annual “roll-in” filings based on investment through May 31, with no deferred return or deferred depreciation, for rates to be effective as of September 1. The Company also seeks a return on and of the approved

¹ In re Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Docket Nos. EO13020155 & GO13020156 (Order dated May 21, 2014).

investments using an after-tax weighted average cost of capital of 6.32% based on a return on equity of 9.75% and a cost of debt of 4.60%.

By Order dated April 15, 2015 ("April Order"), the Board retained this matter for hearing, and designated me as the presiding officer with the authority to establish and modify schedules, decide all motions and otherwise control the conduct of this case, subject to Board ratification. Additionally, the April Order set June 5, 2015 as the deadline for the filing of motions to intervene or participate in this matter.

On May 21, 2015, I issued a Prehearing Order and an accompanying procedural schedule. Thereafter, on May 27, 2015 ("May 27 Order"), I granted the motion of the New Jersey Large Energy Users Coalition ("NJLEUC") to intervene, and the motions of the PSE&G Unions² and AARP to participate in the matter. In the May 27, 2015 Order, I also denied the request made by Ferreira Construction Company, Inc. ("Ferreira") to intervene, but granted it participant status pursuant to N.J.A.C. 1:1-16.6, limited to the right to argue orally and file a statement or brief.

On May 29, 2015, Ferreira filed a motion for reconsideration of my May 27 Order. In addition, five (5) additional motions to intervene or participate have been filed. New Jersey Laborer's-Employers Cooperation and Trust ("NJLECET") filed a motion to intervene on June 3, 2015. Creamer-Sanzari Joint Venture ("CSJV") filed a motion to participate on June 4, 2015. The Environmental Defense Fund ("EDF") filed a motion to intervene and a motion for pro hac vice on June 4, 2015. The Engineers Labor-Employer Cooperative ("ELEC") and International Union of Operating Engineers, Local 825 ("Local 825") filed motions to intervene on June 5, 2015.

THE MOTIONS:

NJLECET

According to its motion to intervene, NJLECET is a nonprofit labor management fund that represents 25,000 construction laborers who are employed and have significant experience in building construction and heavy highway construction. NJLECET argues that its participation would measurably and constructively advance this proceeding because its members are experienced in building and highway construction. NJLECET states that its board is comprised of representatives from large New Jersey construction companies.

NJCELET claims that its members have a unique perspective with regard to the feasibility of proposed large-scale infrastructure projects, including issues of borrowing costs, the interest rate environment and cost feasibility associated with long-term construction projects.

NJLECET also argues that the GSMP will have a direct impact on job creation for its members, as PSE&G estimates that 500 jobs, many of them in the construction and heavy construction industries, as well as on its members' residential and commercial construction projects which will be directly impacted by the proposed improvements to utility infrastructure.

ELEC

In its motion to intervene, ELEC states that it is a labor-management organization that promotes economic development, investments in infrastructure and construction to provide opportunities

² The Unions include Local Union 94 of the International Brotherhood of Electrical Workers, and Local 855 of the United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry.

for developers, union contractors and members of the International Union of Operating Engineers Local 825. ELEC indicates in its motion that it is a unique organization because it is a partnership between employers and the Union, and seeks to find common ground and ways to improve the construction industry as a whole for the benefit of both labor and management. ELEC further asserts that it is in a unique position to provide insight on the impact of the GSMP from both a contractor and operating engineer perspective, speaking to the costs and feasibility of the planned energy infrastructure improvements, the related economic impact, and the impact of the future and long-term costs of the GSMP, in addition to providing insight on the manpower requirements, the market for operating engineers and any additional specific training that may be necessary for operating engineers to perform work under the GSMP.

ELEC claims that its members will also sustain a direct impact as a result of these proceedings because the planned replacement work proposed by the GSMP will consist of construction work, including work performed by operating engineers utilized by ELEC member contractors. ELEC argues that its interest will add measurably and constructively to this proceeding so it can offer input on the market for operating engineers which will be used in the construction work under the GSMP, the economic impact on contractors, operating engineers and the construction industry, as well as the financial aspects of the GSMP, will add measurably and constructively to the scope of this proceeding and provide a substantial benefit to the Board in determining the reasonableness and prudence of the GSMP.

In addition, ELEC reiterates that its interests are not adequately represented by any other party, as it is in a unique position to provide insight on the impact of the GSMP from both a contractor and operating engineer perspective, and that its intervention will not cause delay since its motion to intervene was filed in accordance with the deadline established by the Board.

CSJV

According to its motion to participate, CSJV is a joint venture between J. Fletcher Creamer & Son, Inc. and Joseph M. Sanzari, Inc., two (2) New Jersey corporations in the business of heavy highway construction and utilities installation. CSJV asserts that, in light of the decades of construction experience it has, it is uniquely positioned to provide the Board with critical insight as to the implications the GSMP will have for New Jersey job creation and retention. CSJV represents that it has decades of experience working with the utility industry, including doing the type of work contemplated by the GSMP. CSJV also represents that it is currently performing installation work in connection with the ESP, and this extensive work with PSE&G gives it a unique understanding of the Company's exacting standards of quality, safety and detail in the installation and replacement of its utility infrastructure and of the scope, scale and complexity of the work necessary to implement the GSMP.

CSJV further argues that it has a significant interest in the outcome of this matter, but will be uniquely affected by the outcome of the case in a manner that will assist the Board in its resolution of the petition. CSJV states that it will be able to leverage its substantial experience with utilities and PSE&G to provide the Board with valuable insight as to both the impact the GSMP will have for job creation in New Jersey, as well as a detailed, practical assessment of the most effective strategies for the successful implementation of the GSMP. In addition, CSJV indicates that its participation in this proceeding will contribute to the development of a complete record for consideration by the Board of these issues. CSJV states that its motion is timely and will not delay or disrupt the prosecution of this proceeding.

Local 825

Local 825 states that it is a union of 6,500 members in New Jersey and New York, who operate heavy equipment. According to the motion to intervene, Local 825 members have worked on many large construction projects in the region, including the PSE&G High Line and Susquehanna-Roseland projects. Local 825 argues that it should be permitted to intervene so as to properly represent and protect its interests and the interests of its members.

Local 825 asserts that the Board should grant the motion for the same reasons it granted Local 825's motion to intervene that was filed in the Energy Strong proceeding. Local 825 states that its interests are sufficiently different from, and not adequately represented by, any other party to the proceeding because it is the only party that can provide key and essential information regarding the manning requirements, training requirements and the construction expertise to furnish highly-skilled labor to implement to the GSMP. Local 825 also claims that it has an extensive history with PSE&G and is familiar with its operational structure, which will be integral to proper execution of the GSMP. Local 825 contends that approval of the petition will have a direct economic impact on its members through the payment of union wages and benefits, as well as a secondary effect on New Jersey's economy as money earned through work at good union wages becomes money union members can then spend on the other goods and services that other New Jersey employers provide. Local 825 argues that it has a substantial interest in knowing, understanding and reviewing the intricacies of GSMP in this proceeding so it can provide specifically tailored training for its members.

Local 825 also asserts that its interests are sufficiently different and not adequately represented by any other party in this proceeding because of its history with PSE&G and its familiarity with the practical implementation of the initiatives the Company has suggested in its plan. Additionally, it states that its members, who are also PSE&G consumers, will benefit from safer, more reliable, more cost efficient and more environmentally sound energy system that the GSMP will provide. Local 825 states that its motion is timely and permitting it to intervene will not cause confusion.

EDF

According to its motion to intervene, EDF is a national non-profit membership organization, with 11,000 members in New Jersey, which links science, economics and law to create solutions to urgent environmental problems. EDF represents that it is using newly developed technology to find and quantify methane leaks in gas mains, similar to those the Company proposes to modernize. EDF states that it is pursuing initiatives in multiple states affecting numerous natural gas distribution utilities to ensure investments by utilities to repair and replace leak-prone gas infrastructure are cost effective to customers and environmentally efficacious.

EDF argues that it has extensive expertise and experience in presenting evaluative frameworks and project solutions to increase the cost effectiveness, cost efficiency, environmental, consumer, grid, and market benefits of gas system plans and projects.

EDF claims that it also has extensive expertise with regard to new and emerging technologies to find and quantify sub-surface methane leaks from natural gas mains and techniques for reducing leakage rates in natural gas distribution systems. According to EDF, it is involved in several of these ongoing efforts, including sixteen (16) studies focusing on methane gas emissions.

EDF states that it and its members will be substantially, specifically and directly affected by the outcome of this matter because the GSMP goes to the heart of EDF's mission with regard to the natural gas distribution system. EDF further argues that the proposed investments are likely to impact the State's environment, public health, safety and welfare of its citizens, and that they will have an economic impact on its membership in the Company's service territory.

Further, EDF asserts that its mission with respect to natural gas delivery will be harmed in the event of suboptimal or negative outcome of the case. EDF states that the GSMP, if structured to maximize the full range of consumer and environmental benefits, will advance its intertwined mission to achieve one percent (1%) or less leakage throughout the natural gas supply chain.

EDF argues that its experience will add substantive value to this proceeding by bringing a unique expertise and analyses on natural gas distribution systems, providing specific data regarding the extent of leaking methane in the areas the Company proposes to replace mains and enabling a full development of the record.

Finally, EDF argues that its intervention will not cause confusion or result in undue delay because it will work with other parties to ensure that it avoids duplicating efforts being made by other parties.

