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APR 23 2018



BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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April 23, 2018

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APR 23 2018

**VIA HAND DELIVERY**

Hon. Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

Re: In the Matter of the Petition of Atlantic City Electric Company for  
Approval of a Voluntary Program for Plug-In Vehicle Charging  
BPU Docket No. EO18020190

Reply to Answer to Motion to Stay

Dear Secretary Camacho-Welch:

Please accept this letter response, original and ten copies, from the Division of Rate Counsel ("Rate Counsel") to the Answer ("ACE Answer") filed by Atlantic City Electric Company ("ACE" or "the Company") on April 16, 2018 to Rate Counsel's Motion To Stay ("Motion") in the above-captioned matter.

**We enclose one additional copy of this letter motion. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.**

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### **Summary**

As set forth below, ACE's Answer does not present any compelling argument to deny the relief requested by Rate Counsel in its Motion to stay ACE's Petition for approval of its Plug-In Vehicle ("PIV") charging program ("PIV Program") and hold the matter in abeyance until the Board of Public Utilities ("Board" or "BPU") can decide the direction for Electric Vehicle ("EV") infrastructure upon conclusion of the pending EV Stakeholder Group ("EV Stakeholder Group" or "EVSG") process convened by the Board. The policy issues and concerns raised by ACE are within the scope of the issues currently being addressed in the course of the EVSG process.<sup>1</sup> Rate Counsel concurs with the Board's EVSG approach whereby the important policy questions presented by the need to facilitate increased EV use in the State are addressed in a structured fashion, with input from various stakeholders with divergent interests. The iterative utility-by-utility approach advocated by ACE would subvert the stakeholder approach exemplified by the EVSG.

### **Background**

On February 22, 2018, ACE filed a petition ("Petition"), pursuant to N.J.S.A. 48:2-21, for Board approval of its PIV Program.<sup>2</sup> Earlier, the Board convened the EVSG to solicit input from stakeholders in order to assist the Board in the development of its EV policies.<sup>3</sup> On April 6, 2018, Rate Counsel filed a Motion with the Board to stay ACE's Petition for approval of its PIV

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<sup>1</sup> Transcript of Board Agenda Item 9B (August 23, 2017).

<sup>2</sup> On March 26, 2018, the Board issued an Order retaining this matter at the Board, designating Commissioner Upendra J. Chivukula as the presiding officer, and setting deadline of April 13, 2018 for filing motions to intervene or participate.

<sup>3</sup> Transcript of Board Agenda Item 9B (August 23, 2017).

Program and hold the matter in abeyance until the Board can decide the direction for EV infrastructure upon conclusion of the pending EVSG process.

### Argument

#### **I. Contrary to ACE's Assertions, the EVSG Process Is a Necessary First Step in the Formulation of the EDCs' Role in the EV Sphere.**

ACE's proposed PIV Program and the EVSG process are not complementary, despite ACE's assertions. Answer, pp. 4-5. Among other issues, the EVSG process addresses the role of electric distribution companies ("EDCs") in fostering the EV market which involves many yet unresolved policy and legal determinations, such as whether ratepayer funds may be used to promote EV use and whether EDCs may be involved in competitive businesses such as EV recharging services. In addition, the EVSG addresses the more fundamental policy question of whether public utility ratepayers should bear the cost of ameliorating the emissions attributable to the transportation sector of the economy and subsidize infrastructure that will bring substantial new business and revenues to the EDCs. As Rate Counsel set forth in its Motion to Stay, these fundamental policy issues and others should be resolved first and in a reasoned manner, such as that afforded by the EVSG process.

Here, ACE bypasses the EVSG process and attempts to push forward its own policy positions, by proposing to use ratepayer funds to incent EV use through ratepayer-subsidized EV charging equipment and to support its ownership and operation of commercial EV charging stations.<sup>4</sup> Petition, pp. 22-24. The formulation of policy by the Board through the EVSG

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<sup>4</sup> Contrary to ACE's assertions, its proposed \$14.9 million ratepayer-funded PIV Program is hardly a "modest" program, with subsidized installations of up to 300 Level 2 home chargers, 50 Level 2 multi-family chargers, and 100 Level 2 workplace chargers, in addition to 30 DC fast chargers ("DCFC") in transportation corridors and up to 150 Level 2 community chargers owned

process must precede the unilateral, independent proposals by individual EDCs to implement those policies. The formulation of EDC EV policy and the proposed implementation of that “policy” by a lone EDC are not complementary processes that should be in parallel sequence. By its premature PIV Program filing, ACE would effectively usurp the process put in place by the Board to formulate EV policy in a structured fashion, with input from various stakeholders with divergent interests. The EVSG process is a necessary first step in the formulation of the Board’s EDC policies as they relate to EVs.

