



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PETITION OF ATLANTIC)	ORDER REGARDING EDF MOTION
CITY ELECTRIC COMPANY FOR APPROVAL OF)	TO INTERVENE
AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN)	
INCREASE IN RATES AND CHARGES FOR ELECTRIC)	
SERVICE PURSUANT TO <u>N.J.S.A. 48:2-21</u> AND)	BPU DOCKET NO. ER16030252
<u>N.J.S.A. 48:2-21.1</u> , FOR APPROVAL OF A GRID)	PHASE II
RESILIENCY INITIATIVE AND COST RECOVERY)	
RELATED THERETO, AND FOR OTHER		
APPROPRIATE RELIEF (2016)		

Parties of Record:

Phillip J. Passanante, Esq., on behalf of Atlantic City Electric Company, Petitioner
Stefanie A. Brand, Esq., Director, Division of Rate Counsel
Bradford M. Stern, Esq., for Unimin Corporation, Intervenor
Joseph F. Accardo, Jr., Esq., for Public Service Electric & Gas Company, Participant
Donald J. Meliado, Jr., Esq., for Environmental Defense Fund, Intervenor

BY COMMISSIONER UPENDRA CHIVUKULA:

On March 22, 2016, pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.12, Atlantic City Electric Company ("ACE" or "Company"), a public utility of the State of New Jersey subject to the jurisdiction of the New Jersey Board of Public Utilities ("Board"), filed a petition for approval of an increase in its current base rates for electric service of approximately \$84.4 ("base rate case").

ACE is also seeking authority to implement a grid resiliency program, the PowerAhead Program, with an associated cost recovery mechanism. The Company proposes to implement the program over a five year period at a total approximately capital investment of \$176 million. According to the petition, the PowerAhead Program is designed to modernize the electric grid through energy efficiency, increased distribution generation, and resiliency, all geared toward improving the distribution system's ability to withstand major storm events.

On April 11, 2016 this matter was transmitted to the Office of Administrative Law ("OAL") where

it was assigned to Administrative Law Judge ("ALJ") Irene Jones.

On June 13, 2016 ALJ Jones granted Unimin Corporation Intervenor status and PSE&G was granted Participant status. On May 16, 2016 a motion to intervene was filed with the OAL by the Environmental Defense Fund ("EDF") which remains pending.

On August 19, 2016, the Board recalled the matter from the OAL in order to consider a proposed stipulation of settlement for the base rate case, and address issues relating to PowerAhead.

On August 19, 2016, the Company, Board Staff, Unimin and Rate Counsel (collectively, "the Signatory Parties") reached a settlement of the base rate case ("Stipulation"). On August 24, 2016 the Board ordered that the Stipulation was reasonable, in the public interest and in accordance with the law, and adopted the Stipulation in its entirety subject to any terms and conditions set forth in the August 24, 2016 Order. This Order resolved the base rate case and established the PowerAhead program request as a Phase II of the base rate case, retaining the matter to be decided by the Board with the original docket number. The Board designated me as the presiding Commissioner for the base rate case Phase II PowerAhead program granting me authority to establish and modify schedules, decide all motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

As noted, EDF's May 16, 2016 motion to intervene in this matter remained pending at the time the matter was recalled from the OAL. On May 27, 2016, ACE filed opposition to EDF's motion, on June 1, 2016 EDF filed a response to ACE's opposition and on June 6, 2016 Rate Counsel filed a letter stating it had no opposition to EDF's motion. On August 18, 2016, ACE's counsel submitted correspondence to the Board indicating that EDF's interest in this matter related to the PowerAhead matter, and not the base rate matter which has been resolved.

This Order will address EDF's pending motion.

EDF MOTION

EDF states that it is a national non-profit membership organization which champions using science, economics and law to find solutions to environmental problems with 360,000 national members, 11,000 NJ members and 1,000 members in ACE territory. EDF states that it "has extensive expertise and experience in presenting evaluative frameworks and project solutions to increase cost effectiveness, consumer, grid, environmental and market benefits of electric system resiliency plans and projects similar to PowerAhead". Motion p. 4.

