



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF THE PETITION OF ROCKLAND	)	PREHEARING ORDER
ELECTRIC COMPANY FOR APPROVAL OF AN	)	SETTING PROCEDURAL
INFRASTRUCTURE INVESTMENT PROGRAM, AND	)	SCHEDULE AND RULINGS
RELATED COST RECOVERY MECHANISM	)	ON MOTIONS TO
	)	PARTICIPATE
	)	
	)	DOCKET NO. ER22030198

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**James C. Meyer, Esq.**, Riker Danzig Scherer Hyland and Peretti LLP, on behalf of Rockland Electric Company  
**John L. Carley, Esq.**, Consolidated Edison Company of New York, Inc. on behalf of Rockland Electric Company

**BY COMMISSIONER ROBERT M. GORDON:**

**BACKGROUND AND PROCEDURAL HISTORY**

On March 30, 2022, Rockland Electric Company (“RECO” or “Company”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking approval of a five (5) year Infrastructure Investment Program (“IIP” or “Program”) with a total investment level of \$209 million pursuant to N.J.S.A. 48:2-1 et seq. and N.J.A.C. 14:3-2A.1 et. seq. (“II&R Rules”) (“Petition”).<sup>1</sup>

In its Petition, Rockland proposed to invest in: 1) enhanced overhead storm hardening; 2) selective undergrounding; 3) underground rebuild and rehabilitation; and 4) Franklin Lakes substation and related high voltage distribution line projects (collectively, “Franklin Lakes Projects”). In accordance with the II&R Rules, RECO proposed an average baseline capital spending level of \$20.5 million per IIP year, which is based upon five (5) years of actual capital spending and five (5) years of projected capital spending. Additionally, pursuant to N.J.A.C. 14:3-2A.2(c), the Company identified \$25.9 million of projects similar to those proposed in the IIP that it would invest in outside of the Program over the five (5) year IIP period, which is in excess of the required \$20.9 million.

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<sup>1</sup> On December 19, 2017, the Board adopted new rules for utility “Infrastructure Investment and Recovery” to encourage utilities to implement infrastructure investments. The rules are codified at N.J.A.C. 14:3-2A.1 et seq. (“II&R Rules”) and became effective on January 16, 2018.

RECO proposed to recover costs of the IIP through an IIP Surcharge, which would be a non-bypassable cents per kWh charge applicable to all RECO distribution customers. The IIP Surcharge would be set annually based upon the Company's forecasted revenue requirement associated with the Program, adjusted for any prior period over- or under-recoveries including interest, and a forecast of the Company's kWh deliveries to customers for each annual period. The resulting rate in cents per kWh would then be increased to reflect the Sales and Use Tax. For each annual change of the IIP Surcharge, RECO proposed to make an initial filing that would contain nine (9) months of actual data and three (3) months of forecasted data, with rate adjustments effective two (2) months after each filing. The IIP Surcharge filing would provide for: 1) the recovery of the Program revenue requirement for the annual period; and 2) the recovery of any over- or under-recovered balances including interest.

RECO proposed that any unrecovered Program or project investment costs would be rolled into base rates during future base rate cases. The proposed IIP Surcharge cost recovery mechanism will continue to be used until all Program costs are rolled into base rates. Due to the unique timing of the IIP projects, RECO requested a waiver of N.J.A.C. 14:3-2A.6(b), which states that each filing made by a utility seeking accelerated recovery under an IIP shall seek recovery, at a minimum, or at least ten (10) percent of overall IIP expenditures.

The estimated initial electric bill impact for a typical residential customer with an average annualized monthly usage of 925 kWh is an increase of \$0.32, or 0.2%. At the end of the five (5) year period, the estimated monthly electric bill impact for a typical residential customer with an average annualized monthly usage of 925 kWh would be an increase of \$11.72 or 7.3% in total, which is an average of 1.5% per IIP year.