EDF's attorney, Mr. Meliado also moved for the admission pro hac vice of Michael Panfil, Esq., a member of the bars of Ohio and New York. Mr. Meliado represents that Mr. Panfil has had significant experience representing EDF and EDF's membership. By his affidavit, Mr. Panfil represents that he is associated with Mr. Meliado as New Jersey counsel of record, EDF has requested his representation in this matter, that he will pay 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.

Ferreira

Ferreira filed a motion to intervene or participate in this proceeding on May 7, 2015. Rate Counsel filed a response to the motion on May 22, 2015. In its response, Rate Counsel did not object to the granting of participant status to Ferreira but argued that Ferreira should not be granted intervenor status because Ferreira did not have a concrete and current interest that will be "specifically and directly" affected by the outcome of this matter and therefore should not be granted intervenor.

Ferreira now seeks reconsideration of my May 27 Order and argues that it was not afforded the opportunity to respond to Rate Counsel's objection to its motion to intervene. Ferreira states that its response was not due until June 1, 2015, pursuant to N.J.A.C. 1:1-12.2(c) and 1:1-1.4.

Ferreira once again reiterates that it is undisputed that its interests are "sufficiently different" from other parties and that it has a current and concrete interest in the GSMP that will be "specifically and directly" affected by the outcome of this matter. Ferreira states that its market and business will be impacted by this matter, and that it should be permitted to use its experience and expertise to expand the record by presenting evidence and/or cross-examining witnesses. Ferreira submits that these factors demonstrate a strong interest in and potential impact from this matter justifying the granting of intervention status.

RESPONSES:

PSE&G and Board staff did not file responses to the motions.

Rate Counsel

Rate Counsel filed responses to the motions. In its response, Rate Counsel states that it does not object to the granting of participant status to EDF or CSJV. However, Rate Counsel asserts that EDF should not be granted intervention because EDF is seeking to promote environmental interests, which are not the focus of the Board's jurisdiction under N.J.S.A. Title 48. Rate Counsel asserts that EDF does not possess any legally protected rights under N.J.S.A. 48 that would be directly affected by the outcome of this matter and that would entitle it to intervene with the rights of a full party. Rate Counsel further argues that the granting of intervener status to EDF could significantly expand the scope of this proceeding, and any proposals to make substantial modifications to the proposed GSMP could necessitate additional discovery, pre-filed testimony and hearings to afford other interested parties an opportunity to evaluate and respond to such modifications.

Rate Counsel also opposed the motions to intervene that were filed by Local 825, ELEC and NJLECET. Rate Counsel argues that the interests of these organizations and their members in participating in construction projects are not interests that are legally protected under N.J.S.A. 48. Rate Counsel states that these organizations, as representatives of labor and management involved in the construction industry, do not have direct interests that would be substantially affected by the outcome of these hearings. According to Rate Counsel, the interests of NJLECET members as ratepayers are already represented by other parties in this proceeding. Rate Counsel indicates, however, that it does not object to the granting of participant status to these organizations.

With regard to the motion for reconsideration filed by Ferreira, Rate Counsel indicated via electronic mail dated June 15, 2015 that it would not be filing a response.

EDF

EDF filed a reply to Rate Counsel's opposition to its motion to intervene on June 24, 2015. EDF states that Rate Counsel has opposed its motion based upon a misapprehension of EDF's interests and objectives in this proceeding, which are to achieve the most cost-effective and efficient outcome as the Board considers proposals to commit ratepayer-backed funding to replace leak-prone gas distribution infrastructure. EDF asserts that its intervention will provide the Board and parties with a thorough and comprehensive assessment, using new and proven methods, of the infrastructure subject to replacement and the amount of wasted gas potentially abated by the GSMP, which will be proffered into evidence and subjected to discovery by the parties. EDF argues that Rate Counsel's concerns overlook the fundamental purpose and benefit of EDF's intervention which is to save customers money through a data-driven review and assessment of the problem the Company seeks to address and the design of its proposed solution.

EDF also argues that its interest is necessary and appropriate to the outcome of this case because it will bring to bear new methods and technologies for finding leaks and a data-driven construct for prioritizing leak abatement expenditures to first focus on the largest leaks that could otherwise continue for years without anyone understanding the amount of natural gas being wasted. EDF asserts that these objectives fall squarely within the mandate of the Board, and are intertwined with the substantive questions at issue in this proceeding. EDF further states that it is committing substantial organizational resources to develop leak data for the infrastructure that is the subject of the GSMP including measurement of leaks which, according

to EDF, is data that the Company does not currently possess. EDF's intervention will make this data accessible to and available for evidentiary review in this proceeding.

In addition, EDF claims that its members represent an interest that would not otherwise be considered nor heard by the Board, and it can aid in furthering a "full and complete record" by providing evidence which will help assess and optimize proposed leak reduction expenditures for the benefit of ratepayers, which will also improve the safety of and environmental outcomes from the Company's natural gas utility franchise. The holding of In re Centex Homes, 411 N.J. Super. 244, 267 (App. Div. 2009), which is relied upon by Rate Counsel, is different than the case at bar because EDF intends to provide data and evidence on a utility program before the Board and which the Board has power to approve, deny, or modify. EDF asserts that its intent to help facilitate solutions that touch upon cost-effectiveness, safety, and, by implication, the environmental aspects of the GSMP, is well within the purview of the Board to consider.

Finally, EDF argues that its intervention will not cause undue delay or confusion. EDF claims that Rate Counsel has not provided any specified reason that EDF would cause undue delay and confusion not generally applicable to any party seeking intervention. EDF reiterates that it intends to provide data and analysis which will assist the Board in reviewing the GSMP and, should it be approved, maximize the cost-effectiveness of PSE&G's proposed leak abatement activities. EDF states that it has timely moved to intervene and has not requested extension of any case management dates, and EDF fully intends to comply with all deadlines in the proceeding. According to EDF, these efforts further demonstrate its diligence in ensuring the proceeding continues smoothly without confusion or delay.

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 and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), the members of EDF living in PSE&G's service territory will be directly affected by the outcome of the GSMP proceeding, and that EDF has expertise in the detection and remediation of gas leaks that should contribute to the development of a full and complete record for review by the Board in its evaluation of the GSMP. Therefore, I **HEREBY FIND** that EDF has met the standards for intervention in the GSMP proceeding, as it has an interest in this proceeding that is not represented by another party. Accordingly, I **HEREBY GRANT** EDF's motion for intervention on the basis of its representation that it will adhere to the scope of the issues to be addressed in this proceeding.

In light of this grant of intervention to EDF, I have reviewed EDF's motion and the supporting affidavit of Michael Panfil, Esq. regarding his admission pro hac vice, and no objections to it having been received after due notice to the parties, I **FIND** that Mr. Panfil has satisfied the conditions for admission 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;
- (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; and
- (5) shall provide proof that he has paid to the New Jersey Lawyers' Fund for Client Protection the fees required by R. 1:20-1(b) and 1:28-2.

As to the motion to participate filed by CSJV, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of the CSJV 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 CSJV, 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).

The arguments advanced by Local 825, ELEC and NJLECET primarily focus on economic arguments based on an assumption that their memberships will be substantially affected by the outcome of this matter because they may be hired to perform the work proposed by the GSMP. However, while I am persuaded that each entity has significant experience in large-scale and long-term construction projects similar to the GSMP, I am not persuaded that the primarily pecuniary interests of Local 825, ELEC and NJLECET will add measurably to this proceeding. Further, NJLECET's argument that its membership's residential and commercial contractors'

residential and commercial projects will be directly impacted by the improvements to energy infrastructure goes to the potential for impacts on utility rates, a different issue but one which is already represented by Intervener NJLEUC as well as by Rate Counsel.

After consideration of the papers, I **HEREBY DENY** the motions to intervene filed by Local 825, ELEC and NJLECET, but **HEREBY FIND** that the participation of these entities is likely to add additional perspectives to the case without causing undue delay or confusion. Accordingly, to allow Local 825, ELEC and NJLECET to share their expertise where appropriate, I **HEREBY GRANT** participant status to Local 825, ELEC and NJLECET, 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).

As for the motion for reconsideration filed by Ferreira, the applicable rule and case law require the moving party to allege "errors of law or fact" that were relied upon by in rendering the decision. N.J.A.C. 14:1-8.6(a)(1). Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. See, e.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious, or unreasonable. D'Atria, supra, 242 N.J. Super. at 401.

However, an Order may be modified if there is a showing that the action constituted an injustice or that the finder of fact misunderstood or failed to take note of a significant element of fact or law. N.J.S.A. 48:2-40. I have reviewed Ferreira's motion for reconsideration and **HEREBY FIND** that Ferreira has failed to demonstrate that I failed to consider any evidence that was previously presented in its original motion to intervene or participate. Accordingly, Ferreira's request for reconsideration fails to provide a legal basis that would justify the reversal of my previous decision. Therefore, I **HEREBY DENY** Ferreira's motion for reconsideration of the May 27 Order granting Ferreira participant status.

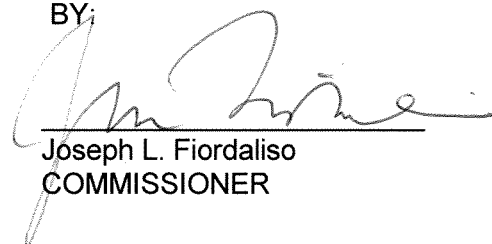
The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

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: July 2, 2015

BY:



Joseph L. Fiordaliso
COMMISSIONER

Gas System Modernization Program II Petition

On July 27, 2017, the Company filed a petition for Board approval of a continuation of the GSMP I and associated cost recovery mechanism ("GSMP II" or "Program"). PSE&G anticipates that GSMP II will be conducted over a five (5) year period from 2019 through 2023. The Company states that the GSMP II: (1) is comprised of gas utility projects designed to replace cast iron mains and unprotected steel¹ mains and services; (2) addresses the abandonment of district regulators associated with this cast iron and unprotected steel plant; (3) will rehabilitate large diameter elevated pressure cast iron; (4) includes upgrades to utilization pressure portions of the system to elevated pressure; (5) replaces limited amounts of protected steel and plastic mains; and (6) provides for the relocation of inside meter sets.

According to the petition, the GSMP II, as proposed, would result in the replacement of approximately 250 miles of main per year, with an estimated investment of approximately \$2.68 billion over the course of the five (5) years, or approximately \$536 million per year.² At this time, the Company anticipates these expenditures will result in the replacement of approximately 870 miles of unprotected cast iron main, 130 miles of elevated pressure cast iron main, 200 miles of unprotected/bare steel main, fifty (50) miles of unprotected cathodically protected steel and plastic main, and reinforcement of approximately 4,000 elevated pressure cast iron bell joints. The Company claims that this main replacement will result in approximately 266 abandoned district regulators, replacement of approximately 99,200 unprotected steel services, and the relocation of approximately 70,900 inside meter sets to the outside of buildings. Where appropriate, services will have excess flow valves installed for improved safety.

PSE&G is proposing a cost recovery mechanism for GSMP II that is consistent with the recently proposed Board Infrastructure Investment and Recovery regulations³ and the GSMP I. The proposed capital expenditure forecast, the first base rate roll-in filing will not occur until December 31, 2019, for rates effective June 1, 2020. The Company also seeks a return on the approved investments using an after-tax weighted average cost of capital of 6.1735% based on a return on equity of 9.75% and a cost of debt of 4.1439%.

By Order dated September 22, 2017 ("September 22, 2017 Order"), the Board determined that the GSMP II petition described above should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated the undersigned as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the September 22, 2017 Order directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by October 13, 2017.

To aid in the setting of an appropriate schedule, Board Staff requested that the New Jersey Division of Rate Counsel ("Rate Counsel") and the Company circulate proposed procedural schedules. The Company and Rate Counsel prepared a proposed procedural schedule, which was forwarded to Board Staff on October 25, 2017.

¹ For purposes of this petition, "unprotected steel" is steel that is not cathodically protected and includes both bare steel and coated steel.

² The Company represents that work required to complete the GSMP II will continue into the first six (6) months of a sixth (6) year of the Program, i.e., through June 30, 2024. The \$2.68 billion cost of this Program includes this work.

³ Proposed New Subchapter: N.J.A.C. 14:3-2A, BPU Docket Number: AX17050469, Order dated June 30, 2017.

THE MOTIONS:

New Jersey Large Energy Users Coalition Motion to Intervene

By motion dated August 11, 2017, the New Jersey Large Energy Users Coalition ("NJLEUC"), an association whose members include large volume natural gas customers serviced by PSE&G, moved to intervene in this proceeding N.J.A.C. 1:1-16. NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities, including PSE&G. Members of NJLEUC are large volume purchasers of natural gas distribution service from PSE&G and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to PSE&G's GSMP II are unique from those of any other party, and as large end-use customers of PSE&G, the interests of NJLEUC members are substantially different from those of any other party seeking intervention or participation. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact, on large volume gas customers, of the relief sought by PSE&G in this proceeding.

NJLEUC also argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the reliability and cost of gas distribution service received from PSE&G by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLEUC, making intervention appropriate.

NJLEUC points out that it has been granted intervenor status in prior PSE&G infrastructure and rate proceedings, including the GSMP I proceeding.

NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers. NJLEUC further states that it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

New Jersey Large Energy Users Coalition Motion for Admission Pro Hac Vice

By motion dated August 11, 2017, NJLEUC, via Steven S. Goldenberg, Esq., also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay, is a member in good standing admitted to the bar of the District of Columbia, and 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 represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing large end-use customers before Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in the various PSE&G utility infrastructure proceedings brought before the Board, including GSMP I, Energy Strong and the 2017 Energy Efficiency filing. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice. On October 5, 2017, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

AARP Motion to Participate

On September 27, 2017, AARP, Inc. ("AARP") filed a motion to participate in this matter. According to its motion, AARP is a non-governmental, non-profit and non-partisan organization whose interest is to protect the affordability, reliability, efficiency and safety of utility services for its New Jersey members. AARP argues that it has hundreds of thousands members aged fifty (50) and over residing in PSE&G's territory who purchase gas and gas-related service from New Jersey's regulated utilities and, therefore, will be substantially and specifically affected by this outcome of this proceeding. 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 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 GSMP II proceeding will directly affect the quality of the lives of its members.

AARP further points out that it participated in the GSMP I proceeding, as well as other numerous energy policy proceedings, and its unique perspective will measurably and constructively advance this matter. It states that the motion is timely and will not delay or disrupt this proceeding. AARP asserts that fundamental fairness and due process considerations weighing favor of it being afforded an opportunity to fully participate in this matter, the outcome of which will have a significant impact on the cost of gas services and poses significant imminent risks to utility customers including the potential for irreparable harm to AARP members 'quality of life if gas service does not remain affordable.

Creamer-Sanzari Joint Venture Motion to Participate

Creamer-Sanzari Joint Venture ("CSJV") filed a motion to participate in this matter on October 11, 2017. According to its motion, CSJV is a joint venture between J. Fletcher Creamer & Son, Inc. and Joseph M. Sanzari, Inc., two (2) New Jersey corporations in the business of heavy highway construction and utilities installation. CSJV points out that it was previously granted participant status in GSMP I due to its unique ability to provide the Board with critical insight as to the implications GSMP I would have for job creation in New Jersey, as well as an accurate assessment of the construction costs associated with the GSMP I, and recommendations concerning efficient solutions for its implementation.

In light of its participation in the GSMP I proceeding, CSJV seeks to participate in this matter. It asserts that the companies that constitute CSJV have decades of experience in New Jersey between them working with the utility industry, including the type of work necessary to implement GSMP II. It states that CSJV has employed a significant number of union workers from various trades to perform that work including laborers and operating engineers, and has performed installation work in connection with PSE&G's Energy Strong Program and to execute portions of GSMP I. CSJV claims that this extensive work with PSE&G gives it a unique understanding of the Company's exacting standards of quality, safety and detail in the installation and replacement of its utility infrastructure and of the scope, scale and complexity of the work necessary to implement the GSMP II.

CSJV further argues that it not only has a significant interest in the outcome of this matter, but will be uniquely affected by the outcome of the case in a manner that will assist the Board in its resolution of the petition. CSJV states that it will be able to leverage its substantial experience with utilities and PSE&G to provide the Board with valuable insight as to both the impact the GSMP will have for job creation in New Jersey, as well as a detailed, practical assessment of

the most effective strategies for the successful implementation of the GSMP II. In addition, CSJV indicates that its participation in this proceeding will contribute to the development of a complete record for consideration by the Board of these issues. CSJV states that its motion is timely and will not delay or disrupt the prosecution of this proceeding.

Ferreira Construction, Inc. Motion to Intervene or Participate

On October 12, 2017, Ferreira Construction Company, Inc. ("Ferreira") filed a motion to intervene or participate in this proceeding. According to its motion, Ferreira is a private construction company specializing in transportation infrastructures, utilities, marine work, buildings, interior renovations, solar installation and construction management which has been hired by PSE&G for past projects. Ferreira argues that it has a substantial interest in the outcome of the GSMP II because it specializes in large-scale heavy infrastructure projects and has completed a number of gas main installation and replacement projects, including those in connection with the Energy Strong Program and GSMP I that are the type of work contemplated by the GSMP II. In addition, Ferreira argues that knowing whether a multi-year program such as GSMP II will be approved by the Board is important for contractors such as Ferreira because it allows them to make investments in staff, material and equipment with greater certainty that a program for a shorter duration.

Ferreira states that there is no other party to the proceeding with a concrete and specific interest in the heavy infrastructure projects and attendant jobs that will be created by the GSMP II. Finally, Ferreira states that its intervention is not likely to cause any confusion or delay as it will coordinate with similarly situated parties as appropriate, and will abide by the proceeding schedule. Alternatively, Ferreira requests that if its motion to intervene is not granted, the Board grant it participant status pursuant to N.J.A.C. 1:1-16.6.

International Brotherhood of Electrical Workers and Local 855 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry Motion to Participate

On October 11, 2017, Local Union 94 of the International Brotherhood of Electrical Workers and Local 855 of the United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry (collectively, the "Unions") filed a motion to participate in this proceeding. In the motion, the Unions state that they represent more than 3,600 non-management employees who are involved in all aspects of operations at PSE&G. According to the motion, the members of the Unions will perform the work envisioned by the GSMP II as they have successfully been doing for than a year and half of the initial and ongoing GSMP I. Therefore, the Unions argue that the issues to be decided in this matter substantially, significantly and directly affect the Unions and their members. They further add that that their participation will not cause confusion or delay the matter.

Engineers Labor-Employer Cooperative Motion to Intervene

Engineers Labor-Employer Cooperative ("ELEC") filed a motion to intervene on October 13, 2017. ELEC states that it 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. ELEC indicates in its motion that it is a unique organization because it is a partnership between employers and the Union, and seeks to find common ground and ways to improve the construction industry as a whole for the benefit of both labor and management. ELEC further asserts that it is in a unique position to provide insight on the impact of the GSMP

II from both a contractor and operating engineer perspective, speaking to the costs and feasibility of the planned energy infrastructure improvements, the related economic impact, and the impact of the future and long-term costs of the GSMP II, in addition to providing insight on the manpower requirements, the market for operating engineers and any additional specific training that may be necessary for operating engineers to perform work under the GSMP II.

