



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

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| IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF THE NEXT PHASE OF THE GAS SYSTEM MODERNIZATION PROGRAM AND ASSOCIATED RECOVERY MECHANISM ("GSMP III") |) | ORDER ON MOTIONS TO INTERVENE OR PARTICIPATE |
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| |) | |
| |) | DOCKET NO. GR23030102 |

Parties of Record:

Danielle Lopez, Esq., Public Service Electric and Gas Company
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Giordano, Halleran and Ciesla, P.C. for New Jersey Large Energy Users Coalition
Anthony R. Francioso, Esq., Fornaro Francioso LLC for Environmental Defense Fund
Murray E. Bevan, Esq., Bevan, Mosca & Giuditta P.C. for NRG

BY COMMISSIONER ZENON CHRISTODOULOU:

I. BACKGROUND AND PROCEDURAL HISTORY

On March 1, 2023, Public Service Electric and Gas Company ("PSE&G" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") seeking approval of the next phase of its Gas System Modernization Program ("GSMP") and an associated cost recovery mechanism pursuant to N.J.A.C. 14:3-2A ("Petition"). The Company's proposed program ("GSMP III" or "Program") includes a three (3)-year term with a total investment level of approximately \$2.54 billion, as an extension of the Company's original GSMP and second GSMP ("GSMP II") programs.¹ According to the Petition, the forecasted cumulative bill impact on the typical residential gas customer is an increase of approximately \$10.16 in their average monthly bill, or approximately 10.41% on an average annual bill.

Via GSMP III, the Company proposed to replace 1,140 miles of gas main, consisting of 810 miles of low-pressure cast iron main, 50 miles of high-pressure cast iron main, 200 miles of

¹ See In re Public Service Electric and Gas Company for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism, BPU Docket No. GR15030272, Order dated November 16, 2015, and In re the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program and Associated Cost Recovery Mechanism ("GSMP II"), BPU Docket No. GR17070776, Order dated May 22, 2018.

unprotected steel main, and 80 miles of cathodically protected steel and plastic main (“Replacement Subprogram”). PSE&G estimated that, through the Program, the Company would replace 380 miles of main annually over the three (3)-year period from 2024 to 2026, beginning January 1, 2024. The proposed Replacement Subprogram also included abandonment of approximately 210 district regulators, replacement of approximately 92,100 unprotected steel services, and relocation of approximately 49,200 inside meter sets to the outside. The Company estimated the Replacement Subprogram would cost approximately \$2.39 billion and reduce greenhouse gas emissions by approximately 59,000 metric tons of carbon dioxide equivalent (“CO₂e”) by the end of 2026.

Additionally, PSE&G proposed a hydrogen blending project that includes the installation of a one-megawatt power-to-gas facility to provide the Company’s distribution system with a 2% blended supply of hydrogen (Hydrogen Project”). The Company estimated the Hydrogen Project would cost approximately \$30 million, and reduce greenhouse gas emissions by approximately 1,000 metric tons of CO₂e.

The Company further proposed to conduct a Renewable Natural Gas (“RNG”) project (“RNG Project”), to upgrade landfill gas to “pipeline quality” specifications before injection into the gas distribution system. According to the Company, the RNG Project would cost approximately \$123 million and would result in quantified net reductions for nitrogen oxides, carbon monoxide, sulfur dioxide, particulate matter 2.5, and particulate matter 10 air pollutants.

To recover costs related to the Program, PSE&G proposed a new gas rate component of the Company’s Infrastructure Investment Program (“IIP”) charges with semi-annual rate adjustment filings beginning June 30, 2024.² The Company further proposed to include depreciation/amortization expenses to recover the invested capital over its useful book life, return on the net investment, and the impact of any tax adjustments applicable to the Program for recovery in its rates. PSE&G explained it would base its return on net investment upon the weighted average cost of capital (“WACC”) approved by the Board in PSE&G’s most recent base rate case, and that any change in the WACC authorized by the Board in any subsequent base rate case will be reflected in the subsequent revenue requirement calculations.³

PSE&G also proposed an Operations and Maintenance (“O&M”) expense adjustment to account for cost savings from leak reductions resulting from the Replacement Subprogram, and the ongoing annual expenses related to the O&M of the proposed Hydrogen and RNG Projects. Additionally, the Company proposed to credit revenue associated with the sale of gas from the Hydrogen and RNG Projects and environmental attributes, and net any selling expenses from the RNG Project, to its Basic Gas Supply Service (“BGSS”)-Residential Service Gas deferral balance.

