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**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF ITS CLEAN ENERGY FUTURE-ENERGY CLOUD (“CEF-EC”) ON A REGULATED BASIS	)	MOTION TO INTERVENE/PARTICIPATE AND PRE-HEARING ORDER
	)	
	)	
	)	DOCKET NO. EO18101115

**Parties of Record:**

**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel  
**Matthew M. Weissman, Esq.,** Public Service Electric and Gas Company  
**Steven S. Goldenberg, Esq.,** Giordano, Halleran and Ciesla, P.C. for New Jersey Large Energy Users Coalition  
**Barbara J. Koonz, Esq.,** Greenbaum, Rowe, Smith and Davis, LLP for Landis+Gyr Technology, LLC  
**Christopher E. Torkelson, Esq., Karen O. Moury, Esq., Sarah C. Stoner, Esq.,** Eckert Seamans Cherin and Mellott, LLC for Market Participants

**BY COMMISSIONER MARY-ANNA HOLDEN:**

**I. BACKGROUND**

On October 11, 2018, Public Service Gas and Electric Company (“PSE&G” or “Company”) filed a petition with the New Jersey Board of Public Utilities (“Board” or “BPU”) seeking approval of its Clean Energy Future – Energy Cloud (“CEF-EC”) program on a regulated basis (“EC-AMI Petition”). In the EC-AMI Petition, the Company requested Board approval to implement a five (5) year program, with an estimated investment of approximately \$721 million, plus operation and maintenance (“O&M”) costs of \$73 million, to implement Advanced Metering Infrastructure (“AMI”) throughout PSE&G’s electric service territory.<sup>1</sup>

By order dated October 29, 2018, the Board determined that the EC-AMI Petition should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated myself as presiding officer authorized to rule on all motions that may arise, set and enforce a schedule, and modify any schedules, as necessary, to ensure a just and expeditious determination of the issues.<sup>2</sup>

<sup>1</sup> PSE&G is not seeking to install AMI in its gas service territory at this time.

<sup>2</sup> In re the Petition of Public Service Gas and Electric Company for Approval of its Clean Energy Future-Cloud (“CEF-EC”) Program on a Regulated Basis, Order Designating a Commissioner, Setting A Bar Date

On November 19, 2018, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed a Motion to Dismiss PSE&G’s EC-AMI Petition alleging that because the EC-AMI Petition sought pre-approval of AMI costs, it was barred by the Board’s moratorium issued in the 2017 RECO AMI Order.<sup>3</sup> On February 19, 2020, the Board found that AMI has the potential to benefit the distribution system, streamline and modernize utility operations, provide an enhanced customer experience, benefit the environment, and was a means to achieve the goals provided in the Energy Master Plan (“EMP”). As such, the Board ordered that the moratorium on pre-approval of AMI be lifted, and that Atlantic City Electric Company (“ACE”), Jersey Central Power & Light Company (“JCP&L”), and PSE&G either file, or update previously filed, petitions for AMI implementation within 180 days.<sup>4</sup> Each filing would receive a separate docket number and be “on a utility-specific basis, given that each utility is starting from a different investment baseline in the AMI backbone necessary to realize the full benefits of smart meters.” See February 19, 2020 AMI Order; See EMP 5.3.1 at p. 185.

On April 1, 2020, I entered a Procedural Order in this matter ruling on Motions to Intervene, Motions to Participate, Motions for Admission Pro Hac Vice, and setting a procedural schedule.<sup>5</sup> On June 5, 2020, I entered an Order granting Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Gateway Energy Services Corporation, NJR Retail Services Company, NRG Energy, Inc., Just Energy Group Inc., and Centrica Business Solutions (collectively, "Market Participants") Motion for Reconsideration, thereby changing the Market Participants status from participants to intervenors.<sup>6</sup> Additionally, I granted AARP participant status and Landis + Gyr Technology, Inc. (“Landis+Gyr”) intervenor status.<sup>7</sup> Finally, I granted Eastern Environmental Law Center’s request to be removed as a party, removal of their attorney admitted pro hac vice, and changed their status from intervenor to participant.<sup>8</sup>

On October 14, 2020, Utilidata, Inc. (“Utilidata”) filed a Motion to Intervene pursuant to N.J.A.C. 1:1-16.1 et seq. According to the motion, Utilidata is the “market leader” in meter-based software and has the ability to offer the Board its unique expertise in this regard and has a significant

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and Manner of Service, BPU Docket No. EO1810115, October 29, 2018.

<sup>3</sup> On August 23, 2017, the Board authorized Rockland Electric Company (“RECO”) to implement its AMI program, but ordered that that RECO’s costs and recovery would remain subject to a prudency review in a subsequent base rate case after RECO’s AMI deployment (“2017 RECO AMI Order”). The Board ordered that an independent consultant provide a comprehensive Cost Benefit Analysis (“CBA”) of RECO’s AMI program, and that RECO’s program should serve as an AMI case study. As such, the Board placed a moratorium on pre-approval of the cost recovery for all AMI programs, for all utilities, until such time that the Board made a determination that AMI was a prudent investment. See In re the Petition of Rockland Electric Company for Approval of an Advanced Metering Program; and for Other Relief, BPU Docket No. ER16060524, Order dated August 23, 2017 (“2017 RECO AMI Order”).

<sup>4</sup> In re the Petition of Rockland Electric Company for Approval of an Advanced Metering Program; and for Other Relief, BPU Docket No. ER16060524, Order dated February 19, 2020 (“February 19, 2020 AMI Order”).

<sup>5</sup> In re the Petition of Public Service Gas and Electric Company for Approval of its Clean Energy Future-Cloud (“CEF-EC”) Program on a Regulated Basis, Prehearing Order with Procedural Schedule and Order on Motions to Intervene or Participate and for Admission Pro Hac Vice, BPU Docket No. EO18101115, April, 2020.

<sup>6</sup> In re the Petition of Public Service Gas and Electric Company for Approval of its Clean Energy Future-Cloud (“CEF-EC”) Program on a Regulated Basis, Order on Motion for Reconsideration; Motions to Intervene and Participate; and Removal of Admission Pro Hac Vice, BPU Docket No. EO18101115, June 5, 2020 (“June 5, 2020 Order”) at p.8.

<sup>7</sup> See June 5, 2020 Order at p. 9.

<sup>8</sup> Id.

interest in the outcome of this proceeding. Utilidata's platform uses advanced metering infrastructure (AMI) data to improve grid operations and deliver an industry-leading 3-5% energy savings. Utilidata stated it developed the first third-party application for Itron's meter platform, and is building the core operational intelligence software for Landis+Gyr's next generation meter. According to the motion, "[n]o company has more experience building software applications for next generation smart meters" than Utilidata.

On October 15, 2020, Rate Counsel filed opposition to Utilidata's Motion to Intervene, but did not oppose participation status for Utilidata. Specifically, Rate Counsel argued that Utilidata's motion should be denied due to the prospect of confusion, undue delay, and prejudice its intervention would cause. See N.J.A.C. 1:1-16.3(a). On October 26, 2020, PSE&G filed opposition to Utilidata's motion, requesting a denial of both intervention and participation. On November 6, 2020, as a result of Rate Counsel and PSE&G's opposition papers, Utilidata amended its request and sought participation status to avoid confusion and/or delay.

## II. DISCUSSION AND FINDINGS

### A. Utilidata's Motion to Intervene/Participate

In ruling on a party's Motion to Intervene, the Board should consider (a) the nature and extent of the movant's interest in the outcome of the case (b) whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, and (c) the prospect of confusion or undue delay arising from the movant's inclusion. N.J.A.C. 1:1-16.3(a). Furthermore, with regard to granting participant status, N.J.A.C. 1:1-16.6 provides that it is in the discretion of the trier of fact to determine if the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion.

Adding Utilidata at this late date in the proceeding, either in the form of an intervenor or a participant, will cause undue delay and confusion. See N.J.A.C. 1:1-16.3(a); N.J.A.C. 1:1-16.6. Utilidata acknowledged that motions were originally due on November 16, 2018. Utilidata argued that entities, specifically Landis+Gyr, filed motions for intervention following that date and were granted intervention. This is incorrect. Landis+Gyr's motion was timely filed on November 16, 2018.<sup>9</sup> Furthermore, pursuant to the Order issued on April 1, 2020, the deadline to file Motions to Intervene and Participate was extended to May 4, 2020. Therefore, Utilidata's Motion is approximately five (5) months past the extended due date, and two years past the original due date. Additionally, although Utilidata claims that it will "promptly provide its filed testimony upon receipt of a Board order granting intervention," this would delay this matter as discovery has concluded, and evidentiary hearings are scheduled to begin in approximately two weeks.

Therefore, I **HEREBY FIND** that granting Utilidata's Motion for Intervention and, in the alternative, Utilidata's Motion to Participate, will cause delay and/or add undue complexity to this proceeding. As such, I **HEREBY DENY** Utilidata's Motion to Intervene, and I **HEREBY DENY** Utilidata's Motion to Participate.

### B. Evidentiary Hearings

On November 16, 2020, a pre-hearing conference was held with the parties. As a result, I **HEREBY ISSUE** the following Evidentiary Hearing direction and procedures.

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<sup>9</sup> Although timely filed, the Landis+Gyr motion was not decided until June 5, 2020 because it was omitted from the record originally presented, and consequently, from the April 1 Prehearing Order.

The Evidentiary Hearings will commence as scheduled for the week of November 30, 2020. In order to facilitate the virtual Evidentiary Hearings, with the consent of the parties, I **HEREBY ORDER** the following topics scheduled for the following days:

1. November 30, 2020: Program, Cost Benefit Analysis, and Stranded Costs
2. December 1, 2020: Data Analysis, Consolidated Billing, and Rate of Return
3. December 3, 2020: Accounting and Stranded Costs
4. December 4, 2020: Additional Day (if necessary).

I may modify the above schedule as necessary during the course of the hearings for reasons including, but not limited to, the duration of testimony, the availability of witnesses and the functionality of the virtual hearing platform.

All witnesses shall have hard copy of his/her pre-filed testimony available for reference during the evidentiary hearings.

The parties, during the pre-hearing conference, stipulated to all pre-filed testimony and discovery being added to the evidentiary record without the need for further authentication, and as such, I **HEREBY ORDER** that all pre-filed testimony and discovery be admitted into evidence.

In preparation for the virtual Evidentiary Hearings, I **HEREBY ORDER** that all parties file the following with the Board on or before **Friday, November 20, 2020**:

1. All hearing exhibits electronically filed in .pdf format, pre-marked for identification with each page numbered or Bates stamped, and a list of the exhibits identified as you would for the court reporter;
2. A list of all proposed attendees, including each attendee's phone number, affiliation, and whether he/she is eligible to hear confidential information by virtue of the nondisclosure agreement in this matter.
3. If a party would like a designated Break Out Room, please provide a list of the names and phone numbers of all people who may enter the Room.

I **FURTHER ORDER** that there shall be no recording of the Evidentiary Hearings and/or any discussions in the Break Out Rooms, and as such, the only official record of this proceeding will be the transcript provided by the Court Reporter.

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 18, 2020

BY:



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MARY-ANNA HOLDEN  
COMMISSIONER

**THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
FOR APPROVAL OF ITS CLEAN ENERGY FUTURE-ENERGY CLOUD (“CEF-EC”)  
PROGRAM ON A REGULATED BASIS  
BPU DOCKET NO. EO18101115**

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**EXHIBIT A**

**IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY FOR APPROVAL OF ITS CLEAN ENERGY FUTURE-ENERGY CLOUD  
("CEF-EC") PROGRAM ON A REGULATED BASIS**

**BPU Docket No. EO18101115**

Settlement Conferences	Weeks of November 9 and November 16, 2020
Items due to the BPU as provided in the November 17, 2020 Pre-Hearing Order	November 20, 2020
Evidentiary Hearings with oral surrebuttal	November 30, December 1, December 3 and December 4
Initial and Reply Briefs	TBD by Commissioner after Evidentiary Hearing