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Governor

SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

November 19, 2018

Via Hand Delivery

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave., 10th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: **I/M/O Petition of Public Service Electric & Gas Co. For
Approval of Its Clean Energy Future-Energy Cloud
("CEF-EC") Program on a Regulated Basis
BPU Docket No. EO18101115**

Dear Secretary Camacho-Welch:

Please accept for filing this original and ten copies of a letter brief and accompanying papers from the New Jersey Division of Rate Counsel ("Rate Counsel") as a Motion to Dismiss the above-referenced petition ("Petition") filed on October 11, 2018 by Petitioner Public Service Electric & Gas Company ("PSE&G"). Please date stamp the additional copy as "filed" and return it in the enclosed, self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

Preliminary Statement

PSE&G's Petition requests pre-approval of a proposed program to deploy Advanced Metering Infrastructure ("AMI") throughout its entire electric service territory at a cost of approximately \$800 million over a period of five years. Petition, p. 6. Specifically, PSE&G seeks a determination from the Board that AMI "is in the public interest," is "reasonable and prudent," and that the costs of AMI may be recovered through the Infrastructure Investment Program, N.J.A.C. 14:3-2A et seq. ("IIP") Id., pp. 2, 16. Because the relief sought by PSE&G is precluded by the current moratorium on AMI pre-approval and rate recovery imposed by the Board on all the State's utilities, including PSE&G, the Petition should be dismissed pursuant to the Board's authority under N.J.A.C. 14:1-5.4(b), N.J.S.A. 48:2-13 and N.J.S.A. 48:2-16.

Background

PSE&G filed the above-referenced Petition on October 11, 2018. As noted above, the Petition seeks pre-approval from the Board for PSE&G to install AMI meters throughout its entire service territory. As described in its Petition, PSE&G intends to remove approximately 2.2 million fully-functional electric meters that are currently in service, and replace them with AMI meters over a five year period. Petition, pp.7, 14. As part of this pre-approval, PSE&G seeks a determination that its approximately \$720 million capital investment in AMI is "reasonable and prudent," and that costs may be recovered through the IIP. Petition, p. 2, 16. The Petition also seeks the ability to defer on PSE&G's books approximately \$73 million in associated operation and maintenance costs ("O&M") and \$219 million in stranded costs associated with currently-installed electric meters that will be removed from service upon

installation of AMI meters. By PSE&G's own calculations, the average residential customer will see a monthly bill increase of \$3.38 solely as a result of the AMI program. Id., p. 14.

PSE&G's Petition should be dismissed since the relief sought in its Petition is barred under the moratorium on pre-approval of AMI imposed on all of the State's electric utilities in I/M/O Petition of Rockland Electric Co. for Approval of an Advanced Metering Program; And For Other Relief, BPU Docket No. ER16060524, Order dated 8/23/17 ("RECO AMI Order").¹ The RECO AMI Order is the result of a petition filed by Rockland Electric Company ("RECO") in May 2016. RECO sought essentially the same relief as PSE&G's Petition, including pre-approval of an AMI program throughout its entire service territory, and the associated stranded costs of meters removed from service. Rockland proposed to roll-out its AMI program during the period of 2017 through 2019 for approximately 73,000 customers.

In the RECO matter, following evidentiary hearings before Commissioner Chivukula and briefing by the parties, the Board issued its Decision and Order following the Board Agenda meeting on August 23, 2017. While the Board permitted RECO to implement the AMI program described in its Petition, it declined to pre-approve either the prudence of the proposed AMI program or the prudence of the associated costs. The Board specifically stated that "[a] determination as to the prudence of the program as well as the prudence of the program costs will be made in a subsequent base rate case after the AMI Program has been fully deployed and is used and useful." RECO AMI Order, p. 19. In addition to deferring any decision on prudence

¹ The RECO AMI Order is not a complete bar to the utilization of AMI: "Any EDC may decide to initiate such a program of its own accord and be subject to review and approval of those expenditures and prudence review in their next base rate case..." RECO AMI Order at 24. The moratorium simply bars pre-approval of such programs.

until after the program was fully rolled-out, the Board, on its own initiative, implemented a moratorium on both pre-approval of and cost recovery for any other AMI petitions. Id., p. 24. The Board applied the moratorium to all of the State's EDCs. Id. The Board specifically stated that it viewed RECO's AMI Program as a "case study," and that it will not consider other petitions for pre-approval and/or cost recovery until after it has reviewed RECO's fully-implemented program and issued further guidance to the EDCs. Id. Indeed, PSE&G acknowledges the Board's moratorium and its applicability to PSE&G in its Petition. Thus, there is no question that PSE&G is subject to the Board's AMI moratorium. Petition, pp. 10-11.