² An IIP allows a utility to accelerate its investment in the construction, installation, and rehabilitation of certain non-revenue producing utility plant and facilities that enhance safety, reliability, and/or resiliency. See N.J.A.C. 14:3-2A.1.

³ In re the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in Tariffs for Electric and Gas Service, B.P.U.N.J. No. 16 Electric and B.P.U.N.J. No. 16 Gas, and for Changes in Depreciation Rates, Pursuant to N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief, BPU Docket Nos. ER18010029 and GR18010030, OAL Docket No. PUC 01151-18, Decision and Order Adopting Initial Decision and Stipulation dated October 29, 2018.

On April 12, 2023, the Board designated me, Commissioner Zenon Christodoulou, as Presiding Commissioner, with the authority to rule on all motions that arise during the pendency of the proceedings, and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.⁴ The Board further ordered that any entities seeking to intervene or participate must file the appropriate application with the Board by May 12, 2023, and any party wishing to file a motion for admission of counsel *pro hac vice* should do so concurrently with any motion to intervene or participate.

II. THE MOTIONS

Motions to Intervene:

New Jersey Natural Gas Company

On March 6, 2023, New Jersey Natural Gas Company (“NJNG”) filed a Motion to Intervene.

According to its motion, NJNG is engaged in the purchase, distribution, and sale of natural gas for more than 565,000 customers located within the State of New Jersey. NJNG argued that a variety of issues in this case would have an impact on NJNG by establishing precedent and, therefore, the relief provided in this matter would directly affect NJNG. NJNG also stated that the service territories, customers, and the operations of NJNG are distinct from those of other parties and participants in this case. Thus, NJNG argued that no other party or participant would represent the interests of NJNG in this case. NJNG further stated that its intervention in this proceeding is likely to add constructively to the proceeding due to NJNG’s experience in the gas industry. If not granted intervenor status, however, NJNG requested that it be permitted to participate in this proceeding pursuant to N.J.A.C. 1:1-16.5.

New Jersey Large Energy Users Coalition

On April 18, 2023, the New Jersey Large Energy Users Coalition (“NJLEUC”) filed a Motion to Intervene.

According to its motion, NJLEUC is an association whose members include large volume natural gas customers served by PSE&G. NJLEUC stated it is consistently granted intervenor status in PSE&G’s regulatory, merger, rate and infrastructure proceedings. NJLEUC argued that it would be directly affected by the significant infrastructure upgrades proposed in this proceeding given its capacity as an association of large end-use customers of PSE&G. NJLEUC further stated that the interests of its members are substantially different from those of any other party. Additionally, NJLEUC stated that it would “measurably and constructively” advance this proceeding because of the unique, well-informed status of its members.

⁴ In re the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program and Associated Recovery Mechanism (“GSMP III”), Order Designating Commissioner and Setting Manner of Service and Bar Date, BPU Docket No. GR23030102, Order dated April 12, 2023.

Environmental Defense Fund

On May 10, 2023, the Environmental Defense Fund (“EDF”) filed a Motion to Intervene.

According to its motion, EDF is a nonprofit organization with over 105,000 members in New Jersey, and has expertise aligning gas utility business models with climate objectives. EDF noted that the Board granted EDF intervention in previous gas infrastructure proceedings. EDF argued that its members have a direct and substantial interest in the issues in this proceeding and would be directly affected by the outcome because the proposed investments, including the proposed hydrogen and biomethane programs, have the potential to contribute to, or detract from, the achievement of New Jersey’s climate objectives. Further, EDF stated that it is not adequately represented by any other party, and its participation in this matter would bring expertise regarding gas utility decarbonization pathways that will add measurably and constructively to the scope of the case.

Waters & Bugbee, Inc.

On May 11, 2023, Waters & Bugbee, Inc. (“W&B”) filed a Motion to Intervene.