On May 18, 2022, the Board ordered that the Petition be retained by the Board for hearing, and pursuant to N.J.S.A. 48:2-32, designated myself, Commissioner Robert M. Gordon, as the Presiding Commissioner, with the authority to rule on all motions that arise during the pendency of the proceedings, and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.<sup>2</sup> The Board further directed that any entity seeking to intervene or participate file the appropriate application with the Board on or before June 1, 2022, and any motion for admission *pro hac vice* should be filed concurrently with any motion to intervene or participate.<sup>3</sup>

## **MOTIONS TO PARTICIPATE**

### **South Jersey Gas Company ("SJG") and Elizabethtown Gas Company ("ETG")**

On May 24, 2022, SJG and ETG filed a Motion to Participate, arguing that they will substantially and directly be affected by the Board's decision, specifically with regard to cost recovery and program qualifications for accelerated recovery. SJG and ETG explained that the customers and operations of SJG and ETG are distinct from those of other parties, and as such, no party will represent SJG and ETG's interests. SJG and ETG stated that they have a history of coordinating activities in dockets at the Board with those of other utilities, if appropriate, and thus, there is no prospect for confusion and/or delay. Finally, SJG and ETG argued that their experience in the

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<sup>2</sup> In the Matter of Rockland Electric Company for Approval of an Infrastructure Investment Program, Order Designating Commissioner, Setting Manner of Service and Bar Date, BPU Docket No. ER22030198, May 18, 2022 (incorrectly dated May 18, 2021).

<sup>3</sup> Id.

utility industry will add constructively to the proceeding, and their participation will not result in undue delay.

On June 1, 2022, RECO responded to the motion, stating no objection to granting SJG and ETG participant status if it is done solely for the purpose of monitoring the proceedings. RECO acknowledged its awareness that SJG and ETG achieved approval of, or have pending, their own IIP applications before the Board. Therefore, RECO stated that it does not object to SJG and ETG monitoring the proceedings given their interests in IIPs.

#### Public Service Electric and Gas Company ("PSE&G")

On April 27, 2022, PSE&G filed a Motion to Participate, also arguing, similar to SJG and ETG, that the ruling in this matter will have a precedential effect and impact on all of New Jersey's electric utilities. As such, PSE&G argued that it will be directly and specifically affected by the relief granted in this matter. Additionally, PSE&G claimed that no other party or participant will represent the interests of PSE&G, and since it has a history of coordinating activities with other utilities in other matters, and its experience in the development and implementation of IIPs, its participation is likely to add constructively to this proceeding.

### DISCUSSION AND FINDINGS

#### Motions to Participate

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.<sup>4</sup>

Applying this standard to the motions filed by SJG and ETG, and PSE&G, 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 will add constructively to this matter without causing undue delay or confusion. Accordingly, noting that the Board received no affirmative objections to the requests for participation, I **HEREBY GRANT** the motions to participate filed on behalf of SJG and ETG, and PSE&G, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

#### Prehearing Order

I reviewed RECO and the Division of Rate Counsel's ("Rate Counsel") jointly proposed procedural schedule. I **HEREBY ISSUE** the following Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

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<sup>4</sup> 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. 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.

## PREHEARING ORDER

### 1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, RECO seeks approval of a five (5) year Infrastructure Investment Program with a total investment level of \$209 million pursuant to N.J.S.A. 48:2-1 et seq. and N.J.A.C. 14:3-2A.1 et seq.<sup>5</sup> In its Petition, RECO proposes to invest in: 1) enhanced overhead storm hardening; 2) selective undergrounding; 3) underground rebuild and rehabilitation; and 4) the Franklin Lakes Projects. In accordance with the II&R Rules, RECO proposes an average baseline capital spending level of \$20.5 million per IIP year, based upon five (5) years of actual capital spending, and five (5) years of projected capital spending. Additionally, pursuant to N.J.A.C. 14:3-2A.2(c), the Company identified \$25.9 million of projects similar to those proposed in the IIP to invest in outside of the Program over the five (5) year IIP period, which is in excess of the required \$20.9 million. RECO proposed to recover costs of the IIP through an IIP Surcharge, a non-bypassable cents per kWh charge applicable to all RECO distribution customers. RECO proposed that any unrecovered Program or project investment costs would be rolled into base rates during future base rate cases. The proposed IIP Surcharge cost recovery mechanism will continue to be used until all Program costs are rolled into base rates. Due to the unique timing of the IIP projects, RECO requested a waiver of N.J.A.C. 14:3-2A.6(b), which states that each filing made by a utility seeking accelerated recovery under an IIP shall seek recovery, at a minimum, or at least ten (10) percent of overall IIP expenditures.