Argument

The Board's authority over utilities such as PSE&G is a "sweeping grant of power...intended to delegate the widest range of regulatory power over utilities...." I/M/O Alleged Violations of Law By Valley Road Sewerage Co., 154 N.J. 224, 235 (1997)); see also N.J.S.A. 48:2-13. Included in this sweeping jurisdiction is the ability of the Board to require every public utility "to comply with the laws of the State...and to conform to the duties imposed upon it thereby...." N.J.S.A. 48:2-16(1)(a). Among the Board's powers is its right to dismiss any petition that it deems to be "deficient." The Board's Rules of Practice provide that "[i]f after review the Board determines that a petition is deficient, the Board may refuse to consider and may issue an order dismissing said petition." N.J.A.C. 14:1-5.4(b). Pursuant to its sweeping jurisdiction, the Board chose to impose a moratorium on review of other AMI petitions until it is able to perform a comprehensive examination of the costs and benefits of RECO's implementation. Given that PSE&G chose to file its Petition in disregard of the Board's moratorium, the Board should issue an order dismissing PSE&G's Petition as deficient. N.J.A.C. 14:1-5.4(b).

There are several arguments supporting dismissal of PSE&G's Petition. For one, entertaining PSE&G's Petition at this time would undermine the entire reason that the Board chose to impose the moratorium. In approving RECO's Petition, the Board was very clear that it intended the installation of AMI in RECO's very small service territory to be a "Case Study for advanced metering technology." RECO AMI Order, p. 24. The Board noted that it "will review the RECO AMI program once it is fully implemented and issue guidance to Electric Distribution Companies" following that review:

The Board's authorization to allow RECO to implement the AMI Program is not an invitation for any utility to file for pre-approval of a similar program. This specific program is being authorized as a Case Study for advanced metering technology that could potentially be utilized throughout the state if it is deemed prudent and useful. Therefore, the Board does not intend to authorize or act on any previously submitted or newly petitioned pre-approvals for AMI programs until such time as the Board has made a determination that advanced metering technology is a prudent investment. The Board will review the RECO AMI program once it is fully implemented and issue guidance to Electric Distribution Companies ("EDC"). Any EDC may decide to initiate such a program of its own accord and be subject to review and approval of those expenditures and prudence review in their next base rate case; recovery of which will not be considered by the Board until after it has evaluated the prudence of RECO's AMI Program.

Id. (emphasis added).

PSE&G's Petition should be dismissed because the Board's review of the RECO AMI program, which according to the RECO AMI Order will be the trigger for any potential lift of the moratorium, has not yet been completed. In its testimony in that matter, RECO indicated that it anticipated installation of AMI meters throughout its service territory to not be completed until year-end 2019. Direct Testimony of Advanced Metering, Smart Grid/Distribution Automation, & Communications Infrastructure Panel, I/M/O Petition of Rockland Electric Co. for Approval of an Advanced Metering Program; And For Other Relief, BPU Docket No. ER16060524, at p.8.

Similarly, in the AMI Implementation Plan that RECO was required to submit to the Board in December 2017, RECO advised the Board that smart meter installation will begin mid-year 2018, with an estimated completion by the end of the fourth quarter 2019. See Rockland Electric Company – Advanced Metering Infrastructure Implementation Plan, (12/11/17), at pp. 4, 7.

Furthermore, while RECO has been providing quarterly reports on AMI metrics throughout 2018, its AMI Implementation Plan indicates that many of the metrics will not be available until 2019 or 2020. Indeed, RECO will not begin reporting on one of the most important metrics in evaluating AMI – Estimated Reduction in Major Event Duration – until the end of the first quarter 2020. See Rockland Electric Company, Advanced Meter Infrastructure Metrics, December 2017, provided with the Advanced Metering Infrastructure Implementation Plan.

Given this timeline, the Board needs several years to review and evaluate whether AMI is a cost-effective, worthwhile technology for which electric ratepayers in New Jersey should be ordered to pay.² Indeed, RECO will only begin reporting metrics based on a complete AMI build-out either at year-end 2019 or first quarter of 2020. Furthermore, at the Agenda Meeting where the Board approved the RECO AMI Order, Board Staff indicated that it would like to see

² This is still very much an open question. Since the Board decided the Rockland AMI Petition in August 2017, Kentucky rejected AMI proposals by two utilities – Kentucky Utilities Inc. and Louisville Gas & Electric. Massachusetts likewise rejected AMI proposals made by multiple utilities. In all instances, the public utility commissions cited a lack of proof that the benefits justified the costs. See <https://www.utilitydive.com/news/massachusetts-rejects-smart-meter-rollout-for-weaknesses-in-the-business-c/523383/> and <https://www.utilitydive.com/news/as-kentucky-regulators-reject-smart-meter-plans-troubling-trend-continues/531384/>

eighteen months of AMI data in order to make a full and complete evaluation of RECO's AMI program:

COMMISSIONER HOLDEN: I just want to ask about the moratorium. How long do you expect that would take place?