According to its motion, W&B is a New Jersey corporation specializing in the installation of utility infrastructure for all the major public and private utilities in the state of New Jersey. W&B stated that it would be substantially, significantly, and directly affected by this proceeding. Specifically, W&B stated that PSE&G would continue to use outside contractors for a substantial portion of the planned work under the Program and W&B is fully prepared to support and participate in the construction envisioned by the Program, as it has done under PSE&G’s other modernization initiatives.

W&B further stated that its interest is sufficiently different from that of any other party or participant and its vast experience in installation of utility infrastructure and its long-standing relationship with PSE&G give it a unique insight and perspective on the Program and its goals compared to other parties in the proceeding. W&B also stated that its inclusion would not cause confusion or undue delay. If not granted intervenor status, however, W&B requested that it be granted participant status.

Engineers Labor-Employer Cooperative

On May 12, 2023, the Engineers Labor-Employer Cooperative (“ELEC”) filed a Motion to Intervene.

According to its motion, ELEC is a labor-management organization that promotes economic development, investments in infrastructure, and construction to provide opportunities for developers, union contractors, and members of the International Union of Operating Engineers Local 825 (“Union”). ELEC stated that it represents more than 7,000 experienced operating engineers and over 1,000 contractors throughout the State of New Jersey and the lower counties of New York State. ELEC also noted that it previously participated in the proceedings related to GSMP II.

ELEC stated that it would be substantially, specifically, and directly affected by the outcome of this proceeding because ELEC contractors and operating engineers would be performing the work called for in the Petition. Additionally, ELEC stated that its interest would add measurably and constructively to this proceeding. Specifically, ELEC stated that it has the capacity to provide

input on the manpower requirements of the Program, the market for operating engineers, and through ELEC's participation, ELEC member contractors who are likely to be used for the construction work performed under the Program can provide input on the costs and scope of the Program.

ELEC further argued that its interests are not adequately represented by any other party. As a partnership between employers and the Union, ELEC stated that it is in a unique position to provide insight on the impact of the Program from both a contractor and operating engineer perspective. ELEC also stated that its inclusion as an intervenor will not cause delay or confusion.

Ferreira Construction Company, Inc.

On May 12, 2023, Ferreira Construction Company, Inc. ("Ferreira") filed a Motion to Intervene.

According to its motion, Ferreira is a privately held, large-scale, full-service construction company specializing in transportation infrastructure, utility related construction, marine work, buildings, interior renovations, solar installation, and construction management. Ferreira stated that it has a substantial interest in the outcome of this matter because it specializes in the type of large-scale heavy infrastructure projects that are contemplated by the GSMP III.

Additionally, Ferreira stated that there are no other parties to the proceeding with interests identical to those of Ferreira. Ferreira also stated that its interest and expertise is with regard to the heavy infrastructure projects (and attendant jobs) that will be created as a result of the GSMP III. Thus, Ferreira argued that its participation would add measurably and constructively to the scope and resolution of this matter. Ferreira further stated that its intervention in this proceeding is not likely to cause any confusion or undue delay. If not granted intervenor status, however, Ferreira requested that it be granted participant status.

Middlesex County Utilities Authority

On May 12, 2023, the Middlesex County Utilities Authority ("MCUA") filed a Motion to Intervene.

According to its motion, MCUA operates and administers the Middlesex County Landfill in East Brunswick Township, New Jersey. MCUA also stated that it owns and operates a cogeneration facility located at its Central Treatment Plant in Sayreville, New Jersey. As stated by MCUA, its existing cogeneration facility is reaching operational obsolescence and, therefore, MCUA and PSE&G have entered into a Memorandum of Understanding whereby MCUA's supply of biogas would be processed in a RNG facility to be designed, constructed and operated by PSE&G and injected into PSE&G's natural gas distribution network.

MCUA stated that it is a key party to the instant matter because: 1) MCUA is a partner with PSE&G in the RNG Project; 2) The RNG Project is on MCUA property; and 3) MCUA will be providing the landfill gas for the new RNG facility. MCUA further stated that it would be directly and specifically affected by this matter and no other party can adequately represent MCUA's interest. Additionally, MCUA stated that granting it intervention in this proceeding would not cause undue delay or confusion.

NRG Energy, Inc.