As Rate Counsel noted in its Motion to Stay, Board policies and guidelines developed through the EVSG process are essential to ensure the integrity of electric grid and supply resources, foster competition, achieve cost-effective results, fairly allocate risks and benefits, and protect the interests of ratepayers. Motion, p. 8. Instead, ACE advocates an *ad hoc* approach which, if followed, would result in a myriad of approaches to facilitate the transition to EVs, depending on which electric utility serves a particular geographic area.

Further, contrary to ACE’s assertions, ACE’s proffered approach would result in confusion that would hinder, rather than facilitate, EV adoption. Each EDC could head in its own direction without a road map from the Board. The EV industry would face confusion, as the EDCs could invest in a myriad of approaches to EV infrastructure and services within their respective service territories. For example, if the Board were to approve ACE’s proposal, automotive retailers would need to contend with an array of recharging policies depending on where an EV is garaged or recharged. Such potentially confusing and contradictory EDC

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and maintained by ACE. Answer, p. 5; Petition, pp. 8-14. Further, ACE proposes that certain sub-programs could be expanded in the future, subject to Board approval. Petition, pp. 10 and 12.

programs would make an already challenging customer education process even more tedious and frustrating for both the retailer and potential EV customer. Furthermore, the Board would need to direct its limited resources to consider each EDC's unique EV program filing, unguided by any carefully designed policy directives. An iterative utility-by-utility approach to EV policy formation such as that advocated by ACE would, quite simply, waste limited resources and add more confusion and uncertainty, thereby hindering the deployment of EVs in the State and thwarting the State's environmental goals.

ACE emphasizes the anticipated proliferation of EVs in the near future and important effects that EVs may have on the electric grid. See ACE Answer, pp. 3-4, 5, and 7-8. These effects underscore the importance of setting clear Board policy to guide this groundbreaking and expensive process early on. There may be many costs associated with the proliferation of EVs and the Board will ultimately have to decide which costs ratepayers should or could afford to bear. Whether regulations are needed will depend upon the outcome of the EVSG process, and what role the Board wants EDCs to take in the EV industry. Hence, the Board should stay the instant proceeding and hold the matter in abeyance until the Board can decide the direction for EV infrastructure upon conclusion of the pending EVSG process.<sup>5</sup>

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<sup>5</sup> Contrary to ACE's assertions, Rate Counsel's position in the consolidated tax matter (BPU Dkt. No. EO12121072) is not inconsistent with its position in the instant matter. Answer, p. 6. Whether regulations will be needed to effectuate the policy directives established by the Board as a result of the EVSG process will depend on what those policy directives are and how they compare to the factors established by the Supreme Court In Metromedia, Inc. v. Div. of Taxation, 97 N.J. 313 (1984). The requirements of due process apply even if ACE believes that it should be granted the ability to enter this competitive market using ratepayer funds now, rather than after the necessary procedures are followed. In any event, whether rulemaking will be required depends on what the Board ultimately decides after the EVSG process.

## **II. ACE's Proposed PIV Programs Delve into Potentially Competitive Services.**

In addition to offering programs for residential, multi-family dwelling, and workplace EV recharging, ACE proposes to construct, own and operate DC Fast Charge ("DCFC") public charging stations along main transportation corridors and in eligible neighborhoods. Petition, pp. 13-14. The ownership and operation of public charging stations runs far afield from traditional electric public utility service and verges into a potentially competitive service. While ACE notes that N.J.S.A. 48:3-55 does not preclude EDCs from offering competitive services, ACE fails to emphasize that EDC involvement in the potentially competitive EV recharging business is an issue under consideration in the EVSG process.<sup>6</sup> ACE Answer, pp. 7-8. ACE presumes that the role of EDCs is to provide these new competitive services. However, the Board has not yet decided the role of EDCs in the EV system and, furthermore, ACE's Petition does not even request permission to provide competitive services as required by N.J.S.A. 48:3-55.<sup>7</sup> Competitive service providers already participating in the EVSG process who are interested in providing EV services would, unlike ACE, bear the cost of their ventures without ratepayer subsidies, thus creating a competitive advantage for the utility that threatens the future competitiveness of the industry.<sup>8</sup> For these reasons, Rate Counsel respectfully submits that EDC