MR. WALKER: Well, we didn't put a specific number because we wanted to make sure we allowed ourselves enough time. If you're asking my personal opinion, it's going to be a three-year build-out and I would probably want to see at least 18 months' worth of data.

Transcript, (8/23/17), Item 2F, p. 28 line 21 – p. 29 line 4.

When the Board approved the RECO AMI program as a case study, it clearly understood that several years would be needed to evaluate that implementation. By imposing a moratorium on other EDCs, the Board demonstrated its desire to proceed cautiously and deliberately, choosing to use RECO's small service territory as a case study to evaluate AMI's costs and benefits. PSE&G's Petition, seeking pre-approval to implement AMI for more than two million customers in the largest service territory in the State, is in direct contradiction to both the moratorium imposed on the EDCs, and the deliberate approach to evaluating AMI that the Board envisioned in the Rockland AMI Order. Because it violates the moratorium, and conflicts with the use of RECO's AMI program as a case study, PSE&G's Petition should be dismissed.

PSE&G acknowledges that it is subject to the moratorium effectuated by the

RECO AMI Order, but requests that the Board lift the moratorium. Petition, pp. 10-11.³ Rate Counsel submits that PSE&G's request is contrary to the sound regulatory policies of stability and consistency of the regulatory environment. Our system of government has long valued consistency in decisions made by administrative bodies. In applying the equitable principles of *res judicata* and collateral estoppel to administrative agencies, our State Supreme Court noted many court "[d]ecisions have stressed that the policy considerations which support these judicial doctrines – namely, finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness – have an important place in the administrative field." Hackensack v. Winner, 82 N.J. 1, 44 (1980). Such regulatory stability is also the basis of our State's Administrative Procedure Act, which seeks to ensure consistent application of regulatory policies across the entirety of a regulated community. See Cooper University Hosp. v. Jacobs, 191 N.J. 125, 143 (2007) ("adherence to due process has always been integral to the regulatory process. Even before adoption of the Administrative Procedure Act, we emphasized that '[w]ithout sufficiently definite regulations and standards administrative control lacks the essential quality of fairly predictable decisions.'" (quoting Boller Beverages, Inc. v. Davis, 38 N.J. 138, 152 (1962))).

³ Despite acknowledging the moratorium, PSE&G requests that it be lifted because of the enactment of the subsequent Clean Energy Law. However, PSE&G offers no explanation of why it believes the Clean Energy Law would justify reversal of the policy decisions the Board made in the RECO AMI Order. Notably, there is no specific mention of AMI in the Clean Energy Law.

These principles require dismissal of PSE&G's Petition. The RECO AMI Order was issued following the full litigation of RECO's Petition, including evidentiary hearings and briefing. After deliberating on the parties' positions, the Board issued the RECO AMI Order, including its independent decision to impose a moratorium on additional AMI pre-approval petitions and rate recovery until after the Board reviews RECO's full implementation. RECO AMI Order at 24. In the RECO AMI Order, the Board committed to issuing guidance to the EDCs after it completes this evaluation. Id. The Board imposed the moratorium on its own initiative, and it was fully supported by the record before it. The RECO AMI Order was not appealed. All of the State's EDCs are subject to the moratorium, and likely have factored the moratorium into their budgeting and other planning decisions. Now little more than a year later, PSE&G requests that the Board reverse this sound policy decision.⁴ This request should be rejected, as it would create regulatory uncertainty and volatility. With the RECO AMI Order, the Board has already set forth a streamlined plan for evaluating AMI technology in a way that protects both ratepayers and shareholders, allows time for careful deliberation by the Board and stakeholders, and avoids unnecessary, duplicative litigation and the accompanying strain on resources. See Hackensack, supra, 82 N.J. at 44. For all of these reasons, the Board's moratorium should be preserved, its evaluation of AMI should continue as envisioned in the RECO AMI Order, and PSE&G's Petition should be dismissed.

⁴ While the Board did recently request the EDCs to submit plans and cost/benefit analyses for AMI, that Order did not lift the Board's moratorium or invite the EDCs to submit petitions for pre-approval as PSE&G has done here. I/M/O the Board's Review of Major Storm Events of March 2018, BPU Docket No EO18030255 (7/25/18).

