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CASE MANAGEMENT

APR 23 2018

Philip J. Passanante
Assistant General Counsel

BOARD OF PUBLIC UTILITIES
TRENTON, NJ



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BOARD OF PUBLIC UTILITIES

April 19, 2018

APR 23 2018

VIA FEDERAL EXPRESS and
ELECTRONIC MAIL

dianne.solomon@bpu.nj.gov
board.secretary@bpu.nj.gov

MAIL RECEIVED

Honorable Dianne Solomon
Commissioner
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: In the Matter of the Petition of Atlantic City Electric Company for Approval of an Infrastructure Investment Program, and Related Cost Recovery Mechanism, Pursuant to *N.J.A.C. 14:3-2A.1 Et Seq.*
BPU Docket No. EO18020196

Dear Commissioner Solomon:

Atlantic City Electric Company ("ACE" or the "Company"), the Petitioner in the above-referenced matter, files this letter to address certain outstanding procedural matters related to this proceeding, including pending Motions to Participate, a proposed Agreement of Non-Disclosure of Information Claimed to be Confidential, and proposal of a procedural schedule.

First, the Company is in receipt of a Motion to Participate filed by Public Service Electric and Gas Company ("PSE&G") on March 13, 2018, and a second Motion to Participate filed by Jersey Central Power & Light Company ("JCP&L") on March 30, 2018. Please be advised that the Company does not object to the granting of either Motion to Participate.

Second, attached please find a proposed Agreement of Non-Disclosure of Information Claimed to be Confidential (the "NDA"). The Company has adopted what it believes is the most current version of the standard NDA utilized by the Staff of the Board of Public Utilities ("Board Staff"). No substantive changes have been made to the NDA, and the Company requests that Board Staff and the Division of Rate Counsel execute the NDA as soon as possible so that the Company made provide to those parties the confidential portions of the Appendix to the Direct Testimony of Bryan L. Clark.

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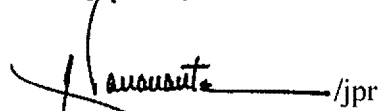
Honorable Dianne Solomon
April 19, 2018
Page 2

Finally, the Company has prepared a proposed procedural schedule for your consideration. As you may recall, ACE has proposed that its Infrastructure Investment Program begin in January 2019. ACE has drafted this schedule to permit the Board to reach a decision on this matter by October 2018 so that infrastructure investments may begin in an orderly fashion as proposed in January 2019.

Proposed ACE IIP Procedural Schedule	
February 28, 2018	Case filed.
April, 2018	Pre-Hearing Conference with Presiding Commissioner Solomon.
April 13, 2018	Deadline for all Motions to Intervene.
May 1, 2018	All first round discovery requests propounded on the Company.
May 16, 2018	All first round discovery responses provided by ACE.
May 30, 2018	All second round discovery requests propounded on the Company.
May, 2018	Two public comment hearings in the service territory (at 3:30 PM and 5:30 PM), preferably at Mays Landing.
June 22, 2018	All second round discovery responses provided by ACE.
June 29, 2018	Discovery conference/settlement discussions.
July 9, 2018	Rate Counsel/Intervenor Direct Testimony is due.
July 17, 2018	Discovery propounded on Rate Counsel/Intervenor Direct Testimony.
August 3, 2018	Rate Counsel/Intervenor responses to discovery requests are due.
August 10, 2018	Rebuttal Testimony filed by parties as appropriate.
August 20, 2018	Discovery requests propounded on Rebuttal Testimony.
September 5, 2018	Responses to discovery requests on Rebuttal Testimony are due.
September 12-14, 2018	Three days of evidentiary hearings.
October 5, 2018	Initial Briefs due.
October 19, 2018	Reply Briefs due.
October 29, 2018	BPU Decision.

Should you have any questions regarding any of these matters, please contact me. Thank you for your consideration.