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<sup>6</sup> See Transcript of Board Agenda Item 9B (August 23, 2017) and Motion, pp. 10-11. See also EVSG Task 1 Follow-up Questions Q5.1, Q5.2, Q5.3, Q5.4, Q5.5, and Q6.1 which elicit stakeholder comments on whether certain EV-related services are competitive businesses and the role of EDCs in providing certain EV-related services (comment period closed on 2/9/2018).

<sup>7</sup> Pursuant to N.J.S.A. 48:3-55, if the utility was granted permission by the Board to engage in this competitive service, several conditions would apply, such as a requirement to share the revenues with ratepayers, a prohibition on using regulated rates to subsidize the competitive service, etc.

<sup>8</sup> Note that on April 13, 2018, ChargePoint, Inc., a participant in the EVSG and an EV service provider filed a Motion to Intervene in the instant proceeding.

involvement in potentially competitive services is best addressed in the EVSG process, with input from various stakeholders who will be affected by a Board ruling on this issue in the instant case.

**III. The Environmental Impacts of EVs are Currently Being Addressed in the EVSG Process.**

While Rate Counsel shares ACE's expressed concerns about Green House Gas ("GHG") emissions and environmental justice communities, the Company presupposes that its PIV program is the proper response to those concerns and its Petition is the proper forum to address general environmental concerns. ACE conflates the issues of environmental benefits of PIVs and the cost responsibility for PIVs. ACE asserts that PIVs are necessary to protect New Jersey's environment and states that the current administration supports the expansion of PIVs in New Jersey. Answer, pp. 2-3. Even if that is the case, it does not mean that ACE's proposal is the best way to meet those goals. Forcing the entire cost of meeting these goals on utility ratepayers could exacerbate the very issues that ACE claims it is trying to solve. ACE's argument, therefore, misses a vital step, which is determining who should pay for expanded PIV infrastructure. That issue fits squarely within the questions being reviewed by the EVSG, and ACE should not be permitted to circumvent that process by having the issue decided through approval of its Petition here. Furthermore, ACE also fails to assess the cost-effectiveness of addressing these emissions through its proposed PIV Program, and the relative cost-effectiveness of its proposed PIV Program versus other control measures, such as energy efficiency ("EE")

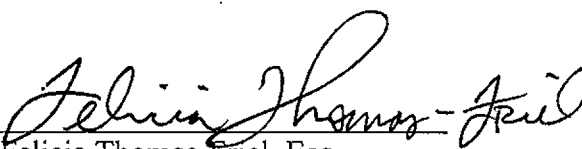
programs. There are many ways to improve air quality. Moreover, the environmental impact of EVs is already being addressed in the EVSG process.<sup>9</sup>

**Conclusion**

A single process to set preliminary EV policy and determine respective roles will save effort by all parties and avoid individual proceedings for each EDC that will waste resources and risk confusing or inconsistent outcomes. The EVSG process is a comprehensive, structured, generic proceeding that is considering, among other things, the proper role of electric public utilities in the field of EVs and EV servicing. ACE has presented nothing in its Answer which effectively refutes the appropriateness of resolving these issues in the EVSG process. For all of these reasons, Rate Counsel respectfully requests that the Board reject ACE's argument and stay ACE's Petition for approval of its PIV Program and hold the matter in abeyance until the Board can decide the direction for EV infrastructure upon conclusion of the pending EVSG process.

Respectfully submitted,

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

By:   
Felicia Thomas-Friel, Esq.  
Deputy Rate Counsel

c: Hon. Upendra J. Chivukula, Commissioner (By Hand and electronic mail)  
Service List (via electronic and regular mail)

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<sup>9</sup> EVSG Task 1 Follow-up Question Q1.2 elicits stakeholder comments on the US DOE ARL GREET model for assessing the environmental impact of EVs (comment period closed on 2/9/2018).



**In the Matter of the Petition of  
Atlantic City Electric Company  
for Approval of a Voluntary  
Program for Plug-In Vehicle  
Charging  
BPU Docket No. EO18020190**

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