EDF argues that it and its members will be directly affected by the outcome of the ACE petition as costs of the proposed projects will be paid by ACE's customers, as are the costs of a system without properly installed resiliency measures. Therefore, EDF and its members have a material interest in ensuring the investments proposed are beneficial and cost-effective. They continue that the outcome of the case and the improvement of the electric grid as it relates to safety, resiliency and economic welfare, goes to the heart of EDF and its membership's mission regarding optimizing the efficiency of the electric grid resiliency and resiliency programs.

EDF continues its argument that its unique expertise and experience, from participating in similar matters nationwide, will measurably and constructively advance this proceeding stating it will draw upon its experience in employing, practical, market-based solutions to cost-effectively improve energy resilience to develop and present its recommendations.

EDF specifically requests intervenor status so that it can assist in fully developing the record through testimony, cross-examination and briefing the areas where other parties do not have the same expertise.

EDF states its intervention will not cause confusion or undue delay as it will ensure it does not duplicate the other parties' efforts and abide by the procedural schedule.

ACE REPLY

ACE's opposition letter argues that EDF has not met its burden to warrant intervention as a full party intervenor. ACE states that EDF's interest is not sufficiently different from any other party's so as to add measurably and constructively to the proceeding as the interests stated are sufficiently represented by statutory parties, Board Staff and Rate Counsel. The Company specifically points to the three consultants hired by Rate Counsel who are reviewing cost-benefit analysis, the engineering and technical aspects and the proposed cost-recovery mechanism associated with the PowerAhead Program. In addition, they argue that both Rate Counsel and Board Staff have propounded a large number of discovery questions focused on PowerAhead which have provided a careful and comprehensive review of the Program.

ACE continues that allowing EDF to intervene will create opportunities for undue delay and confusion as "any additional discovery propounded or testimony provided or elicited by EDF has a high likelihood of duplicating that provided by statutory parties and their consultants". ACE Reply p. 3-4.

EDF REPLY

EDF argues that its interest is sufficiently different from the other parties so as to add measurably and constructively to the proceedings as EDF has a different mission and its focus is on whether the company's investments are both clean and cost-effective. EDF states that its members have an interest in cost effective clean energy solutions, which may be different from the interests of the other parties and the Company's other customers.

EDF argues that it has special expertise in the area of voltage optimization through working closely with Gridwise Alliance a national organization dedicated to modernizing the U.S. electric grid, and have provided testimony in cases in California, Massachusetts, Minnesota, New York, North Carolina, Ohio and Pennsylvania. EDF believes this unique expertise allows it to meet the standard warranting full intervention N.J.A.C. 1:1-16.3 (a).

EDF continues that the Company's allegation that EDF has made no showing that its members will be specifically and directly affected by the outcome of the proceeding has no merit, as its members are customers who have a special interest in clean energy outcomes. EDF believes that the other parties do not advocate for clean energy outcomes as part of their mission. It concludes that if not allowed to intervene and provide its specialized expertise in the area of clean energy solutions, then its EDF members would be harmed.

Lastly, EDF states that its discovery requests would not likely be duplicative as EDF's voltage optimization specialization is unique from the other parties and if duplicative, ACE could reply by incorporating its answer to the other discovery request that was duplicated. Therefore, EDF concludes that ACE's argument that its intervention in this matter would cause delay is without merit.

DISCUSSION AND FINDING

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 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, Order, I/M/O 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).

After consideration of the papers, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), the members of EDF living in ACE's service territory will be directly affected by the outcome of the this proceeding, and that EDF has expertise in voltage optimization across the country that should contribute to the development of a full and complete record for review by the Board in its evaluation of the ACE PowerAhead Matter. Therefore, I **HEREBY FIND** that EDF has met the standards for intervention in the ACE PowerAhead Matter, as it has an interest in this proceeding that is not represented by another party. Accordingly, I **HEREBY GRANT** EDF's motion for intervention on the basis of its representation that it will adhere to the scope of the issues to be addressed in this proceeding.

In addition, in the interests of economy, all parties are **HEREBY DIRECTED** to serve all documents in the PowerAhead program matter electronically, while still providing hard copies to the Board for those documents which must be filed with the Board, with hard copies to each party upon request.

DATED: October 5, 2016

BY:

A handwritten signature in black ink, appearing to read 'Upendra Chivukula', written in a cursive style.

UPENDRA J. CHIVUKULA
COMMISSIONER

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