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CASE MANAGEMENT

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TRENTON, NJ

State of New Jersey

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FORWARD
CASE MANAGEMENT

2019 NOV 21 A 10: 06

BOARD OF PUBLIC UTILITIES
STEFANIE A. BRAND
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Director

November 20, 2019

Via Hand Delivery and Electronic Mail

Honorable Aida Camacho-Welch, Secretary
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350

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NOV 20 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**Re: In the Matter of the Relocation and Consolidation of Atlantic City Electric Company's Transmission System Operations Control Function
BPU Docket No. EO19070834**

Dear Secretary Camacho-Welch:

Please accept for filing an original and ten (10) copies of the **PUBLIC** version of these comments filed on behalf of the Division of Rate Counsel ("Rate Counsel") regarding the above-referenced matter. Enclosed is one additional copy. **Please stamp and date the copy as "filed" and return it to the courier.**

Please note that Rate Counsel's comments include information claimed to be confidential by the Petitioner, Atlantic City Electric Company. Since the parties have signed a non-disclosure agreement in this matter, electronic copies are only being provided the parties identified in that agreement. Thank you for your consideration and attention to this matter.

*Case Mgmt
list copied*

PUBLIC VERSION

I. INTRODUCTION

Rate Counsel appreciates the opportunity to file comments regarding Atlantic City Electric Company's ("ACE" or the "Company") petition ("the Petition") before the Board of Public Utilities ("Board" or "BPU") for approval to relocate the Company's transmission system control function from Mays Landing, New Jersey to a new transmission system operations facility ("TSO North") that is proposed to be constructed in Kennett Square, Pennsylvania. The Petition notes that the proposed TSO North facility will consolidate transmission control functions for ACE; Delmarva Power & Light Company ("DPL"); and Philadelphia Electric Company ("PECO"). Rate Counsel has the following comments on the Company's proposal.

II. BACKGROUND

The Company's cover letter submitting the Petition provides that "ACE's customers will not be negatively impacted" by the proposed relocation and that the Petition does not propose an increase in rates "subject to the Board's jurisdiction."¹ Through the pre-filed joint testimony of Mike Kormos, Senior Vice President, Transmission & Compliance of Exelon Utilities ("EU"); Darryl Stokes, Vice President, Transmission System Operations & Planning of EU; and Kenneth Braerman, Director of Transmission Operations & Planning for Baltimore Gas and Electric Company ("BGE"), the Company states that the current Mays Landing facility meets North American Electric Corporation ("NERC") minimum requirements standards for transmission control functions.² In addition, the Company states that all of the other eight Exelon utilities' transmission control facilities currently meet regulatory standards.³

¹ Petition Cover Letter at 2.

² Direct Testimony of Mike Kormos, Darryl Stokes, and Kenneth Braerman ("Direct Testimony"), at A15.

³ Direct Testimony at A17.

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However, the Company asserts that the facility does not meet “industry best practices” to address anticipated threats from weather or physical, cyber, or electromagnetic pulses (“EMP”) attacks.⁴ Although the Company never specifically identifies or defines the “best practices” in its Petition, ACE noted that its current transmission control functions were insufficient when compared to the unspecified “current and continually improving industry best practices.”⁵ The best practices formulated by the Company were informed by <Begin Confidential> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] <End Confidential>⁶

ACE also stated that there has been an “increased focus on anticipating threats to the electric system, including from extreme weather, physical and cyber-attacks, and [EMPs].”⁷ The Petition also states there is a need to: “enhance physical and cyber security at transmission operations control facilities; harden transmission control facilities against EMP threats; optimize transmission system operator staffing and training; improve transmission system operator situational awareness; and establish continuity of electric system control for disaster recovery purposes.”⁸

The Petition proposes that the TSO North consolidation is the most cost-effective solution to address the facility enhancement needs identified by the Company.⁹ According to ACE, the proposed consolidation would allow Exelon to consolidate transmission functions at

⁴ Direct Testimony at A16.

⁵ Direct Testimony at A19.

⁶ See Confidential Response to RCR-ENG-1.

⁷ Petition at ¶5.

⁸ *Ibid.*

⁹ Petition at ¶10.

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lower cost than if ACE elected to build a dedicated transmission control facility solely for ACE.¹⁰

ACE states that it is seeking Board approval to the extent necessary, but also states that “ACE is not of the view that Board approval is required”¹¹ To that end, the Company requests that the Board disclaim “jurisdiction over the transmission system control function consolidation initiative.”¹² Alternatively, ACE seeks: (1) Board approval to relocate the current transmission operations into the proposed consolidated TSO North transmission system control facility to be located in Kennett Square, Pennsylvania; (2) Board approval to “own and operate the TSO North facility jointly with its affiliated public utilities;” (3) Board approval to enter into a “proposed lease arrangement” with Exelon Business Services Company, LLC; and (4) a finding by the Board that ACE’s proposal “is in the public interest, and is necessary and proper so that the Company can continue to provide safe, adequate, and proper service to its customers.”¹³

Of the Company’s sister utilities in other jurisdictions, namely Pennsylvania, Delaware, and Maryland, the Company states that only Pennsylvania requires some form of regulatory approval or notification for the proposed relocation project.¹⁴ Notably, the Pennsylvania Public Utility Commission did not make a determination on the reasonableness of the costs for the land and building in its approval.¹⁵

¹⁰ Ibid.