#### Major Issues:

- Ensure conformance with II&R regulations codified at N.J.A.C. 14:3-2A;
- Ensure maximum benefit to ratepayers;
- Ensure compliance with prior Board Orders and Board Policy;
- The reasonableness of all construction, construction timelines, and design aspects of the proposed program;
- The reasonableness and lawfulness of the proposed cost recovery mechanism;

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<sup>5</sup> On December 19, 2017, the Board adopted new rules for utility "Infrastructure Investment and Recovery" to encourage utilities to implement infrastructure investments. The rules are codified at N.J.A.C. 14:3-2A.1 et seq. ("II&R Rules") and became effective on January 16, 2018.

2. **PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:**

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

Pursuant to N.J.S.A. 48:2-32.6, after publication of notice in newspapers of general circulation in RECO's service territory, due to the COVID-19 pandemic, public hearings will be held virtually, and will be presided over by myself on September 13, 2022 at 4:30 and 5:30 pm.

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

Evidentiary hearings will be held virtually and are scheduled for December 1, December 2, and December 5, 2022.

5. **STIPULATIONS:**

The parties have not entered into any stipulations at the time of this Order.

6. **SETTLEMENT**

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

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

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

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

9. **ORDER OF PROOFS:**

RECO has the burden of proof. The hearings will be conducted by topic in the following order:

First – RECO

Second – Rate Counsel

Third – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES**

RECO and Rate Counsel's witnesses are yet to be determined. Once determined, additional witnesses may be identified by the parties for the purposes of rebuttal and sur-rebuttal.

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

13. **MOTIONS:**

All pending motions are addressed.

14. **SPECIAL MATTERS:**

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

In compliance with the Board's Order in Docket No. EO20030254, I **HEREBY DIRECT** all parties to serve documents electronically. No hard copies shall be filed until the Board lifts the restrictions imposed in that Order.

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:

7/14/2022



ROBERT M. GORDON  
COMMISSIONER

IN THE MATTER OF THE PETITION OF ROCKLAND ELECTRIC COMPANY FOR APPROVAL OF AN  
INFRASTRUCTURE INVESTMENT PROGRAM, AND RELATED COST RECOVERY MECHANISM

BPU DOCKET NO. ER22030198

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## EXHIBIT A

### In the Matter of the Petition of Rockland Electric Company for Approval of an Infrastructure Investment Program (IIP) Procedural Schedule

**BPU Docket No. ER22030198**

Motions to Intervene/Participate	June 1, 2022
First Round Discovery Requests+	June 10, 2022
First Round of Discovery Answers	June 24, 2022
Second Round Discovery Requests +	July 1, 2022
Second Round Discovery Answers	July 15, 2022
Discovery Conference	Week of July 25, 2022
Third Round Discovery Requests +	August 1, 2022
Third Round Discovery Answers and Discovery Conference Requests	August 12, 2022
Settlement Meetings	Week of August 22, 2022
Public Hearings	September 13, 2022: 4:30 pm and 5:30 pm
Rate Counsel/Intervenor Testimony	September 16, 2022
Responses to Discovery on Rate Counsel/Intervenor Testimony	September 30, 2022
Rebuttal Testimony	October 7, 2022
Settlement Conferences(s) (if necessary) ++	Week of October 17, 2022
Discovery on Rebuttal Testimony	November 4, 2022
Evidentiary Hearings +++	December 1 – 2, 2022 and December 5, 2022
Initial and Reply Briefs	TBD by Commissioner Gordon after evidentiary hearings

+ Discovery has already commenced in accordance with the procedural rules. The parties will endeavor to adhere to the discovery schedule. However, Petitioner agrees that discovery is ongoing and will endeavor to answer all discovery within fifteen days of service or earlier if possible.

++Parties to confer to determine if they agree settlement conferences would be beneficial. If so, this week is reserved for such conferences.

+++Subject to Commissioner Gordon's availability. Rate Counsel has proposed live surrebuttal. RECO is amenable if live rejoinder is also provided. Rate Counsel wishes to discuss this issue with Commissioner Gordon prior to evidentiary hearings.