Respectfully submitted,


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

Enclosure

cc: Service List

**IN THE MATTER OF THE PETITION OF
ATLANTIC CITY ELECTRIC COMPANY
FOR APPROVAL OF AN
INFRASTRUCTURE INVESTMENT
PROGRAM, AND RELATED COST
RECOVERY MECHANISM, PURSUANT
TO N.J.A.C. 14:3-2A.1 ET SEQ.**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

BPU DOCKET NO. EO18020196

**AGREEMENT OF
NON-DISCLOSURE
OF INFORMATION**

It is hereby AGREED, as of the _____ day of April, 2018, by and among Atlantic City Electric Company (“Petitioner”), the Staff of the New Jersey Board of Public Utilities (“Board Staff”) and the Division of Rate Counsel (“Rate Counsel”) (collectively, the “Parties”), who have agreed to execute this Agreement of Non-Disclosure of Information Claimed to be Confidential (“Agreement”), and to be bound thereby that:

WHEREAS, in connection with the above-captioned proceeding before the Board of Public Utilities (the “Board”) and/or the Office of Administrative Law (the “OAL”), Petitioner and/or another party (“Producing Party”) may be requested or required to provide petitions, pre-filed testimony, other documents, analyses and/or other data or information regarding the subject matter of this proceeding that the Producing Party may claim constitutes or contains confidential, proprietary or trade secret information, or which otherwise may be claimed by the Producing Party to be of a market-sensitive, competitive, confidential or proprietary nature (hereinafter sometimes referred to as “Confidential Information” or “Information Claimed to be Confidential”); and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the exchange of information while recognizing that under Board regulations at N.J.A.C. 14:1-12 et seq., a request for confidential treatment shall be submitted to the Custodian who is to rule on requests made pursuant to the Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et seq., unless such

information is to be kept confidential pursuant to court or administrative order (including, but not limited to, an Order by an Administrative Law Judge sealing the record or a portion thereof pursuant to N.J.A.C. 1:1-14.1, and the parties acknowledge that an Order by an Administrative Law Judge to seal the record is subject to modification by the Board), and also recognizing that a request may be made to designate any such purportedly confidential information as public through the course of this administrative proceeding; and

WHEREAS, the Parties acknowledge that unfiled discovery materials are not subject to public access under OPRA; and

WHEREAS, the Parties acknowledge that, despite each Party's best efforts to conduct a thorough pre-production review of all documents and electronically stored information ("ESI"), some work product material and/or privileged material ("protected material") may be inadvertently disclosed to another Party during the course of this proceeding; and

WHEREAS, the undersigned Parties desire to establish a mechanism to avoid waiver of privilege or any other applicable protective evidentiary doctrine as a result of the inadvertent disclosure of protected material;

NOW, THEREFORE, the Parties hereto, intending to be legally bound thereby, DO HEREBY AGREE as follows:

1. The inadvertent disclosure of any document or ESI that is subject to a legitimate claim that the document or ESI should have been withheld from disclosure as protected material shall not waive any privilege or other applicable protective doctrine for that document or ESI or for the subject matter of the inadvertently disclosed document or ESI if the Producing Party, upon becoming aware of the disclosure, promptly requests its return and takes reasonable precautions to avoid such inadvertent disclosure.

2. Except in the event that the receiving party or parties disputes the claim, any documents or ESI that the Producing Party deems to contain inadvertently disclosed protected material shall be, upon written request, promptly returned to the Producing Party or destroyed at the Producing Party's option. This includes all copies, electronic or otherwise, of any such documents or ESI. In the event that the Producing Party requests destruction, the receiving party shall provide written confirmation of compliance within thirty (30) days of such written request. In the event that the receiving party disputes the Producing Party's claim as to the protected nature of the inadvertently disclosed material, a single set of copies may be sequestered and retained by and under the control of the receiving party until such time as the Producing Party has received final determination of the issue by the Board of Public Utilities or an Administrative Law Judge, provided that the Board has not modified or rejected an order by the Administrative Law Judge.

3. Any such protected material inadvertently disclosed by the Producing Party to the receiving party pursuant to this Agreement shall be and remain the property of the Producing Party.

4. Any Information Claimed to be Confidential that the Producing Party produces to any of the other Parties in connection with the above-captioned proceeding and pursuant to the terms of this Agreement shall be specifically identified and marked by the Producing Party as Confidential Information when provided hereunder. If only portions of a document are claimed to be confidential, the producing party shall specifically identify which portions of that document are claimed to be confidential. Additionally, any such Information Claimed to be Confidential shall be provided in the form and manner prescribed by the Board's regulations at N.J.A.C. 14:1-12 et seq., unless such information is to be kept confidential pursuant to court or

administrative order. However, nothing in this Agreement shall require the Producing Party to file a request with the Board's Custodian of Records for a confidentiality determination under N.J.A.C. 14:1-12 et seq., with respect to any Information Claimed to be Confidential that is provided in discovery and not filed with the Board.

5. With respect to documents identified and marked as Confidential Information, if the Producing Party's intention is that not all of the information contained therein should be given protected status, the Producing Party shall indicate which portions of such documents contain the Confidential Information in accordance with the Board's regulations at N.J.A.C. 14:1-12.2 and 12.3. Additionally, the Producing Party shall provide to all signatories of this Agreement full and complete copies of both the proposed public version and the proposed confidential version of any information for which confidential status is sought.

6. With respect to all Information Claimed to be Confidential, it is further agreed that:

(a) Access to the documents designated as Confidential Information, and to the information contained therein, shall be limited to the Party signatories to this Agreement and their identified attorneys, employees, and consultants whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding.

(b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than their identified employees and any identified experts and consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and is not expected to testify, or is called to testify in this proceeding. All consultants or experts of any Party to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall

have previously executed a copy of the Acknowledgement of Agreement attached hereto as "Attachment 1", which executed Acknowledgement of Agreement shall be forthwith provided to counsel for the Producing Party, with copies to counsel for Board Staff and Rate Counsel.

(c) No other disclosure of Information Claimed to be Confidential shall be made to any person or entity except with the express written consent of the Producing Party or their counsel, or upon further determination by the Custodian, or order of the Board, the Government Records Council or of any court of competent jurisdiction that may review these matters.

7. The undersigned Parties have executed this Agreement for the exchange of Information Claimed to be Confidential only to the extent that it does not contradict or in any way restrict any applicable Agency Custodian, the Government Records Council, an Administrative Law Judge of the State of New Jersey, the Board, or any court of competent jurisdiction from conducting appropriate analysis and making a determination as to the confidential nature of said information, where a request is made pursuant to OPRA, N.J.S.A. 47:1A-1 et seq. Absent a determination by any applicable Custodian, Government Records Council, Administrative Law Judge, the Board, or any court of competent jurisdiction that a document(s) is to be made public, the treatment of the documents exchanged during the course of this proceeding and any subsequent appeals is to be governed by the terms of this Agreement.

8. In the absence of a decision by the Custodian, Government Records Council, an Administrative Law Judge, or any court of competent jurisdiction, the acceptance by the undersigned Parties of information that the Producing Party has identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Likewise, the affidavit(s)

submitted pursuant to N.J.A.C. 14:1-12.8 shall not alone be presumed to constitute adequate proof that the Producing Party is entitled to a protective order for any of the information provided hereunder.

9. In the event that any Party seeks to use the Information Claimed to be Confidential in the course of any hearings or as part of the record of this proceeding, the Parties shall seek a determination by the trier of fact as to whether the portion of the record containing the Information Claimed to be Confidential should be placed under seal. Furthermore, if any Party wishes to challenge the Producing Party's designation of the material as Confidential Information, such Party shall provide reasonable notice to all other Parties of such challenge and the Producing Party may make a motion seeking a protective order. In the event of such challenge to the designation of material as Confidential Information, the Producing Party, as the provider of the Information Claimed to be Confidential, shall have the burden of proving that the material is entitled to protected status. However, all Parties shall continue to treat the material as Confidential Information in accordance with the terms of this Agreement, pending resolution of the dispute as to its status by the trier of fact.