On May 12, 2023, NRG Energy Inc. and its affiliates Reliant Energy Northeast, LLC, d/b/a NRG Home/NRG Business; Energy Plus Natural Gas LP; Xoom Energy New Jersey, LLC; Stream

Energy New Jersey, LLC; Direct Energy Services, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; and Gateway Energy Services Corporation (collectively, "NRG") filed a Motion to Intervene.

According to the motion, NRG is a provider of residential natural gas services with over six (6) million customers. NRG stated that it has numerous licensed third party suppliers ("TPSs") that are actively serving natural gas customers in PSE&G's service territory. NRG stated that it is directly affected by this proceeding and has a substantial interest in PSE&G's plans regarding RNG and hydrogen. Specifically, NRG stated that it is concerned about PSE&G's plan to include the costs of its RNG and hydrogen projects in the distribution rates for all its customers, including customers of NRG and other TPSs, while only BGSS customers would receive the beneficial rate impact of revenue from PSE&G's sales of the RNG and hydrogen. NRG also stated that the gas commodity products that NRG and its affiliates currently offer would be affected by PSE&G's plans to inject RNG and hydrogen into the gas distribution system.

Additionally, NRG stated that it intends to intervene in these proceedings to the extent necessary to ensure that PSE&G's proposed RNG and hydrogen programs and associated rate changes do not adversely affect the competitive market for NRG's TPS gas supply companies and their customers. NRG stated that its interests would not be adequately represented by other potential parties to the proceeding because NRG and its affiliates combined are among the largest TPSs operating in New Jersey. NRG further stated that its intervention in this proceeding would not unduly broaden the issues in the proceeding, create confusion, or result in undue delay.

Motions to Participate:

South Jersey Gas Company and Elizabethtown Gas Company

On March 9, 2023, South Jersey Gas Company ("SJG") and Elizabethtown Gas Company ("ETG") filed a joint Motion to Participate.

According to their motion, SJG and ETG are New Jersey public utilities engaged in the purchase, distribution, and sale of natural gas to approximately 400,000 customers and 300,000 customers, respectively. SJG and ETG stated that they would be substantially, specifically, and directly impacted by this matter because the Board's decision in this proceeding will have a precedential effect, which may impact other New Jersey utilities. Additionally, SJG and ETG argued that their customers and operations are distinct from those of other parties and, thus, no other party would represent the interests of SJG and ETG in this case. SJG and ETG also stated that they have a history of coordinating their activities in dockets at the Board with those of other utilities where appropriate and, therefore, there is no prospect for confusion and delay arising from inclusion of SJG and ETG in this proceeding. Further, SJG and ETG stated that their participation is likely to add constructively to the proceeding due to their experience in the gas industry.

New Jersey Laborers-Employers Cooperation and Education Trust

On March 31, 2023, the New Jersey Laborers-Employers Cooperation and Education Trust ("NJLECET") filed a Motion to Participate.

According to its motion, NJLECET is a nonprofit labor management fund representing more than 25,000 laborers in New Jersey and their signatory contractors, and its membership is comprised of local unions engaged in the construction and the heavy highway construction industry. NJLECET also stated that the membership component of the NJLECET Board comprises

representatives from labor as well as representatives from the Associated Construction Contractors of New Jersey.

NJLECET argued that its participation 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, and its members have a unique financial interest in the Program. NJLECET also stated that its interests are unique to the construction industry and are not adequately represented by any other party. NJLECET further stated that it would cooperate with other parties to the proceeding to ensure that a decision is made in full view of all relevant facts.

AARP

On April 27, 2023, AARP filed a Motion to Participate.

According to its motion, AARP is a nonprofit, nonpartisan social welfare organization with a membership base including more than 1.1 million members residing throughout New Jersey. AARP stated that its members purchase gas and gas-related service from New Jersey's regulated utilities and, therefore, would be substantially and specifically affected by the outcome of this proceeding. AARP also noted that it was granted participant status in the proceedings related to the prior GSMP and GSMP II programs.

AARP stated that it represents the interests of residential consumers ages 50 or older and, therefore, its interests are substantially different from those of any other party in this proceeding. Additionally, AARP argued that its entry as a participant would "measurably and constructively" advance this proceeding because of the unique status of its members as PSE&G residential ratepayers, and their view of the necessity and prudence of the proposed investments for modernization of the gas infrastructure system. AARP further stated that it would work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy of administrative agency and judicial resources.