¹¹ Petition at ¶17, n.5.

¹² Petition at ¶17.

¹³ Petition at *14-15.

¹⁴ Response to RCR-ENG-22, Attachments 1 &2.

¹⁵ See Response to RCR-ENG-22, Attachment 2.

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III. COMMENTS

A. Board Authority

Board approval is required for the relief sought in ACE's petition. It is well-established that the Board has jurisdiction over "all services necessary for the transmission and distribution of electricity"¹⁶ This jurisdiction specifically includes safety and reliability.¹⁷ The Board's statutory authority is to be read broadly and the statutes governing public utilities are to be construed liberally.¹⁸ "The sweeping grant of power to the BPU is intended to delegate the widest range of regulatory power over utilities to the [BPU]."¹⁹ This authority includes incidental powers not expressly granted by statute, but necessary for the Board to accomplish its statutory mandate.²⁰ Communication between distribution and transmission operations is a critical component of any reliable electric utility system. Accordingly, the Company's alternative request for a declaratory ruling disclaiming jurisdiction is inappropriate and should be denied by the Board.

B. The Petition Fails to Show that the Proposed Consolidation is Necessary and Proper for Safe, Adequate and Proper Service

Although the Company acknowledges that the ACE, PECO, and DPL transmission consolidation is driven by a desire to meet "Industry Best Practices," it fails to provide sufficient justification for performing the consolidation at this time.²¹ The Company's self-defined "Industry Best Practices," are vague and amorphous terms which have no standard basis since they are not supported by documentation of federal, state, or industry guidance and there is no reference to regulatory requirements. Rather, to justify its decision, Exelon conducted an

¹⁶ N.J.S.A. 48:2-13(d).

¹⁷ Ibid. See also 16 U.S.C.S. § 824o(i)(3).

¹⁸ See In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961).

¹⁹ Borough of Haledon v. Borough of N. Haledon, 358 N.J. Super. 289, 299 (App. Div. 2003)(quoting Twp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969)).

²⁰ Id. at 299 (citing A.A. Mastrangelo, Inc. v. Comm'r of Dept. of Envtl. Prot., 90 N.J. 666, 683-684 (1982)).

²¹ Direct Testimony at A16.

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external benchmarking analysis of selected peer utilities.²² The analysis compared Exelon with

<Begin Confidential> [REDACTED] . <End

Confidential> Exelon's internal analysis found the following:²³ <Begin Confidential>

[REDACTED]

- [REDACTED]

<End Confidential>

The Company notes that the Mays Landing facility<Begin Confidential> [REDACTED]

[REDACTED] <End Confidential> to the proposed Kennett Square

facility.²⁴ Specifically, the Company noted that: <Begin Confidential>

[REDACTED]

- [REDACTED]

<End Confidential>

<Begin Confidential> [REDACTED]

[REDACTED]

[REDACTED] <End Confidential>

Moreover, the Company acknowledges that the Mays Landing facility currently meets NERC requirements.²⁵ The other Exelon affiliated transmission control facilities also meet

²² Responses to RCR-ENG-1 and RCR-ENG-1 Attachment 1 Confidential.

²³ Ibid.

²⁴ Response to S-ENG-2 Confidential.

²⁵ Direct Testimony at A15.

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NERC requirements.²⁶ This distinction is important in that there is no current regulatory requirement for the Company or the other Exelon utilities to upgrade the facilities, including the Mays Landing facility. The Company also acknowledges that it will not allow the Mays Landing facility to fall below the minimum NERC requirements.²⁷ Accordingly, Rate Counsel believes that the Company has not shown that the consolidation proposal is required pursuant to any state or federal guidelines, nor necessary and proper at this time for the Company to continue to provide safe, adequate and proper service.

C. EMP Resiliency

To substantiate the need for this new consolidated facility, the Company referenced a number of initiatives to examine the issue of EMP threats to the electric utility industry.²⁸ The Company contends that, to protect against an EMP event, a new EMP hardened facility is preferred because EMP hardening of the existing facility would be difficult and cost prohibitive.²⁹ In April 2019, NERC created a task force (“NERC Task Force”) to identify reliability concerns and opportunities for improving resilience in the industry.³⁰ Exelon’s Braerman is among the members on the NERC Task Force.³¹ The NERC Task Force recently issued a strategic recommendations report on November 5, 2019 that recommends *the development* of guidelines for EMP mitigation.³² Rate Counsel notes that the report declined to make any specific recommendation because the research on the impacts of EMPs is still ongoing

²⁶ *Id.* at A17.

