

Philip J. Passanante  
Assistant General Counsel



An Exelon Company

92DC42  
PO Box 6066  
Newark, DE 19714-6066

302.429.3105 - Telephone  
302.429.3801 - Facsimile  
philip.passanante@pepcoholdings.com

500 N. Wakefield Drive  
Newark, DE 19702

atlanticcityelectric.com



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MAR 07 2017

BOARD OF PUBLIC UTILITIES  
MAIL ROOM

March 6, 2017

**VIA FEDERAL EXPRESS and  
ELECTRONIC MAIL**

**[irene.asbury@bpu.nj.gov](mailto:irene.asbury@bpu.nj.gov)**  
**[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)**

Irene Kim Asbury, Esquire  
Secretary of the Board  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625-0350

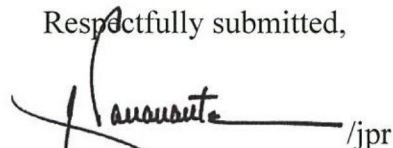
**RE:** In the Matter of Atlantic City Electric Company's Verified Petition to Reconcile Costs Associated with Its Residential Controllable Smart Thermostat Program for the Period June 1, 2015 through May 31, 2016 and to Maintain Its Rider RGGI Recovery Charge for the Period October 1, 2016 through May 31, 2017 BPU Docket No. ER16090846

Dear Secretary Asbury:

Attached hereto for filing are three conformed copies of a fully executed Stipulation of Settlement (the "Stipulation") in connection with the above-referenced matter.<sup>1</sup> It is Atlantic City Electric Company's understanding that the Stipulation will be placed on the agenda for consideration at the regular meeting currently scheduled for Friday, March 24, 2017.

Thank you for your cooperation and courtesies. Feel free to contact me with any questions or if I can be of further assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Passanante", followed by a horizontal line and the initials "/jpr".

Philip J. Passanante  
An Attorney at Law of the  
State of New Jersey

*Case mgmt  
a. Moreau  
V. Beke*

Enclosure

cc: Service List ✓

<sup>1</sup> This filing has been made consistent with the Board's Order Waiving Provisions of N.J.A.C. 14:4-2, N.J.A.C. 14:17-4.2(a), N.J.A.C. 14:1-1.6(c), and N.J.A.C. 14:17-1.6(d), issued on July 29, 2016 in connection with *In the Matter of the Board's E-Filing Program*, BPU Docket No. AX16020100.

**IN THE MATTER OF ATLANTIC CITY  
ELECTRIC COMPANY'S VERIFIED  
PETITION TO RECONCILE COSTS  
ASSOCIATED WITH ITS RESIDENTIAL  
CONTROLLABLE SMART  
THERMOSTAT PROGRAM FOR THE  
PERIOD JUNE 1, 2015 THROUGH MAY  
31, 2016 AND TO MAINTAIN ITS RIDER  
RGGI RECOVERY CHARGE FOR THE  
PERIOD OCTOBER 1, 2016 THROUGH  
MAY 31, 2017**

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
STIPULATION OF SETTLEMENT  
BPU DOCKET NO. ER16090846**

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MAIL ROOM

**APPEARANCES:**

**Philip J. Passanante, Esq., Assistant General Counsel, on behalf of Petitioner, Atlantic City Electric Company;**

**Alex Moreau and Veronica Beke, Deputy Attorneys General, on behalf of the Staff of the New Jersey Board of Public Utilities (Christopher S. Porrino, Attorney General of New Jersey); and**

**Ami Morita, Esq., Deputy Rate Counsel and Diane Schulze, Esq., Assistant Deputy Rate Counsel, on behalf of the New Jersey Division of Rate Counsel (Stefanie A. Brand, Director).**

This Stipulation of Settlement (the "Stipulation") is hereby made and executed as of this 2nd day of March, 2017, by and among Atlantic City Electric Company ("ACE" or the "Company"), the Staff of the New Jersey Board of Public Utilities ("Staff"), and the New Jersey Division of Rate Counsel ("Rate Counsel") (individually, a "Party" and collectively, the "Parties" or the "Signatory Parties"), in settlement of all factual and legal issues pertaining to the Company's September 7, 2016 Verified Petition, as fully described in the above caption (the "2016 Reconciliation Petition").