Conclusion

For all of the reasons stated above, the Board should issue an order dismissing PSE&G's Petition.

Respectfully submitted,

A handwritten signature in black ink, reading "Stefanie A. Brand". The signature is written in a cursive style with a large initial 'S' and a stylized 'B'.

Stefanie A. Brand
Director, Division of Rate Counsel

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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Christine M. Juarez, Esq.
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I/M/O Petition of Public Service Electric & Gas Company For Approval of Its Clean Energy Future Energy Cloud ("CEF-EC") Program On a Regulated Basis	: : : : : :	BOARD OF PUBLIC UTILITIES BPU Docket No. EO18101115 : : MOTION TO DISMISS
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TO: Secretary Camacho-Welch and to OTHER PARTIES as set forth on the attached

Certification of Service:

PLEASE TAKE NOTICE that the undersigned, Christine M. Juarez, on behalf of the New Jersey Division of Rate Counsel, ("Rate Counsel") files this Motion requesting that the New Jersey Board of Public Utilities ("BPU" or the "Board") issue an Order dismissing the Company's petition in this matter.

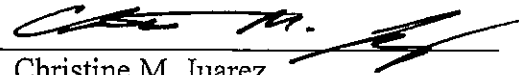
PLEASE TAKE FURTHER NOTICE that Rate Counsel requests an expedited review of this motion.

PLEASE TAKE FURTHER NOTICE that the undersigned will rely on the letter brief submitted in support of this request.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By:



Christine M. Juarez
Assistant Deputy Rate Counsel

Dated: November 19, 2018

- c: Honorable Joseph L. Fiordaliso, President (via hand delivery)
Honorable, Mary-Anna Holden, Commissioner (via hand delivery)
Honorable Diane Solomon, Commissioner (via hand delivery)
Honorable Upendra Chivukula, Commissioner (via hand delivery)
Honorable Bob Gordon, Commissioner (via hand delivery)
Service List (Via Electronic & USPS Regular Mail)

**IMO THE PETITION OF PUBLIC SERVICE
ELECTRIC AND GAS COMPANY FOR
APPROVAL OF ITS CLEAN ENERGY FUTURE
ENERGY EFFICIENCY, CLEAN ENERGY
FUTURE ELECTRIC VEHICLE AND ENERGY
STORAGE, AND ITS CLEAN ENERGY FUTURE
ENERGY CLOUD ("CEF-EC")
BPU DKT. NO. EO18101115**

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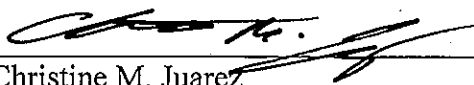
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CERTIFICATION OF SERVICE

I, Christine M. Juarez, hereby certify that I have served the Division of Rate Counsel's Motion to Dismiss by hand delivery to Ms. Aida Camacho-Welch, New Jersey Board of Public Utilities ("Board of Public Utilities") Secretary and the Commissioners of the Board of Public Utilities and by electronic mail and UPS Overnight Mail to Matthew I. Weissman, Esq., PSE&G and by electronic and USPS Regular Mail to all parties on the attached service list.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment:



Christine M. Juarez
Assistant Deputy Rate Counsel

Dated: November 19, 2018

IMO THE PETITION OF PUBLIC SERVICE
ELECTRIC AND GAS COMPANY FOR
APPROVAL OF ITS CLEAN ENERGY FUTURE
ENERGY EFFICIENCY, CLEAN ENERGY
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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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I/M/O Petition of Public Service Electric &	:	BPU Docket No. EO18101115
Gas Company For Approval of Its Clean Energy	:	:
Future Energy Cloud ("CEF-EC") Program	:	
On a Regulated Basis	:	ORDER DISMISSING
Tariff Provisions	:	PUBLIC SERVICE ELECTRIC
	:	AND GAS COMPANY'S
	:	PETITION
	:	
	:	ORDER

The Board of Public Utilities, having considered the New Jersey Division of Rate Counsel's ("Rate Counsel") Motion to Dismiss Public Service Electric and Gas Company's Petition hereby grants the Motion and Dismisses the Petition without prejudice.

Joseph L. Fiordaliso President
New Jersey Board of Public Utilities

Mary-Anna Holden, Commissioner
New Jersey Board of Public Utilities

Dianne Solomon, Commissioner
New Jersey Board of Public Utilities

Upendra J. Chivukula, Commissioner
New Jersey Board of Public Utilities

Bob Gordon, Commissioner
New Jersey Board of Public Utilities

Dated: