



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC )	ORDER AND DECISION ON MOTION
SERVICE ELECTRIC AND GAS COMPANY FOR )	TO PARTICIPATE
APPROVAL OF AN INFRASTRUCTURE )	
ADVANCEMENT PROGRAM (IAP) )	DOCKET NOS. EO21111211 &
)	GO21111212
)	
)	

**Parties of Record:**

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**Danielle Lopez, Esq.,** Public Service Electric and Gas Company  
**Steven S. Goldenberg, Esq.,** Giordano, Halleran and Ciesla, P.C. for New Jersey Large Energy Users Coalition

**BY COMMISSIONER MARY-ANNA HOLDEN:**

**I. BACKGROUND AND PROCEDURAL HISTORY**

On November 4, 2021, Public Service Electric and Gas Company (“PSE&G” or “Company”) filed a petition with the Board of Public Utilities (“Board”) seeking approval of its Infrastructure Advancement Program (“IAP” or “Program”) and an associated cost recovery mechanism pursuant to N.J.A.C. 14:3-2A (“Petition”). The Company proposed a four (4)-year Program with a total investment level of approximately \$848 million. The Program involved the replacement of aging overhead and underground electrical equipment, modernization of electric distribution substation equipment, upgrading of gas metering and regulating stations, and installation of electric vehicle infrastructure to support the Company’s transition to an electric fleet. According to the Petition, the IAP would improve last mile reliability while supporting the electrification of the transportation sector and increased use of Distributed Energy Resources.

On December 15, 2021, the Board executed an Order designating myself, Commissioner Mary-Anna Holden, as Presiding Commissioner, with the authority to rule on all motions that arise during the pendency of these proceedings, and to modify any schedules that may be set as necessary

to secure a just and expeditious determination of the issues.<sup>1</sup> The Board further ordered that entities seeking to intervene or participate in this matter must file the appropriate application with the Board by January 14, 2022, 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.

On March 1, 2022, I issued a Prehearing Order wherein, among other things, I ruled on all motions to intervene, participate, and admission *pro hac vice*.<sup>23</sup> Notwithstanding the January 14, 2022 deadline, I considered all motions filed up and until January 24, 2022. While I was under no obligation to consider the out-of-time motions, I did so because, in part, the proceeding just began, there were no objections, and there was no prejudice to the other parties and/or participants because the ten (10) day delay did not cause undue delay or confusion.<sup>4</sup>

## **II. ATLANTIC CITY ELECTRIC COMPANY'S MOTION TO PARTICIPATE**

On April 8, 2022, nearly three (3) months after the bar date established in the December 15, 2021 Order, Atlantic City Electric Company ("ACE") filed a Motion to Participate. ACE argued that the three (3)-month delay is irrelevant because N.J.A.C. 1:1-16.2(a) allows parties to file a motion at any time after a case is initiated. ACE claimed it should be granted participant status because this matter might "significantly influence" or "have a precedential effect on" the positions taken by parties involved in ACE's other proceedings. ACE further stated that its participation will not cause undue delay or confusion because, "ACE intends to participate only in order to receive copies of testimony, briefs, and other materials; to monitor the proceedings; and possibly file briefs or exceptions." ACE also mentions its desire to "monitor developments and be apprised of potential policy developments" in a timely manner.

## **III. DISCUSSION AND FINDINGS**

In ruling on a Motion to Participate, N.J.A.C. 1:1-16.6 requires the decision maker to consider the following: (1) whether the movant has a significant interest in the outcome of the case; and (2) 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. 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

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<sup>1</sup> In re the Petition of Public Service Electric and Gas Company for Approval of an Infrastructure Advancement Program (IAP), Order Designating Commissioner and Setting Manner of Service and Bar Date, BPU Docket Nos. EO21111211 and GO21111212, Order dated December 15, 2021 ("December 2021 Order").

<sup>2</sup> For a complete list providing the Intervenor and Participants, see In re the Petition of Public Service Electric and Gas Company for Approval of an Infrastructure Advancement Program (IAP), Prehearing Order with Procedural Schedule and Order on Motions to Intervene or Participate and Admission Pro Hac Vice, BPU Docket Nos. EO21111211 and GO21111212, Order dated March 1, 2022 ("Prehearing Order") at p. 8-12.

<sup>3</sup> The Prehearing Order was subsequently amended on March 3, 2022. However, the determinations regarding motions to intervene, participate, and admission *pro hac vice* were not modified.

<sup>4</sup> See Prehearing Order at p. 9.

proceedings.<sup>5</sup> As described herein, I find that ACE fails to satisfy the standards enumerated in N.J.A.C. 1:1-16.6, and as such, its Motion to Participate is denied.

First, granting ACE participant status will cause undue delay. ACE's Motion to Participate was untimely, not by ten (10) days, but by three (3) months. Although ACE is correct that its motion is permitted under N.J.A.C. 1:1-16.2(a), that provision is, however, limited to the ability of parties to file after a proceeding has begun; it does not bear upon the merits of the filing or upon how the Board should rule. Precedent dictates that when faced with an untimely motion, filed months after the filing deadline, resulting in the party missing numerous hearings and investigatory milestones, the Board denies such motion.<sup>6</sup> Here, as a result of the three (3) month delay, ACE missed numerous dates significant to this proceeding including, but not limited to, the deadline to file motions, the first, second, and third rounds of discovery, and numerous settlement conferences. A three (3) month delay in filing is, by nature, an undue delay. At this time, with settlement negotiations already underway, significant time and effort would have to be expended to make ACE current. Therefore, I **HEREBY FIND** that granting ACE's Motion to Participate would cause undue delay of this matter. See N.J.A.C. 1:1-16.6.

Second, ACE failed to demonstrate that it has a significant interest in the outcome of this matter. See N.J.A.C. 1:1-16.6. ACE seeks participation to "receive copies of testimony, briefs, and other materials" and "*possibly* to file briefs and/or exceptions." (emphasis added) By merely receiving documents and testimony, ACE plans to act as an outside observer. By its own admission, ACE does not intend to add constructively to this matter, but rather, intends to sit by and "monitor developments" which may influence ACE's unrelated matters. A party need not be a participant to monitor the developments of a case. All relevant documents and proceedings from these matters are publicly available, and anyone may appear and speak at the Public Hearings and/or provide comments to the Board. Therefore, I **HEREBY FIND** that ACE does not have a significant interest in the outcome of this case to warrant granting participant status in this matter. See N.J.A.C. 1:1-16.6.

As such, after careful review of the individual facts, circumstances, and law, I **HEREBY FIND** that ACE failed to satisfy the legal requirements necessary to grant participation. Accordingly, I **HEREBY DENY** ACE's Motion to Participate for failure to meet the standards provided in N.J.A.C. 1:1-16.6.

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<sup>5</sup> 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 of Public Service Electric and Gas Company and Related Authorizations, BPU Docket No. EM05020106, Order dated June 8, 2005.

<sup>6</sup> See In re the Board's Investigation into the Continuing Outage of the Salem Nuclear Generating Station, BPU Docket Nos. ES96030158 and ES96030159, Order dated December 18, 1996, at 27-28. (Deciding that, where the movant in a Motion to Intervene filed nine months after initiation of the matter and after missing several important investigatory milestones and hearings relevant to the case, allowing such an untimely intervention would lead to confusion and "undue and inappropriate delay.")

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: 5/20/2022

A handwritten signature in black ink that reads "Mary-Anna Holden". The signature is written in a cursive, flowing style.

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MARY-ANNA HOLDEN  
COMMISSIONER

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
FOR APPROVAL OF AN INFRASTRUCTURE ADVANCEMENT PROGRAM (IAP)

DOCKET NOS. EO21111211 AND GO21111212

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