Pursuant to the New Jersey Board of Public Utilities' (the "Board") Order dated July 31, 2009 (the "2009 Order"),<sup>1</sup> which approved a stipulation of the Parties (the "2009 Stipulation"), the Company is required to reconcile annually the costs and revenues associated with the Program with the Board and the Parties. The specific details of the Program, including the related background information leading to its development and implementation, are fully set forth in the 2009 Stipulation, as well as the Orders issued in this regard, and as such, they are not repeated, but are deemed to be incorporated in this Stipulation.

If approved, the 2016 Reconciliation Petition will maintain the current Regional Greenhouse Gas Initiative Recovery Charge (referred to herein as "Rider RGGI" or the "RGGI Charge") for the Program at the previously approved rate of \$0.000000 per kWh; therefore, public notice was not required to be published in connection with these filings and no public hearing was necessary. The Signatory Parties join in recommending that the Board issue an Order Approving this Stipulation based upon the following facts and stipulated issues.

### **BACKGROUND**

The RCSTP was approved with an expectation that the Program would start in March 2010 with an initial four year roll out period, during which time ACE was required to offer the Program to all of its eligible customers and connect and maintain approximately 42,200 active participants, with approximately 42,300 qualifying units, with participants using either thermostats or switches, by mid-year 2014. Such demand response ("DR") devices can be remotely managed by the Company in order to reduce electric usage in customers' homes during periods of peak electric demand. ACE agreed to register, nominate, and/or bid<sup>2</sup> each year's expected Megawatt reduction resulting from the RCSTP into PJM's Base Residual and

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<sup>1</sup> Board Order dated July 31, 2009 in BPU Docket Nos. EO08050326, EO08080543 and EO07110881.

<sup>2</sup>The term "bid" as used herein shall indicate what the Company will "offer" into the relevant PJM auctions.

Incremental Auctions in time to meet PJM registration deadlines, beginning and including registration for summer 2010 auctions. The 2009 Order noted that revenues from participation in PJM DR programs and market-based opportunities would be used to off-set Program costs and mitigate the impact on customers' bills.

ACE was required to provide an annual update filing to the Board and the Parties with respect to: (1) the progress of customer acceptance of the RCSTP and the number of installations of the relevant devices achieved to date; (2) the status of PJM revenue credits associated with the RCSTP; (3) the status of Federal Stimulus Award monies associated with the RCSTP received by the Company; (4) the impact of each of the above on the overall cost of the Program relative to the original cost estimate for the RCSTP, along with the resultant cost/benefit of the Program; and (5) to reset, if necessary, the Rider RGGI associated with the RCSTP for the upcoming program year in order for ACE to recover its costs of Program implementation.

On March 31, 2010, the Company filed its first update Petition<sup>3</sup> with respect to the progress of the RCSTP establishing the initial RGGI rates for the RCSTP. On April 12, 2011, the Company filed its second update Petition with respect to the progress of the RCSTP.<sup>4</sup> ACE proposed no change in the RGGI Charge in its April 2011 filing. On April 11, 2012 (the "April 2012 Petition"),<sup>5</sup> the Company filed its third update Petition with respect to the progress of the RCSTP as required by the 2009 Order. In its April 2012 Petition, ACE proposed certain changes to its then-existing Rider RGGI for the RCSTP.

Following the filing of the April 2012 Petition, the Parties submitted discovery to the Company with respect to the information included in the petition. Specifically, Staff and Rate Counsel questioned why the Company had not submitted bids in certain PJM auctions for which

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<sup>3</sup> The March 31, 2010 Petition was assigned BPU Docket No. ER10050351.

<sup>4</sup> The April 12, 2011 Petition was assigned BPU Docket No. ER11060379.

<sup>5</sup> The April 11, 2012 Petition was assigned BPU Docket No. ER12050426.

the RCSTP was eligible. By stipulation dated April 11, 2013 (the “April 2013 Stipulation”), which Stipulation was approved by Board Order dated May 29, 2013 (the May 2013 Order”), the Company agreed to make certain revenue credit adjustments associated with the RCSTP in order to provide its customers with the full value of PJM auction revenues to which they are entitled, and to make an additional revenue credit of \$300,000. In compliance with the 2009 Order, and consistent with the requirements of the April 2013 Stipulation and related May 2013 Order, the Company, on July 5, 2013 submitted its Fourth RCSTP Update Petition (the “July 2013 Petition”) <sup>6</sup>, covering the program costs and revenues for the Program year commencing on June 1, 2012 through May 31, 2013.

In the July 2013 Petition, the Company advised the Board and the Parties that ACE expected to complete the initial RCSTP roll-out by May 31, 2014. By stipulation dated September 5, 2013 (the “September 2013 Stipulation”), the Parties requested the Board issue an Order approving same. The September 2013 Stipulation indicated that the Company would submit a further petition seeking the Board’s approval of a four year extension of the Program. By Order dated September 18, 2013 (the “September 2013 Order”), the Board approved the September 2013 Stipulation of the Parties.

On or about October 1, 2013, consistent with the September 2013 Stipulation and Order, the Company filed a Verified Petition (the “October 2013 Petition”) <sup>7</sup> requesting the Board’s authorization to extend the RCSTP for an additional four year period commencing June 1, 2014 at the 42,200 active participant level, and to reduce the applicable RGGI charge effective June 1, 2014 to \$0.000010 per kWh. The Parties entered into a stipulation dated March 26, 2014 (the “March 2014 Stipulation”), recommending that the Board approve the Company’s October 2013

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<sup>6</sup> The July 5, 2013 Petition was assigned BPU Docket No. ER13070627.

<sup>7</sup> The October 1, 2013 Petition was assigned BPU Docket No. ER13100907.



Petition in those regards. By Order dated April 24, 2014 (the “April 2014 Order”), the Board approved the March 2014 Stipulation. The April 2014 Order authorizes the Company to operate the RCSTP until May 31, 2018.

On or about July 30, 2014, the Company filed a Reconciliation Petition (the “2014 Reconciliation Petition”)<sup>8</sup> in conformance with the requirements of the 2009 Order, in order to reconcile the results of the four-year implementation of the RCSTP. Based upon the data provided in support of the reconciliation of the initial four year implementation cost for the RCSTP, as well as the status of PJM revenue credits associated with the RCSTP, and the final accounting of the Federal Stimulus Award monies associated with the RCSTP received by the Company, the 2014 Reconciliation Petition sought a further reduction in the current RGGI charge of \$0.000010 per kWh for the RCSTP to \$0.000000 per kWh. Additionally, ACE advised the Parties that it wished to submit a bid in the PJM Base Residual Auction (“BRA”) scheduled to be conducted in May 2015, which auction had a performance period commencing on June 1, 2018 and continuing through May 31, 2019. However, that performance period was beyond the BPU authorized termination date for the RCSTP. The Company indicated that, without an extension of the RCSTP covering the performance period for the May 2015 BRA, it could not submit an offer in that auction. On April 2, 2015, the Parties entered into a stipulation (the “April 2015 Stipulation”) recommending the Board approve the Company’s proposed reduction in the Rider RGGI charge for the Program to \$0.000000 per kWh, and further that the requested extension of the Program to May 31, 2019 be authorized. By Order dated April 15, 2015, the Board approved the April 2015 Stipulation as recommended by the Parties.

On or about August 19, 2015, the Company filed its 2015 Initial Reconciliation Petition in conformance with the requirements of the 2009 Order. Based upon the data provided in

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<sup>8</sup> The 2014 Reconciliation Petition was assigned BPU Docket No. ER14070832.

support thereof, the 2015 Initial Reconciliation Petition sought to maintain the current RGGI charge of \$0.000000 per kWh for the RCSTP. Additionally, on or about October 5, 2015 ACE filed with the Board and the Parties the 2015 Amended Petition requesting the Board's approval of an additional one year extension of the RCSTP in order to allow it to submit an offer in the PJM BRA scheduled to be conducted in May 2016, which auction has a performance period commencing on June 1, 2019 and continuing through May 31, 2020. However, that performance period is beyond the BPU authorized termination date for the RCSTP. The Company indicated that, without an extension of the RCSTP covering the performance period for the May 2016 BRA, it will not be able to submit an offer in that auction. By Order dated March 18, 2016 the Board approved a stipulation of the Parties dated February 29, 2016 which approved the continuation of the existing RGGI charge of \$0.000000 per kWh for the RCSTP be continued, and that the Program term be extended through May 31, 2020.

By Petition dated September 7, 2016, the Company filed its 2016 Reconciliation Petition in conformance with the requirements of the 2009 Order. Based upon the data provided in support thereof, the 2016 Reconciliation Petition sought to maintain the current RGGI charge of \$0.000000 per kWh for the RCSTP.

Formal discovery was submitted by Staff on September 30, 2016, and the Company provided its responses to that discovery on October 17, 2016. Further, on February 1, 2017 Rate Counsel submitted additional discovery, and the Company responded to same on February 10, 2017. Subsequently, the Parties engaged in discussions with regard to the Company's 2016 Reconciliation Petition. Since approval of the 2016 Reconciliation Petition will not result in a rate increase, the Parties agree that no public hearing is required.

## **STIPULATION**

The Parties to this Stipulation HEREBY STIPULATE AND AGREE to the following findings, conclusions, and determinations for the purpose of a full, final, and complete resolution of the issues raised in the 2016 Reconciliation Petition.

The Parties agree in settlement of this matter that the 2016 Reconciliation Petition, including the estimated costs and revenues, as more fully set forth on Exhibit A of the 2016 Reconciliation Petition and attached hereto as Attachment A, is consistent in all material respects with the terms and conditions of the 2009 Order, as well as all applicable subsequent Board Orders, and therefore should be approved by the Board. As provided in the May 2013 Order, all PJM revenues, including those from the sale of energy pursuant to PJM programs, derived from the Program shall continue to be credited to customers through the Rider RGGI Charge or other successor clause. Any penalties arising from PJM bids shall not be recoverable from ACE's customers.

## **SETTLEMENT IMPLEMENTATION**

The Parties hereby request that this proposed Stipulation be considered by the Board as soon as reasonably possible.

## **CONCLUSION**

1. The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event that any particular provision of this Stipulation is not accepted and approved in its entirety by the Board or is modified by a court of competent jurisdiction, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice, to be provided to all other Parties within ten (10) days after receipt of any such adverse decision, to



litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in an appropriate Order, or is modified by a court of competent jurisdiction, then any Party hereto is free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed.

2. The Parties agree that this Stipulation shall be binding on them for all purposes herein.

3. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein: (a) by executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation; and (b) the contents of this Stipulation shall not in any way be considered, cited or used by any of the Stipulating Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.

4. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, the Stipulating Parties shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein in total or by specific item. The Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

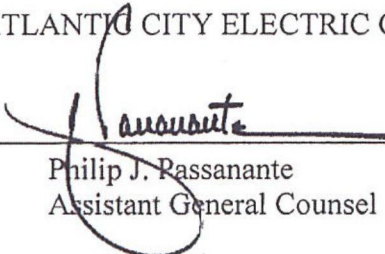
5. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties.

WHEREFORE, the Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and recommend that the Board issue a Final Decision and Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

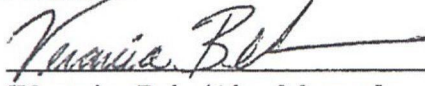
ATLANTIC CITY ELECTRIC COMPANY

Dated: March 2, 2017 By: \_\_\_\_\_

  
Philip J. Passanante  
Assistant General Counsel


CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF  
NEW JERSEY  
Attorney for the Staff of the New Jersey Board of  
Public Utilities

Dated: March 2, 2017

By:   
[Veronica Beke/Alex Moreau]  
Deputy Attorney General

STEFANIE A. BRAND, ESQ.  
DIRECTOR  
DIVISION OF RATE COUNSEL

Dated: 3/3/2017

By:   
Diane Schulze, Esq.