



**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

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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 Order<sup>1</sup> (“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

<sup>1</sup> 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.<sup>2</sup> 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 Unions<sup>3</sup> 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.

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<sup>2</sup> “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.

<sup>3</sup> 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,<sup>4</sup> 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.

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<sup>4</sup> 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.<sup>5</sup> 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

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<sup>5</sup> 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:



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JOSEPH L. FIORDALISO  
COMMISSIONER

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

SERVICE LIST

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