ELEC claims that its members will also sustain a direct impact as a result of these proceedings because the planned replacement work proposed by the GSMP II will consist of construction work, including work performed by operating engineers utilized by ELEC member contractors. ELEC argues that its interest will add measurably and constructively to this proceeding because it can offer input on the market for operating engineers which will be used in the construction work under the GSMP II, the economic impact on contractors, operating engineers and the construction industry, as well as the financial aspects of the GSMP II, will add measurably and constructively to the scope of this proceeding.

ELEC also claims that it has a history of successful efforts on behalf of PSE&G and other energy and pipeline projects, including supporting the Company and testifying before the Board in the 2014 Energy Strong matter, participating as an intervenor in the GSMP I and routinely attending public meetings and supporting new pipelines throughout the region. It states its contracts have experience in large-scale, long-term construction projects and can provide information on the financial markets for borrowing for large-scale construction projects, such as the GSMP II. It asserts that, permitting it to intervene in this matter so that it can offer input on the market for operating engines, the economic impact on contractors, operating engineers and the construction industry, as well as the financial aspects of the GSMP II, will add measurably and constructively to this proceeding and providing a substantial benefit to the Board in determining the reasonableness and prudence of the GSMP II.

In addition, ELEC reiterates that its interests are not adequately represented by any other party, as it is in a unique position to provide insight on the impact of the GSMP II from both a contractor and operating engineer perspective, and that its intervention will not cause delay since its motion to intervene was filed in accordance with the deadline established by the Board.

New Jersey Laborers Employers Cooperation and Education Trust Motion to Intervene or Participate

New Jersey Laborers Employers Cooperation and Education Trust ("NJLECT") filed a motion to intervene or participate. NJLECT states that it is a nonprofit labor management fund that represents 25,000 construction laborers who are employed and have significant experience in building construction and heavy highway construction. NJLECT states that its board is comprised of representatives from large New Jersey construction companies. NJLECT represents that it has particular expertise in tracking construction projects, researching and providing market guidance in the construction industry and legislative analysis as relates to construction and infrastructure investment. NJLECT partners with all sectors of the construction industry, local businesses, community activists and government agencies, to research and promote effective economic development through investment in transportation and infrastructure.

NJLECT's indicates that its membership includes large-scale residential and commercial contractors whose projects and businesses will be directly impacted by the contemplated improvements to New Jersey's energy infrastructure. Mitigation efforts aimed at improving the

efficiency, safety and long-term costs associated with the delivery of gas will directly improve the sustainability of the residential and commercial projects built by NJLECET's membership.

NJLECET argues that the GSMP II will have a direct beneficial impact on job creation for NJLECET's membership. It also asserts that its members will be directly impacted both by any short-term increases in utility rate changes and by long-term efficiencies created by utility infrastructure improvement. NJLECET states that its membership represents large-scale consumers of energy, who will be directly impacted both by any short-term increases in utility rate changes and by long-term efficiencies created by utility infrastructure improvement. NJLECET further claims that its members' unique interests in energy costs, those costs' impact on the construction industry and related to NJLECET's members' direct financial interests related to job creation in the construction industry. The above-referenced interests of its membership are unique to the construction industry and those employed within, according to NJLECET. The interests are unique from and are not adequately represented by any other party to these proceedings, states NJLECET and citing to N.J.A.C. 1:1-16.1(a).

In addition, NJLECET asserts that its entry as intervenor or as participant would measurably and constructively advance this proceeding, because its members are uniquely situated to provide input related to large-scale construction financing and cost-benefit analysis; its members have a unique financial interest in GSMP II, both in the immediate benefit to construction employment and in the long-term cost savings to residential and commercial construction projects; its members represent large-scale consumers of energy who would be directly impacted by short term rate increases and in the long term costs of inadequate energy infrastructure. It further states that its entry as intervenor or as participant would promote better informed consideration of the costs and benefits of improving New Jersey's energy infrastructure.

Environmental Defense Fund Motion to Intervene

On October 13, 2017, the Environmental Defense Fund ("EDF") filed a motion to intervene. According to its motion, EDF is a membership organization whose mission is to preserve the natural systems on which all life depends. It states it has 14,000 members in New Jersey, and seeks practical solutions to resolve environmental problems. EDF claims its uses the power of markets to achieve beneficial environmental outcomes, and consistent with its organizational purpose is engaged in activities to facilitate cost-effective and efficient energy market designs that encourage investment to modernize the energy grid and increase energy efficiency.

EDF argues that it and its members have a direct and substantial interest in the issues raised in this proceeding and will be directly affected by the outcome. Over the past three years, EDF indicates that it has engaged in a focused set of scientific, technical and policy-oriented projects to develop, demonstrate and foster commercialization of advanced leak detection and data analytics methods for use by local gas distribution utilities. It points out that it is managing a project that uses Google Street View cars equipped with methane concentration analyzers to quantify methane leaks from distribution pipelines. The goals of this project are to demonstrate the benefits of state-of-the-art technological solutions, create pathways for the integration of leak quantification and advanced leak detection technology into utility operations, and to commercialize tools to assist utilities in planning and implementing leak abatement and leak-prone infrastructure replacement projects.

In collaboration with PSE&G, EDF states that it gathered leak flow rate data for sections of the utility's infrastructure targeted for replacement through a mobile leak survey using Google Street

View cars that were specially outfitted with methane sensors. EDF indicates that PSE&G shared information with EDF on the location and type of its pipelines, enabling the collection of leak flow rate data that could be spatially attributed to specific pipes targeted for replacement. PSE&G used this leak flow rate data to prioritize its pipeline replacement efforts after considering safety factors. The methodology used by PSE&G to integrate leak flow rate data into its pipe replacement prioritization scheme is described in a white paper titled "Integrating Leak Quantification into Natural Gas Utility Operations," published in Public Utilities Fortnightly in May 2017. EDF states that it has also been heavily engaged throughout the United States in reducing methane emissions stemming from distribution system pipeline leaks. This engagement, according to EDF, includes action in several states. It also indicates that it recently completed a collaborative pilot project to quantify gas leaked from Consolidated Edison Company of New York's non-hazardous Type 3 leak backlog and develop a prioritization scheme for the repair of those leaks. EDF points out that this expertise has been recognized by the Board in prior cases and cites to the GSMP I proceeding, wherein it was granted intervenor status.

EDF further asserts that it has significant experience in prior proceedings before the Board in which local gas distribution utilities seek approval for programs to abate leaks, replace leak-prone infrastructure and modernize gas delivery systems. It claims that its advocacy before the Board and deep technical expertise with leak detection and prioritization methods have provided benefits to utilities, their customers, safety and the environment in New Jersey.

EDF adds that, as in prior proceedings, its intervention will not cause undue delay or confusion and it will abide by the procedural schedule and other rulings in this matter.

RESPONSES:

On October 24, 2017, Rate Counsel filed its response to the motions. In its response, Rate Counsel indicates that it does not oppose the motions filed by NJLEUC, AARP, the Unions, CSJV and EDF. However, Rate Counsel objects to the motions to intervene filed by Ferreira, NJLECET and ELEC.

With regard to Ferreira, Rate Counsel states that Ferreira's economic interest in participating in PSE&G construction projects is not a legally protected right under Title 48. Thus, Rate Counsel asserts that Ferreira does not have a concrete and current interest that will be "specifically and directly" affected by the outcome of this matter. However, Rate Counsel does not object to the granting of participant status to Ferreira.

Rate Counsel also objects to the motion to intervene filed by NJLECET on the grounds that its members' interests in construction projects, either undertaken by PSE&G or resulting from infrastructure upgrades are not interests protected by Title 48. Accordingly Rate Counsel argues that NJLECET does not have a direct interest that will be substantially affected by these proceedings. However, Rate Counsel does not object to the granting of participant status to NJLECET. In response to this objection, by letter dated October 30, 2017, NJLECET indicated that it would withdraw its motion to intervene if it were granted participant status.

In addition, Rate Counsel objects to the motion to intervene filed by ELEC for the same reasons as set forth in its response to NJLECET's motion to intervene, in that it does not have a direct interest that would support intervention. Once again, Rate Counsel does not object to the granting of participant status to ELEC.

No other parties filed a response to the motions.

DISCUSSION AND FINDINGS:

Motions to Intervene 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, 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), the members of NJLEUC who are customers of PSE&G will be directly affected by the outcome of this proceeding, I **HEREBY FIND** that NJLEUC has met the standards for intervention as it is an interest in this proceeding. Accordingly, having received no objections, I **HEREBY GRANT** the motion for intervention of NJLEUC pursuant to the authority granted to me by the Board under the September 22, 2017 Order.

With regard to the motions to participate filed by AARP, the Unions, CSJV and NJLECET⁴, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of AARP, the Unions, CSJV and NJLECET in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motions to participate filed on behalf of AARP, the Unions, CSJV and NJLECET, 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).

⁴ As noted above, by letter dated October 30, 2017 and in light of Rate Counsel's objections, NJLECET withdrew its intervention request and instead sought participant status.

The arguments advanced by Ferreira focus on its economic interest in construction jobs which will be potentially created by the GSMP II. I am persuaded that Ferreira has years of experience in utility construction, including direct expertise in projects similar to those under consideration in this matter. However, I am not persuaded that the primarily pecuniary interests of Ferreira will add measurably to this proceeding. After consideration of the papers, I **HEREBY FIND** that the participation of a New Jersey-based and long established construction company, such as Ferreira, is likely to add an additional perspective to the case without causing undue delay or confusion. Accordingly, to allow Ferreira to share its expertise where appropriate, I **HEREBY GRANT** participant status to Ferreira, 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).