Local 94, International Brotherhood of Electrical Workers

On May 8, 2023, Local 94, International Brotherhood of Electrical Workers ("Local 94") filed a Motion to Participate.

According to its motion, Local 94 is a labor organization and exclusive bargaining representative of a bargaining unit of PSE&G employees employed within the Company's Jersey City, Summit, and Harrison gas districts. Additionally, Local 94 stated that the issues to be decided in this proceeding "substantially, significantly and directly affect" Local 94 and its members. Local 94 argued that it is reasonable to expect that its member employees of PSE&G will operate and maintain the proposed projects once operational. Further, Local 94 stated that it intends to fully cooperate with the other parties to this proceeding and its participant status will not cause confusion or delay the proceeding.

EmpowerNJ

On May 11, 2023, EmpowerNJ filed a Motion to Participate.

According to its motion, EmpowerNJ is a coalition of 140 environmental, community, religious and grassroots groups located in New Jersey whose mission is to seek the reduction of greenhouse

gas emissions and other pollutants and to promote clean energy solutions to the climate crisis. EmpowerNJ stated that it is uniquely qualified to address the environmental issues raised by the Petition, as it has actively participated in numerous legislative and administrative proceedings regarding hydrogen, landfill gas, and what constitutes clean energy. EmpowerNJ further stated that its participation would bring an important and essential environmental perspective to the proceeding and thus “measurably and constructively” advance the proceeding. Additionally, EmpowerNJ stated that it will not delay or disrupt the prosecution of this proceeding and it would work cooperatively with other parties in this proceeding.

UA Local 855

On May 11, 2023, UA Local 855 filed a Motion to Participate.

According to its motion, UA Local 855 is the collective bargaining representative of employees of PSE&G in the Gas Distribution and Appliance Service areas of the Company. UA Local 855 stated that it has a substantial and singular interest in the Program as the projects would dramatically impact the future of natural gas in the State. Specifically, UA Local 855 stated that approval of the Program would have a significant impact upon the workload available for members and will impact the number of employees who are members of the union.

Creamer-Sanzari Joint Venture

On May 12, 2023, Creamer-Sanzari Joint Venture (“CSJV”) filed a Motion to Participate.

According to its motion, CSJV is a joint venture between J. Fletcher Creamer & Son, Inc. and Joseph M. Sanzari, Inc., which are two (2) New Jersey corporations in the business of heavy construction and utilities installation. CSJV noted that the Board has granted participant status to CSJV in similar proceedings, including PSE&G’s prior GSMP and GSMP II programs. Additionally, CSJV stated that it has performed work under GSMP and GSMP II, specifically the gas system infrastructure improvements, which are similar to the improvement proposed under GSMP III.

CSJV stated that it has a significant interest in the outcome of this proceeding due to its extensive experience with the utility industry, its prior experiences with PSE&G’s previous gas infrastructure improvement programs, as well as the likelihood that CSJV’s members may be retained to complete portions of the construction work that GSMP III entails. CSJV further argued that its participation in this proceeding will contribute to the development of a complete record for consideration of the Board and is likely to be constructive. Additionally, CSJV stated that its participation would not cause any delay or confusion with respect to this proceeding.

III. RESPONSES

On March 22, 2023, PSE&G filed its response to the Motion to Intervene submitted by NJNG and the Motion to Participate submitted by SJG and ETG. On March 27, 2023, the New Jersey Division of Rate Counsel (“Rate Counsel”) also filed its response to the Motion to Intervene submitted by NJNG and the Motion to Participate submitted by SJG and ETG. On May 22, 2023, Rate Counsel submitted an additional response regarding the Motions to Intervene submitted by NJLEUC, EDF, W&B, ELEC, Ferreira, MCUA, and NRG, as well as the Motions to Participate submitted by NJLECET, AARP, Local 94, EmpowerNJ, and CSJV. On May 26, 2023, PSE&G submitted an additional response, which addressed NRG’s Motion to Intervene, but did not oppose the positions articulated by Rate Counsel with respect to the remaining motions. No party

objected to the NJLEUC or EDF motions to intervene, or to SJG, ETG, NJLECET, AARP, Local 94, EmpowerNJ, UA Local 855, or CSJV's motions to participate.