10. Confidential Information that is placed on the record of this proceeding under seal pursuant to a protective order issued by the Board, an Administrative Law Judge, provided that the Board has not modified or rejected an order by the Administrative Law Judge, or any court of competent jurisdiction, shall remain with the Board under seal after the conclusion of this proceeding. If such Confidential Information is provided to appellate courts for the purposes of an appeal(s) from this proceeding, such information shall be provided, and shall continue to remain, under seal.

11. This Agreement shall not:

(a) Operate as an admission for any purpose that any documents or information produced pursuant to this Agreement are admissible or inadmissible in any proceeding; or

(b) Prejudice in any way the right of the Parties, at any time, on notice given in accordance with the rules of the Board, to seek appropriate relief in the exercise of discretion by the Board for violations of any provision of this Agreement.

12. Within forty-five (45) days of the final Board Order resolving the above-referenced proceeding, all documents, materials and other information designated as "Confidential Information," regardless of format, shall be destroyed or returned to counsel for the Producing Party. In the event that such Board Order is appealed, the documents and materials designated as "Confidential Information" shall be returned to counsel for the Producing Party or destroyed within forty-five (45) days of the conclusion of the appeal.

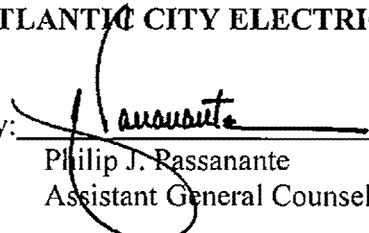
Notwithstanding the above return requirement, Board Staff and Rate Counsel may maintain in their files copies of all pleadings, briefs, transcripts, discovery and other documents, materials and information designated as "Confidential Information," regardless of format, exchanged or otherwise produced during these proceedings, provided that all such information and/or materials that contain Information Claimed to be Confidential shall remain subject to the terms of this Agreement. The Producing Party may request consultants who received Confidential Information, who have not returned such material to counsel for the Producing Party as required above, to certify in writing to counsel for the Producing Party that the terms of this Agreement have been met upon resolution of the proceeding.

13. The execution of this Agreement shall not prejudice the rights of any Party to seek relief from discovery under any applicable law providing relief from discovery.

14. The Parties agree that one original of this Agreement shall be created for each of the signatory parties for the convenience of all. The signature pages of each original shall be executed by the recipient and transmitted to counsel of record for Petitioner, who shall send a copy of the fully executed document to all counsel of record. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all Parties.

IN WITNESS THEREOF, the undersigned Parties do HEREBY AGREE to the form and execution of this Agreement.

**PETITIONER:
ATLANTIC CITY ELECTRIC COMPANY**

By: 
Philip J. Passanante
Assistant General Counsel

**GURBIR S. GREWAL
ATTORNEY GENERAL
OF NEW JERSEY
Attorney for the Staff of the
New Jersey Board of Public Utilities**

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

By: _____

By: _____

Deputy Attorney General

Assistant Deputy Rate Counsel

Dated: _____

**IN THE MATTER OF THE PETITION OF
ATLANTIC CITY ELECTRIC COMPANY
FOR APPROVAL OF AN
INFRASTRUCTURE INVESTMENT
PROGRAM, AND RELATED COST
RECOVERY MECHANISM, PURSUANT
TO N.J.A.C. 14:3-2A.1 ET SEQ.**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

BPU DOCKET NO. EO18020196

**AGREEMENT OF
NON-DISCLOSURE
OF INFORMATION**

ACKNOWLEDGMENT OF AGREEMENT

The undersigned is an attorney, employee, consultant and/or expert witness for the Division of Rate Counsel or an intervenor who has received, or is expected to receive, Confidential Information provided by Atlantic City Electric Company or by another party (“Producing Party”) that has been identified and marked by the Producing Party as “Confidential Information.” The undersigned acknowledges receipt of the Agreement of Non-Disclosure of Information Claimed to be Confidential and agrees to be bound by the terms of the Agreement.

Dated: _____

By: _____
(Name, Title and Affiliation)