Likewise, the arguments advanced by ELEC primarily focus on economic arguments based on an assumption that its membership will be substantially affected by the outcome of this matter because they may be hired to perform the work proposed by the GSMP II. However, while I am persuaded that ELEC has significant experience in large-scale and long-term construction projects similar to the GSMP II, I am not persuaded that the primarily pecuniary interests of ELEC will add measurably to this proceeding.

After consideration of the papers, I **HEREBY DENY** the motion to intervene filed by ELEC, but **HEREBY FIND** that the participation by ELEC is likely to contribute additional perspectives to the case without causing undue delay or confusion. Accordingly, to allow ELEC to share their expertise where appropriate, I **HEREBY GRANT** participant status to ELEC, 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).

Motion for Admission Pro Hac Vice

I have reviewed NJLEUC's motion and the supporting affidavit of Mr. Forshay. I agree that this proceeding involves a complex field of law, and I am persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, I **FIND** that Mr. Forshay has satisfied the conditions for admission pro hac vice, 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, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this 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.

In addition, I have reviewed the proposal for a preliminary schedule, after giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, PSE&G seeks approval to implement and administer its GSMP II, and to implement up to \$2.68 billion in GSMP II investment across its gas service territory over five (5) years to replace cast iron mains, unprotected steel mains and services, and abandoned district regulators associated with cast iron and unprotected steel plant; and relocate inside meter sets. The Company proposes to implement the same cost-recovery methodology and rate design as used for the GSMP I, including: annual “roll-in” filings based on investment through December 31, 2019, with no deferred return or deferred depreciation for rates to be effective June 1, 2020. The Company proposes a return on the approved investments using an after-tax weighted average cost of capital of 6.1735% based on a return on equity of 9.75% and a cost of debt of 4.1439%.

A. Issues to be Resolved

- 1) The prudence, cost effectiveness and cost efficiency of the activities and programs proposed for the five and one half years of the proposed GSMP II;
- 2) The reasonableness and lawfulness of the proposed cost recovery mechanism; and
- 3) The reasonableness of the proposed rates.

2. 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 dates for hearings. 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:**

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in PSE&G's service territory. Three (3) public hearings will be held in January 2018 with sessions at 4:30 p.m. and 5:30 p.m. at each location. Public hearings will be held in Newark, New Brunswick and Mt. Holly.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Evidentiary hearings will be held the week of March 26, 2018 starting at 9:00 a.m. on each day at the Board of Public Utilities, 44 South Clinton Avenue, Trenton, New Jersey. Dates will be determined based on the availability of the parties and myself.

5. **STIPULATIONS:**

The Staff of the Board of Public Utilities, the Division of Rate Counsel and PSE&G have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 or as provided in Exhibit A.

9. **ORDER OF PROOFS:**

PSE&G has the burden of proof. The hearings will be conducted by topic (see point 12, below); within each topic, the hearings will be conducted in the following order:

First – PSE&G

Second – Rate Counsel

Third – Intervenors

Fourth – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACTS AND EXPERT WITNESSES:**

PSE&G will present the following two (2) witnesses: Wade Miller and Stephen Swetz. Additional witnesses may be identified by PSE&G as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel will present the following five (5) witnesses: Andrea Crane, Edward McGee, David Dismukes, Julie McKenna and Kevin O'Donnell. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

None at this time.

14. **SPECIAL MATTERS:**

None at this time.

DATED:

11/9/17

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
COMMISSIONER

Exhibit A

**IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL
OF A GAS SYSTEM MODERNIZATION PROGRAM
AND ASSOCIATED COST RECOVERY MECHANISM ("GSMP II")
DOCKET NO. GR17070776**

Procedural Schedule

October 30, 2017: Discovery conference

December 6, 2017: Settlement conference

December 11, 2017: Settlement conference

January 4, 2018: Settlement conference

January 10, 2018: Settlement conference

**January 17, 2018 (alternate date January 24, 2018), January 18, 2018 (alternate date
January 23, 2018) and January 25, 2018 (alternate date February 6, 2018):** Public hearings

January 19, 2018: Deadline for filing Rate Counsel/Intervenor direct testimony

January 29, 2018: Deadline for propounding discovery on Rate Counsel/Intervenor testimony

February 9, 2018: Deadline for filing responses to discovery on Rate Counsel/Intervenor
testimony

February 15, 2018: Deadline for Company to file rebuttal testimony

February 26, 2018: Deadline for propounding discovery on Company's rebuttal testimony

March 1, 2018: Deadline for responses to discovery on Company's rebuttal testimony

Week of March 26, 2018: Evidentiary hearings – with live sur-rebuttal in Trenton, subject to the
Commissioner's availability

To Be Determined: Briefing schedule

Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C.
1:1-10.4, subject to the scheduled end dates.

The Energy Strong Order also approved a cost recovery mechanism that allowed for semi-annual rate adjustments for spending related to electric Energy Strong Program investments and annual rate adjustments for spending related to gas Energy Strong Program investments.

Energy Strong II Program Petition

On June 12, 2018, PSE&G filed a petition for approval to implement the next phase of its Energy Strong Program ("Energy Strong II" or "Program") and an associated cost recovery mechanism. The Company proposed a five-year program with a total investment level of approximately \$2.5 billion. PSE&G states that the Program aims to improve the reliability and resiliency of the Company's electric and gas systems by rebuilding critical electrical equipment, installing stronger poles, deploying advanced technology, building backup pipes, modernizing critical gas equipment, and improving customer service.

According to the petition, the proposed Program is consistent with the Board's rules on Infrastructure Investment Programs ("IIP"), promulgated in N.J.A.C. 14:3-2A. Consistent with the IIP regulations, PSE&G states that the Program aims to enhance safety, reliability, and/or resiliency through four electric and two gas subprograms. The Company proposes to conduct the Program from March 1, 2019 through February 29, 2024.

PSE&G projects that the first base rate adjustment filings related to the Program will be in September 2020 for electric rates and March 2022 for gas rates. The Company also proposes a rate filing no later than September 15, 2024 comprised of all actual cost data for rates effective January 1, 2025. Costs to be included in rates will include depreciation/amortization expense, return on the net investment, and the impact of any tax adjustments applicable to the Program.

The Company has forecasted cumulative impact is a monthly increase of \$4.04 for the typical electric residential customer and \$4.98 for the typical gas residential customer. The total impact for a combined typical electric and gas customer would average about one percent per year over the five year Program.

By Order dated July 25, 2018 ("July 2018 Order"), the Board determined that the Energy Strong II petition should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated me as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings, and establish and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. The July 2018 Order further directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by August 17, 2018.

To aid in the setting of an appropriate schedule, Board Staff requested that the New Jersey Division of Rate Counsel ("Rate Counsel") and the Company circulate proposed procedural schedules. The Company and Rate Counsel prepared a proposed procedural schedule, which was received by Board Staff on October 15, 2018 and October 26, 2018, respectively.

related to substations which would not be recoverable through the Energy Strong Program rate recovery mechanism.

Motions

New Jersey Large Energy Users Coalition ("NJLEUC")

By motion dated June 22, 2018, the NJLEUC, an association whose members include large volume electric and natural gas customers serviced by PSE&G, moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities, including PSE&G. Members of NJLEUC are large volume purchasers of electric and natural gas distribution service from PSE&G and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to Energy Strong II are unique and substantially different from those of any other party seeking intervention, and as large end-use customers of PSE&G its members will be directly affected by the proposed multi-billion-dollar infrastructure upgrades. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact on large volume electric and gas customers of the significant rate relief sought by PSE&G in this proceeding.

NJLEUC also argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the reliability and cost of gas and electric distribution service received from PSE&G by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLEUC, making intervention appropriate.

NJLEUC points out that it has been granted intervenor status in prior PSE&G regulatory, infrastructure and rate proceedings, including Energy Strong and the Company's most recent base rate proceeding.

NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers. NJLEUC further states that it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

By motion dated June 22, 2018, NJLEUC, via Steven S. Goldenberg, Esq., also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay, is a member in good standing admitted to the bar of the District of Columbia and 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 represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing large end-use customers before Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in the various PSE&G utility rate and infrastructure proceedings brought before the Board. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice.

On October 19, 2018, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

AARP, Inc. ("AARP")

On August 14, 2018, AARP filed a motion to intervene in this matter. According to its motion, AARP is a non-governmental, non-profit and non-partisan organization whose interest is to protect the affordability, reliability, efficiency and safety of utility services for its New Jersey members. AARP argues that it has hundreds of thousands members aged 50 and over residing in PSE&G's territory who purchase electric and gas service from PSE&G and, therefore, will be substantially and specifically affected by the outcome of this proceeding. 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 and are living on fixed incomes. Therefore, AARP maintains that its members are unique from and not adequately represented by any other party, and points out that Rate Counsel's statutory duty is to represent all ratepayers, whereas AARP represents the specific interests of its members who are over 50, many of whom live on fixed and limited household budgets. AARP states its purpose in intervening in this proceeding is to represent the interests of its members who purchase gas and electric from PSE&G who will be directly affected and impacted monetarily by the Company's gas and electric service rates and tariffs.

AARP further points out that it was granted intervenor status in Energy Strong, as well as other base rate, infrastructure investment, modernization and storm cost recovery proceedings. It also indicates that it actively participated in energy policy proceedings, including the State's Energy Master Plan, legislative initiatives leading to and following the adoption of the Electric Discount and Energy Competition Act, and numerous deregulation and/or energy proceedings before the Board or state legislature. AARP states that it has advocated for and actively participated in the establishment of the Universal Service Fund ("USF") to provide affordable utility rates for low and fixed income customers, and is a member of the USF working group.

AARP adds that its unique perspective will measurably and constructively advance this matter, and will not cause or delay this proceeding if its motion is granted. AARP asserts that fundamental fairness and due process considerations weigh in favor of it being afforded an opportunity to intervene in this matter, the outcome of which poses significant and imminent risks to all of PSE&G's customers including the potential for irreparable harm to ratepayers' quality of life. Based on all of the foregoing, and because PSE&G's gas and electric service and rates will affect the quality of lives of its members, AARP has a direct, substantial, specific and immediate interest in the outcome of this proceeding and cannot be adequately represented by any other party.

Engineers-Labor Cooperative ("ELEC")

ELEC filed a motion to intervene on August 17, 2018. ELEC states that it 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. ELEC indicates in its motion that it is a unique organization because it is a partnership between employers and the Union, and seeks to find common ground and ways to improve the construction industry as a whole for the benefit of both labor and management. ELEC further asserts that it is in a unique position to provide insight on the impact of Energy Strong II from both a contractor and operating engineer perspective, as it can speak to the costs and feasibility of the planned 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 the manpower requirements, the market for operating engineers and any additional specific training that may be necessary for operating engineers to perform work under Energy Strong II.

ELEC claims that its members will also sustain a direct impact as a result of these proceedings because the planned replacement work proposed by Energy Strong II will consist of construction work, including work performed by operating engineers utilized by ELEC member contractors. ELEC argues that its interest will add measurably and constructively to this proceeding because it can offer input on the market for operating engineers which will be used in the construction work under Energy Strong II, the economic impact on contractors, operating engineers and the construction industry, as well as the financial aspects of the Program, and therefore will add measurably and constructively to the scope of this proceeding.

ELEC also claims that it has a history of successful efforts on behalf of PSE&G and other energy and pipeline projects, including supporting the Company and testifying before the Board in the 2014 Energy Strong matter, participating in the Gas System Modernization Program II proceedings, routinely attending public meetings and supporting new pipelines throughout the region. It states its contractors have experience in large-scale, long-term construction projects and can provide information on the financial markets for borrowing for large-scale construction projects, such as Energy Strong II. It asserts that, permitting it to intervene in this matter so that it can offer input on the market for operating engines, the economic impact on contractors, operating engineers and the construction industry, as well as the financial aspects of the Program, will add measurably and constructively to this proceeding and providing a substantial benefit to the Board in determining the reasonableness and prudence of Energy Strong II.

In addition, ELEC reiterates that its interests are not adequately represented by any other party, as it is in a unique position to provide insight on the impact of Energy Strong II from both a contractor and operating engineer perspective, and that its intervention will not cause delay since its motion to intervene was filed in accordance with the deadline established by the Board.

New Jersey Laborers Employers Cooperation and Education Trust ("NJLECET")

NJELECT filed a motion to intervene or participate on August 17, 2018. NJLECET states that it is a nonprofit labor management fund that represents 25,000 construction laborers who are employed and have significant experience in building construction and heavy highway construction. NJLECET states that its board is comprised of representatives from large New Jersey construction companies. NJLECET represents that it has particular expertise in tracking construction projects, researching and providing market guidance in the construction industry and legislative analysis as it relates to construction and infrastructure investment. NJLECET partners with all sectors of the construction industry, local businesses, community activists and government agencies, to research and promote effective economic development through investment in transportation and infrastructure.

NJLECET's indicates that its membership includes large-scale residential and commercial contractors whose projects and businesses will be directly impacted by the contemplated improvements to New Jersey's energy infrastructure. NJELECT claims mitigation efforts aimed at improving the efficiency, safety and long-term costs associated with the delivery of gas and electricity will directly improve the sustainability of the residential and commercial projects built by its membership.

NJLECET argues that Energy Strong II will have a direct beneficial impact on job creation for NJLECET's membership. It also asserts that its members will be directly impacted both by any short-term increases in utility rate changes and by long-term efficiencies created by utility infrastructure improvement. NJLECET states that its membership represents large-scale consumers of energy, who will be directly impacted both by any short-term increases in utility rate changes and by long-term efficiencies created by utility infrastructure improvement. NJLECET further claims that its members have unique interests related to energy costs' impact on the construction industry and related to NJLECET's members' direct financial interests in construction industry job creation. The above-referenced interests of its membership are unique to the construction industry and those employed within, according to NJLECET. The interests are unique from and are not adequately represented by any other party to these proceedings, states NJLECET and citing to N.J.A.C. 1:1-16.1(a).

In addition, NJLECET asserts that its entry as intervenor or as participant would measurably and constructively advance this proceeding, because its members are uniquely situated to provide input related to large-scale construction financing and cost-benefit analysis; its members have a unique financial interest in Energy Strong II, both in the immediate benefit to construction employment and in the long-term cost savings to residential and commercial construction projects; its members represent large-scale consumers of energy who would be directly impacted by short term rate increases and in the long term costs of inadequate energy infrastructure. It further states that its entry as intervenor or as participant would promote better informed consideration of the costs and benefits of improving New Jersey's energy infrastructure. NJLECET adds that it will cooperate with other parties to ensure that a decision is made in full view of all relevant facts.

Ferreira Construction Company Inc. ("Ferreira")

On August 17, 2018, Ferreira filed a motion for leave to intervene or participate. According to its motion, Ferreira is a private construction company specializing in transportation infrastructure, utility-related construction, marine work, buildings, interior renovations, solar installation and construction management. Ferreira argues that it has a substantial interest in the outcome of Energy Strong II because PSE&G indicated that it anticipates using outside contractors, such as Ferreira, for much of the planned replacement work under this program. Ferreira states it specializes in the large-scale heavy infrastructure projects that are contemplated by Energy Strong II. In addition, Ferreira argues that knowing whether a multi-year program such as Energy Strong II will be approved by the Board is important for contractors such as Ferreira because it allows them to make investments in staff, material and equipment with greater certainty.

Ferreira states that there is no other party to the proceeding with a concrete and specific interest in the heavy infrastructure projects and attendant jobs that will be created by Energy Strong II. Finally, Ferreira states that its intervention is not likely to cause any confusion or delay as it will coordinate with similarly situated parties as appropriate, and will abide by the procedural schedule. Alternatively, Ferreira requests that if its motion to intervene is not granted, the Board should grant it participant status pursuant to N.J.A.C. 1:1-16.6.

Jersey Central Power and Light Company ("JCP&L")

On August 9, 2018, JCP&L filed a motion to participate. According to its motion, JCP&L is an electric utility primarily engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to approximately 1.1 million residential, commercial and

industrial customers located within 13 counties and 236 municipalities of the State of New Jersey.

JCP&L argues that the Board's decision in this matter will have a precedential effect not only on PSE&G, but also New Jersey's other electric and gas utilities, including JCP&L and its customers. A variety of issues that will be addressed in this case may have an impact on JCP&L by serving as precedent for JCP&L. JCP&L will therefore likely be directly and specifically affected by the relief provided in this proceeding.

According to JCP&L, its service territories, customers, and operations are distinct from other parties or participants in this case. Thus, JCP&L claims no other party will represent the interests of JCP&L in this case. JCP&L indicates it has a history of coordinating its activities in dockets at the Board with other similar entities where appropriate. JCP&L represents it will coordinate its representation with other similarly situated entities in this matter to the extent it finds such action appropriate. JCP&L also states that due to its experience in the electric industry, its participation is likely to add constructively to the proceeding. JCP&L further represents it will abide by any schedule set for this proceeding and the granting of its motion will not cause undue delay or confusion.

Creamer-Sanzari Joint Venture ("CSJV")

CSJV filed a motion to participate in this matter on August 17, 2018. According to its motion, CSJV is a joint venture between J. Fletcher Creamer & Son, Inc. and Joseph M. Sanzari, Inc., two New Jersey corporations in the business of heavy highway construction and utilities installation. CSJV points out that it has a unique ability to provide the Board with critical insight as to the implications Energy Strong II would have for the improvement and hardening of utility infrastructure, job creation and retention in New Jersey, as well as an accurate assessment of the construction costs associated with Energy Strong II, and recommendations concerning efficient solutions for its implementation.

CSJV asserts that the companies that constitute CSJV have decades of experience in New Jersey between them working with the utility industry, including the type of work necessary to implement Energy Strong II. It states that CSJV has employed a significant number of union workers from various trades to perform that work including laborers and operating engineers, and has performed installation work in connection with Energy Strong and the Gas System Modernization Program. CSJV claims that this extensive work with PSE&G gives it a unique understanding of the Company's exacting standards of quality, safety and detail in the installation and replacement of its utility infrastructure and of the scope, scale and complexity of the work necessary to implement Energy Strong II.

CSJV further argues that it not only has a significant interest in the outcome of this matter, but will be uniquely affected by the outcome of the case in a manner that will assist the Board in its resolution of the petition. CSJV states that it will be able to leverage its substantial experience with utilities and PSE&G to provide the Board with valuable insight as to both the impact the Program will have for job creation in New Jersey, as well as a detailed, practical assessment of the most effective strategies for the successful implementation of Energy Strong II. In addition, CSJV indicates that its participation in this proceeding will contribute to the development of a complete record for consideration by the Board of these issues. CSJV states that its motion is timely and will not delay or disrupt the prosecution of this proceeding.