NJNG

PSE&G requested that NJNG's Motion to Intervene be denied and treated alternatively as a Motion to Participate in accordance with N.J.A.C. 1:1-16.5. While PSE&G agreed that the current matter may have an impact on New Jersey's other gas utilities, PSE&G stated that NJNG does not have a direct interest that is sufficiently different from other parties in the case so as to add measurably and constructively to the scope of the case, as required by N.J.A.C. 1:1-16.3. Therefore, PSE&G stated that it is appropriate to grant NJNG participant status but not full intervenor status in this proceeding.

Rate Counsel similarly argued that NJNG failed to demonstrate that it is entitled to intervenor status, stating that NJNG would not be directly impacted by the Board's decision in this proceeding. Additionally, Rate Counsel stated that the Board has historically disallowed Motions to Intervene submitted by other regulated utilities in similar matters. Although Rate Counsel objected to NJNG being allowed to intervene in this proceeding, Rate Counsel stated that it would not object to NJNG being granted participant status.

W&B

Rate Counsel opposed intervention by W&B, arguing that it does not assert a legally protected right under N.J.S.A. Title 48 to receive work from PSE&G, and was denied intervention in previous matters. However, Rate Counsel did not object to the granting of participant status to W&B.

ELEC

Rate Counsel opposed intervention by ELEC. Rate Counsel stated that ELEC does not assert a legally protected right under N.J.S.A. Title 48 to receive work from PSE&G, and noted that the Board previously denied ELEC intervenor status in GSMP II. However, Rate Counsel did not object to the granting of participant status to ELEC.

Ferreira

Rate Counsel opposed intervention by Ferreira, stating that it does not assert a legally protected right under N.J.S.A. Title 48 to receive work from PSE&G. Rate Counsel also stated that Ferreira does not have a current and concrete interest that will be "specifically and directly" affected by the outcome of this matter. However, Rate Counsel did not object to the granting of participant status to Ferreira.

MCUA

Rate Counsel opposed intervention by MCUA. Rate Counsel stated that MCUA has an economic interest in receiving the benefits of the proposed RNG facility, but does not assert a legally protected right under N.J.S.A. Title 48 to receive such benefits. Rate Counsel also stated that MCUA's economic interest is similar to that of the construction firms and labor organizations that have been denied intervention in previous infrastructure proceedings. However, Rate Counsel did not object to the granting of participant status to MCUA.

NRG

PSE&G opposed intervention or participation by NRG. PSE&G stated that NRG's Motion indicated that it is interested in litigating issues related to the competitive gas market in New Jersey broadly, and not PSE&G's GSMP III filing specifically. Additionally, PSE&G argued that NRG cannot demonstrate that it will be "substantially, specifically and directly affected" by the outcome of GSMP III, as the standard for intervention requires, or even that it has a "significant interest" in the outcome of GSMP III, as the standard for participation requires. PSE&G also stated that NRG's involvement in GSMP III will serve only to delay the resolution of this case as NRG confuses the issues by injecting unrelated, distracting elements regarding its perspective on market construct issues. Further, PSE&G stated that NRG's interest is limited to the impact of GSMP III on rates - a concern that belongs to gas customers, who are already represented in this action by Rate Counsel. Moreover, PSE&G stated that NRG wishes to use GSMP III as a vehicle to litigate issues regarding the allocation of revenues between BGSS and non-BGSS customers and the market for gas commodities, which are not concerns specific to PSE&G's filing, but broadly apply to all gas utilities, TPSs, and New Jersey residents. PSE&G stated that the forum to litigate these matters is not in a utility-specific infrastructure investment filing. Further, PSE&G noted that NRG filed a petition with the Board in November 2022 to open a generic gas supply proceeding to cover related market construct issues, and the Board recently opened a stakeholder process in response to that request.⁵

Rate Counsel also opposed intervention by NRG, stating that it does not assert a legally protected right under N.J.S.A. Title 48. Rate Counsel also stated that the economic interest identified by NRG does not ultimately belong to NRG, but to its customers. Specifically, Rate Counsel stated if the RNG project was approved by the Board, NRG's residential customers could pay for the cost of the RNG project through their rates for gas distribution service, but NRG would not pay these costs itself, so it cannot assert the right to pay just and reasonable rates on behalf of its customers. However, Rate Counsel did not object to the granting of participant status to NRG.

IV. DISCUSSION AND FINDINGS

Motions to Intervene and/or Participate

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

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

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

⁵ In re the Matter of the Board's Review of Generic Basic Gas Supply Service ("BGSS") Structure and Procedures and Related Competition Issues, BPU Docket No. GO23020100.

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

As the Board stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In the Matter of the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

Motions to Intervene

NJNG

After consideration of NJNG's Motion to Intervene, and PSE&G and Rate Counsel's opposition thereto, I am persuaded that NJNG failed to satisfy the requirements for intervention. N.J.A.C. 1:1-16.3(a) requires, in part, that I consider the nature and extent of NJNG's interest in the outcome of this case, and whether or not NJNG's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case. NJNG's interest in this matter is generally limited to the possibility that this proceeding will have a precedential impact on other gas utilities. While NJNG argued that its service territories, customers, and operations are distinct from those of other parties in this case, I am not persuaded that NJNG's interest is sufficiently different from that of other parties in this matter.

As such, I **HEREBY FIND** that the nature of NJNG's limited interest does not rise to a level that warrants intervention, and thus, I **HEREBY DENY** NJNG's Motion to Intervene. However, I **HEREBY FIND** that NJNG is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to NJNG.

NJLEUC

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

EDF

After consideration of EDF's Motion to Intervene, and given the lack of any objections, I **HEREBY FIND** that EDF will be directly and substantially affected by the outcome of this proceeding. I **FURTHER FIND**, pursuant to N.J.A.C. 1:1-16.3(a), that EDF has met the standards for intervention as it has a significant interest in this proceeding, its interest is different from that of any other party, and it will add measurably and constructively to the proceeding without causing delay. Specifically, I found that EDF could offer insight and advice regarding environmental, technical, and economic perspectives that could assist the Board in rendering its decision. I **HEREBY GRANT** EDF's Motion to Intervene.

W&B

After consideration of W&B's Motion to Intervene, and Rate Counsel's comments objecting thereto, I am persuaded that W&B failed to demonstrate that it will be substantially, specifically, and directly affected by the outcome of this case. As a utility construction firm, W&B's interest in this proceeding appears to be limited to its possible award of business that could result from the approval of the Petition. I am not persuaded that a theoretical pecuniary interest is sufficient to warrant intervention in this matter. Additionally, I am not persuaded that W&B's interest is sufficiently different from that of other parties in this matter. Based on the record before me and the limited nature and scope of movant's interest, I **HEREBY DENY** W&B's Motion to Intervene. However, I **HEREBY FIND** that W&B is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to W&B.

ELEC

ELEC described itself in its Motion as a labor-management organization that promotes economic development and infrastructure investment. The arguments advanced by ELEC in support of its Motion to Intervene provide that its member-contractors and operating engineers will be substantially, specifically, and directly affected by the outcome of the proceeding because they may perform the work called for in the Petition. Similar to Rate Counsel, I am not persuaded that this interest is sufficient to warrant intervention in this matter. Additionally, I am not persuaded that ELEC's interest is sufficiently different from that of other parties in this matter. Considering the limited nature and extent of the movant's interest, I **HEREBY DENY** ELEC's Motion to Intervene. However, I **HEREBY FIND** that ELEC is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to ELEC.

Ferreira

After consideration of Ferreira's Motion to Intervene, and Rate Counsel's opposition thereto, I am persuaded that Ferreira failed to demonstrate that it will be substantially, specifically, and directly affected by the outcome of this case. As a construction company, Ferreira's interest in this proceeding appears to be limited to the possibility that its contractors would be utilized to perform the work proposed in the Petition. I am not persuaded that this interest is sufficient to warrant intervention in this matter. Additionally, I am not persuaded that Ferreira's interest is sufficiently different from that of other parties in this matter.

As such, I **HEREBY FIND** that the nature of Ferreira's limited interest does not rise to a level that warrants intervention, and thus, I **HEREBY DENY** Ferreira's Motion to Intervene. However, I

HEREBY FIND that Ferreira is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to Ferreira.

MCUA

MCUA sought intervenor status in this proceeding based upon its partnership with PSE&G within the RNG Project proposed in the Petition. MCUA argued that it would be directly and specifically affected by PSE&G's GSMP III filing and no other party to this proceeding could adequately represent its interest. While MCUA may have a significant interest in the RNG Project, I disagree that MCUA's interest is substantial enough to justify intervenor status given that it is not sufficiently different from that of other parties in this matter. Rather, I agree with Rate Counsel that MCUA's interest is similar to that of the construction firms and labor organizations that wish to receive benefits from PSE&G's proposed projects.

Accordingly, I **HEREBY DENY** MCUA's Motion to Intervene. However, I **HEREBY FIND** that MCUA is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to MCUA.

NRG

After consideration of NRG's Motion to Intervene, including PSE&G's and Rate Counsel's objections thereto, I disagree with the sentiments expressed by PSE&G and Rate Counsel. It is evident that PSE&G's proposed Program, particularly the Hydrogen and RNG Projects and the revenues associated therewith, will present new and unique issues with respect to TPSs and their customers. As proposed by PSE&G, the revenues created from these projects would be credited to BGSS customers, which could place NRG and other TPSs at a competitive disadvantage. While the Board established a generic BGSS proceeding (Docket No. GO23020100) to address TPS concerns associated with the current BGSS structure, the proposed GSMP III projects are not contemplated within the existing BGSS structure. Thus, they will not necessarily be addressed in the generic BGSS proceeding. PSE&G further contended that NRG's interests are not sufficiently different from that of Rate Counsel. I disagree. Although Rate Counsel will represent the interests of all ratepayers in this matter, there is no party representing the specific interests of TPSs and their customers.

Therefore, I **HEREBY FIND** that NRG will be directly and substantially affected by the outcome of this proceeding. I **FURTHER FIND**, pursuant to N.J.A.C. 1:1-16.3(a), that NRG has met the standards for intervention as it has a significant interest in this proceeding, its interest is different from that of any other party, and it will add measurably and constructively to the proceeding without causing delay. Accordingly, I **HEREBY GRANT** NRG's Motion to Intervene.

Motions to Participate

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

With regard to the Motions to Participate filed by SJG and ETG, NJLECET, AARP, Local 94, EmpowerNJ, UA Local 855, and CSJV, and after careful review of the individual facts and circumstances detailed in each motion, I **HEREBY FIND**, that these entities' interest in this proceeding is sufficient to merit participation and that such participation is likely to add constructively to this matter without causing undue delay or confusion. Accordingly, and having

received no objection, I **HEREBY GRANT** the motions to participate filed on behalf of SJG and ETG, NJLECET, AARP, Local 94, EmpowerNJ, UA Local 855, and CSJV.

Summary of Rulings

The following entities are **HEREBY GRANTED** Intervenor status:

- NJLEUC;
- EDF; and
- NRG.

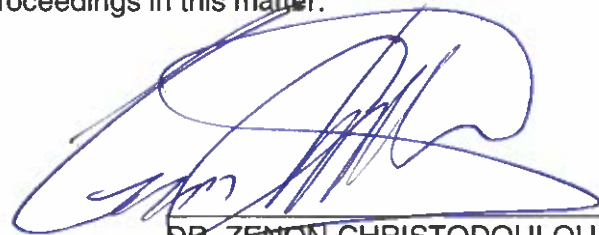
The following entities are **HEREBY GRANTED** Participant status, which I determine shall be limited, as to each participant, pursuant to N.J.A.C. 1:1-16.6(c), to the right to argue orally and file a statement or brief:

- NJNG;
- W&B;
- ELEC;
- Ferreira;
- MCUA;
- SJG and ETG;
- NJLECET;
- AARP;
- Local 94;
- EmpowerNJ;
- UA Local 855; and
- CSJV.

I **FURTHER DIRECT** that this Order be posted on the Board's website.

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

DATED: 6/27/23



DR. ZENON CHRISTODOULOU
COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL OF THE NEXT PHASE OF THE GAS SYSTEM MODERNIZATION
PROGRAM AND ASSOCIATED RECOVERY MECHANISM ("GSMP III")

DOCKET NO. GR23030102

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