Local Union 94 of the International Brotherhood of Electrical Workers ("IBEW")

On August 17, 2018, IBEW filed a motion to participate in this proceeding. In the motion, the IBEW Local Union 94 states that it represents thousands of non-management employees who are involved in all aspects of operations at PSE&G, and has approximately 2,200 members who are employed in electric distribution and transmission, gas distribution and appliance service, and other work in support of those operations. According to the motion, the members of IBEW Local Union 94 are part of PSE&G's skilled workforce and will perform the work envisioned by Energy Strong II as they have successfully been doing work for Energy Strong and other PSE&G ongoing modernization initiatives. Therefore, IBEW Local Union 94 argues that the issues to be decided in this matter substantially, significantly and directly affect it and its members. It adds that its participation will not cause confusion or delay the matter.

Henkels & McCoy, Inc. ("H&M")

H&M filed a motion to participate late on August 22, 2018⁴. H&M states that it is a leading utility construction firm providing critical infrastructure for the power, gas distribution and communications markets throughout North America. Over the past five (5) years, H&M indicates it has provided more than 1.4 million hours of craft labor, with 1,800 employees, to support PSE&G in its Energy Strong initiatives in power transmission, distribution and substation builds, as well as gas distribution construction services. H&M argues its broad experience in all areas of utility construction will constructively assist the Board in evaluating, among other things, the value of continuity in continuing the Energy Strong initiative without the need to stop/start the program. H&M claims PSE&G's ability to forge long term commitments to its Energy Strong initiative and its contractor community provides continuous job opportunities for New Jersey residents. This benefits the state by assuring that the most competent and committed talent stay in New Jersey, according to H&M. H&M adds that maintaining an experienced and trained New Jersey workforce will continue to have positive impacts on safety, quality, cost and schedule.

H&M states its status as a large-scale heavy infrastructure company gives it unique experience and a distinctive viewpoint concerning Energy Strong II as compared to the other parties and participants in this proceeding, and thus, H&M's participation will be constructive. H&M represents that it will also coordinate its representation with similarly situated parties in this matter to the extent that it finds such action appropriate. Moreover, H&M represents it will abide by the schedule set forth for this proceeding and, if granted participant status, will not seek to participate beyond the bounds permitted by N.J.A.C. 1:1-16.6(c). Accordingly, it argues allowing H&M participant status will not cause any undue delay or confusion with regard to these proceedings.

Joseph Jingoli & Son, Inc. ("Jingoli")

Jingoli filed a motion for leave to participate on August 17, 2018. Jingoli states that it has decades of experience as a contractor performing development work and underground facility utility work for the utility industry in New Jersey, including the types of work necessary to implement Energy Strong II. Jingoli claims that it has previously employed a significant number of union workers from various trades to perform such work, and has previously worked for PSE&G and this prior experience gives Jingoli an understanding of the standards necessary to

⁴ H&M's motion was not timely filed, but will nonetheless be considered.

meet the quality, safety and schedule requirements for the installation and replacement of the utility structure under Energy Strong II.

Based on Jingoli's experience in the utility industry, its prior work for PSE&G and the likelihood that it may be retained to perform services in support of Energy Strong II, Jingoli asserts that it not only has an interest in the outcome of this matter, but will be uniquely affected by the outcome of this case in a manner that will assist the Board in reaching a resolution. Jingoli indicates that it will be in a position to provide the Board with valuable insight with regard to the impact Energy Strong II will have on job creation as well as succession implementation of Energy Strong II. Accordingly, Jingoli argues that the issues in this matter substantially and directly affect it, thereby making it appropriate for it to participate. Jingoli states that its participation in this matter will not cause confusion or delay.

Waters and Bugbee, Inc. ("W&B")

W&B filed a motion to participate on August 17, 2018. W&B states that it is a corporation specializing in the installation of utility infrastructure and has been involved with major electrical and natural gas distribution with PSE&G for over 50 years. W&B claims that its involvement in Energy Strong will provide the Board with critical insight as to the potential impact that Energy Strong II could have for job creation, accurate assessment of construction costs, and recommendations with efficient implementation. W&B also states that it will support and participate in the construction envisioned by Energy Strong II, as it has successfully been doing under Energy Strong and other modernization initiatives.

W&B represents that its participation in this proceeding will contribute to the development of a complete record by the Board for consideration on these issues. As such, W&B asserts that the issues to be decided in this matter substantially, significantly and directly affect W&B, thereby making it appropriate for it to participate. W&B indicates that its motion is timely it will not delay or otherwise disrupt this proceeding.

Environment New Jersey ("ENJ") and New Jersey Conservation Foundation ("NJCF")

On August 17, 2018, ENJ and NJCF filed a motion to participate. ENJ indicates it has more than 20,000 members in the state, the majority of who reside in PSE&G's New Jersey service territory. NJCF states it was founded in 1960 and has since preserved over 125,000 acres of land in New Jersey, for the public's use and enjoyment, and to contribute to the state's ecological well-being. Both ENJ and NJCF state that they are committed to preserving New Jersey's environment by protecting land, air, and water and promoting a clean energy future.

ENJ and NJCF's interest in this matter concerns three subprograms contained within the Program: the grid modernization subprogram, the curtailment resiliency subprogram, and the metering and regulation upgrade subprogram. ENJ and the NJCF assert that they have a significant interest in ensuring Energy Strong II will "conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State," citing N.J.S.A. 48:2-23, which they state is fundamental to the core mission of both organizations. NJCF indicates it has an especially urgent interest in this goal, because the organization owns, manages and stewards over 20,000 acres of open space lands in the state. They also state that they have a significant interest in ensuring that Energy Strong II conforms to the goals and the specific provisions of the clean energy legislation recently signed by Governor Murphy, the Governor's clean energy platform, and the Regional Greenhouse Gas Initiative ("RGGI").

ENJ and the NJCF argue that the Energy Master Plan will be developed by July 2019, a process that could develop policy goals and strategies contrary to the expansion of gas infrastructure proposed in the curtailment resiliency subprogram, and the metering and regulation upgrade subprogram. ENJ and the NJCF further claim they have a strong interest in developing new state goals and policies that will allow the state to reduce the consumption of gas in order to achieve the goals of the Global Warming Response Act. ENJ and the NJCF state that they have a significant interest in ensuring that, if approved, the grid modernization subprogram maximizes the benefits that grid modernization can provide in terms of reliability, energy efficiency and clean energy. They claim the Board's decision will influence future grid modernization proposals in New Jersey. Grid modernization is a key issue in their energy platforms and, therefore, ENJ and the NJCF assert they have a significant interest in the Board's decision.

Since 2004, ENJ represents it has been involved with Board proceedings on energy efficiency standards and renewable energy resource analysis, advocating for increased investments in energy efficiency and an energy efficiency resource standard. ENJ cites to other cases in which it was permitted to intervene, including the proposed merger between Exelon, Inc. and PSE&G and PSE&G's Susquehanna-Roseland electric transmission line project.

ENJ states it has longstanding expertise in energy issues, including advocating for improved air quality and reduced air pollution from fossil fuels and challenging air permits and advocating for reduced emissions from fossil fuel power plants, stronger scrubber technology and the reduced use of fossil fuel generation

NJCF indicates it has an extensive record of supporting additional actions to reduce global warming pollution, both in New Jersey and across the country and has provided expert consultation and analysis of costs related to clean energy provisions of New Jersey's Clean Energy Act. NJCF alleges it has a record of advocating for reduced air pollution from fossil fuels and improved air quality. NJCF adds that it has been substantially involved in examining proposed gas infrastructure projects, as well as devoting significant resources to presenting recommendations for federal energy infrastructure review nationwide, and has brought such expertise to bear on specific gas infrastructure projects impacting New Jersey residents, presenting expert examination of those projects. Such research and advocacy are important to protecting the interests of New Jersey ratepayers. In the present proceeding, NJCF believes that a central question is whether the proposed investments are prudent and its prior and current work on gas infrastructure is directly relevant to these issues.

ENJ and the NJCF argue that they have significant interests in this matter, including the proposal's effect on environmental protection, the proposal's conformance with Governor Murphy's clean energy platform, RGGI, the proposal's potential for benefits in reliability, energy efficiency, clean energy, and the proposal's potential to further the development of gas infrastructure that may be contrary to the state's clean energy goals and unduly harm natural resources and ratepayers.

ENJ and the NJCF assert they should be permitted to participate because they can assist with development of a complete record in areas where they hold unique expertise, experience and policy perspectives. Lastly, ENJ and the NJCF represent their participation would not cause undue delay or confusion, and will work with all parties to ensure an efficient hearing process, and avoid duplicate of efforts, confusion or any delays.

Responses

PSE&G

By correspondence dated August 30, 2018, PSE&G states it has no objection to the motions to intervene filed by the ELEC, Ferreira, NJLECET and AARP. Likewise, PSE&G has no objection to the motions to participate filed by H&M, CSJV, Jingoli, JCP&L, W&B and IBEW.

With regard to NJLEUC, PSE&G requests that as a condition of its approval of the motion to intervene, the Board require NJLEUC to provide a list of the members it is representing in connection with this proceeding. Further, the Company requests that NJLEUC be required to update this membership list in the event of any material membership changes.

However, the Company opposed the motion to participate filed by ENJ and the NJCF, claiming that their participation would invite injection on significant policy issues regarding renewable energy and energy efficiency into these proceedings that are misplaced, and that will cause confusion or undue delay.

NJLEUC

In response to PSE&G's August 20, 2018 letter, on September 6, 2018, NJLEUC provided the names of its members located in the Company's territory.

ENJ and NJCF

On September 6, 2018, ENJ and NJCF filed their response to PSE&G's opposition to their motion to participate, stating that they have demonstrated that they meet the requirements for participation under N.J.A.C. 1:1-16.6. ENJ and NJCF reiterate that they have several significant interests in the outcome of Energy Strong II, including the proposal's effect on environmental protection and the proposal's potential for benefits in reliability, energy efficiency, and clean energy, and that they can assist with development of a complete record in areas where they hold unique expertise, experience, and policy perspectives, thus adding constructively to the case. They add that, as in past proceedings, they will not interfere with the smooth operation of this docket in that they will strictly abide by the schedules and other rulings made by the Board, work with all parties to ensure an efficient hearing process, and avoid duplication of efforts, confusion, or any delays.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, PSE&G seeks approval to implement and administer Energy Strong II and its associated cost recovery mechanism. The Company proposes a five-year program with a total investment level of approximately \$2.5 billion. PSE&G claims the Program aims to improve the reliability and resiliency of the Company's electric and gas systems by rebuilding critical electrical equipment, installing stronger poles, deploying advanced technology, building backup pipes, modernizing critical gas equipment, and improving customer service.

Issues to be Resolved

- A. Is the Program prudent, cost effective and cost efficient?

- B. Is the Program non-revenue producing, accelerated capital spending pursuant to the requirements of N.J.A.C. 14:3-2A.1, et seq.?
- C. Is the Program necessary accelerated capital spend?
- D. What is the appropriate base line spend?
- E. Is the eligible Program spending above the baseline spending level and incremental in nature?
- F. What is the appropriate cost of capital?
- G. Is the proposed cost recovery mechanism reasonable and lawful?

2. **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 dates for hearings. 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:**

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in PSE&G's service territory. Three public hearings will be held on January 7, 8 and 9, 2018 with sessions at 4:00 p.m. and 5:30 p.m. at each location. Public hearings will be held in Hackensack, Mount Holly and New Brunswick, respectively.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Evidentiary hearings will be held on May 21, 22, 23 and 24, 2019 starting at 10:00 a.m. on each day at the Board of Public Utilities, First Floor Multipurpose Room, 44 South Clinton Avenue, Trenton, New Jersey. Dates will be determined based on the availability of the parties and myself.

1. **STIPULATIONS:**

The Staff of the Board of Public Utilities, the Division of Rate Counsel and PSE&G have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussions. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in

the case.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 and as provided in Exhibit A.

9. **ORDER OF PROOFS:**

PSE&G has the burden of proof. The hearings will be conducted by topic (see point 12, below); within each topic, the hearings will be conducted in the following order:

First – PSE&G

Second – Rate Counsel

Third – NJLEUC

Fourth - AARP

Fifth – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACTS AND EXPERT WITNESSES:**

PSE&G will present the following witnesses: Wade E. Miller, Edward F. Gray, Stephen Swetz, William D. Williams, Krystal Richart, Craig Preuss and Andrew Trump. Additional witnesses may be identified by PSE&G as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel will present the following witnesses: Andrea Crane, David Dismukes, Kevin O'Donnell, Max Chang and Charles Salamone. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

NJLEUC and AARP's witnesses are to be determined.

Any party substituting witnesses shall identify such witnesses within five days of determining to replace a witness, and in no event later than five days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct

testimony will be subject to cross-examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

NJLEUC has moved to intervene and for the admission pro hac vice of Paul F. Forshay, Esq. AARP has moved to intervene. ELEC, CSJV, Ferreira, NJLECET, IBEW, H&M, Jingoli, W&B, JCP&L, ENJ and NJCF have moved to intervene and/or participate.

14. **SPECIAL MATTERS:**

None at this time.

DISCUSSION AND FINDINGS

Motions to Intervene 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, 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 In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU 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), the members of AARP and NJLEUC who represent large and identifiable customer groups of PSE&G will be directly affected by the outcome of this proceeding, I **HEREBY FIND** that AARP and NJLEUC have met the standards for intervention as it is an interest in this proceeding.

Accordingly, having received no objection to AARP, and NJLEUC having met PSE&G's request for a list of members, I **HEREBY GRANT** the motions for intervention of AARP and NJLEUC pursuant to the authority granted to me by the Board under the July 2018 Order.

The arguments advanced by Ferreira in support of its motion focus on its economic interest in construction jobs, which will be potentially created by Energy Strong II. I am persuaded that Ferreira has years of experience in utility construction, including direct expertise in projects similar to those being considered in this matter. However, I am not persuaded that the primarily pecuniary interests of Ferreira will add measurably to this proceeding. After consideration of the papers, I **HEREBY DENY** Ferreira's motion to intervene. However, I **HEREBY FIND** that the participation of a New Jersey-based and long-established construction company such as Ferreira is likely to add an additional perspective to the case without causing undue delay or confusion. Accordingly, to allow Ferreira to share its expertise where appropriate, I **HEREBY GRANT** participant status to Ferreira, 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).

Likewise, the arguments advanced by ELEC and NJLECET primarily focus on economic arguments based on an assumption that their membership will be substantially affected by the outcome of this matter because their organization's members may be hired to perform the work proposed by the Energy Strong II. However, while I am persuaded that ELEC and NJLECET have significant experience in large-scale and long-term construction projects similar to the projects proposed for Energy Strong II, I am not persuaded that the primarily pecuniary interests of ELEC and NJLECET will add measurably to this proceeding.

I **HEREBY DENY** the motion to intervene filed by ELEC and NJLECET, but **HEREBY FIND** that the participation by ELEC and NJLECET is likely to contribute additional perspectives to the case without causing undue delay or confusion. Accordingly, to allow ELEC and NJLECET to share their expertise where appropriate, I **HEREBY GRANT** participant status to ELEC and NJLECET, 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).

With regard to the motions to participate filed by CSJV, H&M, Jingoli, JCP&L, W&B and IBEW, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of CSJV, H&M, Jingoli, JCP&L, W&B and IBEW in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motions to participate filed on behalf of CSJV, H&M, Jingoli, JCP&L, W&B and IBEW, 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).

In addition, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), the members of ENJ and NJCF living in PSE&G's service territory will be directly affected by the outcome of the Energy Strong II proceeding, and that ENJ and NJCF have expertise in evaluating the effect on environmental protection and its potential benefits regarding reliability, energy efficiency and clean energy that 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 ENJ and NJCF have met the standards for participation in the Energy Strong II proceeding, as they have interests that are not represented by another party. Accordingly, I **HEREBY GRANT** motion to participate of ENJ and NJCF on the basis of their representation that they will adhere to the scope of the issues to be addressed in this proceeding, and 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).

Motion for Admission Pro Hac Vice

I have reviewed NJLEUC's motion and the supporting affidavit of Mr. Forshay. I agree that this proceeding involves a complex field of law, and I am persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, I **FIND** that Mr. Forshay has satisfied the conditions for admission pro hac vice, 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, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this 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.

Procedural Schedule

I have reviewed the proposals for a preliminary schedule, after giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the aforementioned as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

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

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: November 30, 2018



JOSEPH L. FIORDALISO
PRESIDENT

EXHIBIT A

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL OF THE SECOND ENERGY STRONG PROGRAM (ENERGY STRONG II)
DOCKET NOS. EO18060629 and GO18060630

Procedural Schedule⁵

November 9, 2018	Deadline for propounding first round discovery requests on Company
November 23, 2018	Deadline for Company to file first round data responses
December 14, 2018	Deadline for propounding second round discovery requests on Company
December 28, 2018	Deadline for Company to provide all outstanding discovery
January 7, 8, and 9, 2018	Public hearings in Hackensack, Mount Holly and New Brunswick, respectively
Week of January 21, 2019	Technical conference/discovery conference
Week of February 4, 2019	Settlement conferences
February 22, 2019	Deadline for filing Rate Counsel/Intervenor direct testimony
March 8, 2019	Deadline for propounding discovery requests on Rate Counsel/Intervenor direct testimony
March 22, 2019	Deadline for responses to discovery requests on Rate Counsel/Intervenor direct testimony
April 5, 2019	Deadline for filing rebuttal testimony
April 19, 2019	Deadline for propounding discovery requests on rebuttal testimony
May 3, 2019	Deadline for responses to discovery on rebuttal testimony discovery
Week of May 6, 2019	Settlement conferences
May 21-24, 2019	Evidentiary hearings, with live surrebuttal, subject to the President's availability
June 21, 2019	Deadline for filing initial briefs
July 12, 2019	Deadline for filing reply briefs

⁵ Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C. 1:1-10.4, subject to the scheduled end dates. The aforementioned dates are subject to modification by the presiding Commissioner. The parties on the service list will be notified accordingly.



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New Jersey Natural Gas Company for
Approval of An Increase in Gas Base
Rates and for Changes in its Tariff for Gas
Service Pursuant to N.J.S.A. 48:2-21 and
N.J.S.A. 48:2-21.1; and for Changes to
Depreciation Rates for Gas Property
Pursuant to N.J.S.A. 48:2-18
OAL Docket No. PUC 04111-21
BPU Docket No. GR21030679
OAL Docket No. PUC 04111-21

New Jersey Natural Gas Company for
Approval of A Base Rate Adjustment
Pursuant to the NJ RISE and SAFE II
Programs, N.J.S.A. 48:2-21, 48:2-21.1,
48:2-18 and 48:2-13
OAL Docket No. PUC 04113-21
BPU Docket No. GR21030680

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