²⁷ Response to S-ENG-3.

²⁸ See S-ENG-2 **Confidential**.

²⁹ *Ibid.*

³⁰ <https://www.nerc.com/pa/Stand/Pages/EMPTaskForce.aspx>. Accessed Nov. 14, 2019.

³¹ NERC EMP Task Force, Strategic Recommendations at 18 (Nov. 5, 2019) (“EMP Task Force: Strategic Recommendations”) (available at

https://www.nerc.com/pa/Stand/EMP%20Task%20Force%20Posting%20DL/NERC_EMP_Task_Force_Report.pdf)

³² *Id.* at 11.

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and the NERC Task Force “is unable to endorse a particular mitigation strategy at this time for all stakeholders.”³³ Moreover, The NERC Task Force recommended developing clear and consistent “federal financial support” for EMP mitigation plans and referenced the ongoing investigation into cost recovery measures by the Secretary of Homeland Security.³⁴

An EMP event would affect the entire electric utility system including generation, transmission, distribution systems.³⁵ The Company also acknowledges that an EMP incident would impact ACE’s unprotected distribution equipment, even if the transmission facility is hardened.³⁶ The Company admits that no utility in the nation is fully hardened against EMPs, and that it would be a large and significant undertaking to fully harden a utility.³⁷ The NERC Task Force also stated that the electric utility industry has “historically . . . hardened its individual components, allowing flexibility to install them in virtually any environment” rather than entire facilities.³⁸ On the other hand, the Company contends that having a hardened transmission control center would facilitate faster recovery for the entire system under an EMP incident.³⁹

Based on the lack of conclusive recommendation from the EMP Task Force, of which Exelon was represented as a member, Rate Counsel recommends that the Board reject ACE’s request at this time until further guidance from NERC is available. In the alternative, the Board should require ACE to update the Board once final guidance from NERC is provided and the

³³ Id. at 11-12.

³⁴ See EMP Task Force: Strategic Recommendations at 3.

³⁵ See EMP Task Force: Strategic Recommendations at vii (stating that the “the disruptive influence of an EMP event seems likely to span across the full spectrum of power system assets”). See also EMP Task Force: Strategic Recommendations at 3 (stating “effective EMP mitigation will span all portions of the electric sector: generation, transmission, and distribution”)(emphasis added).

³⁶ Response to RCR-ENG-20.

³⁷ Ibid.

³⁸ EMP Task Force: Strategic Recommendations at 11.

³⁹ Ibid.

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Company shall assume the risk that future guidance or policy on cost recovery measures will make the investment obsolete and therefore imprudent.

D. Consolidating and Moving the Transmission Operations for ACE out of New Jersey Involves Risk

Rate Counsel notes that the consolidation of transmission functions from three separate utilities into a single facility does carry some practical risk. While it is possible that coordination between service territories may be improved, there is the risk that a large enough event that spans all three service territories, such as a Geomagnetic Disturbance (“GMD”) event, could overwhelm the proposed facility.⁴⁰ A GMD event is much more likely than a man-made EMP event, because an EMP attack requires “both a powerful nuclear warhead *and* a sophisticated ballistic missile able to detonate at high altitude.”⁴¹ However, the NERC Task Force noted that GMD events “tend to remain confined to longer lines, operating at transmission voltage levels, and interfaced to large power apparatus (e.g., generators and transformers)” and not affect command and control centers.⁴² Additionally, consolidation into a single location could be riskier than having multiple locations and make a more attractive target or suffer a greater impact in the face of a major weather event or other disaster, such as a terrorist attack using conventional means.

⁴⁰ On March 13, 1989 the entire Canadian province of Quebec, experienced an electrical power blackout for nine hours. Dept. of Homeland Security, “Strategy for Protecting and Preparing the Homeland Against Threats of Electromagnetic Pulse and Geomagnetic Disturbances, Appendix A at A-4 (October 9, 2018) (available at https://www.dhs.gov/sites/default/files/publications/18_1009_EMP_GMD_Strategy-Non-Embargoed.pdf)

⁴¹ See Christopher W. Blair, Casey Mahoney, Shira E. Pindyck and Joshua A. Schwartz, “Trump issued an executive order to prepare for an EMP attack. What is it, and should you worry,” Washington Post (March 29, 2019) (available at <https://www.washingtonpost.com/politics/2019/03/29/trump-issued-an-executive-order-prepare-an-emp-attack-what-is-it-should-you-worry/>). See also Dept. of Homeland Security, “Strategy for Protecting and Preparing the Homeland Against Threats of Electromagnetic Pulse and Geomagnetic Disturbances,” Appendix A at A-4 (October 9, 2018) (available at https://www.dhs.gov/sites/default/files/publications/18_1009_EMP_GMD_Strategy-Non-Embargoed.pdf)

⁴² EMP Task Force: Strategic Recommendations at vii.

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For ACE's distribution system, the operational facilities will remain in Mays Landing.⁴³ The Company contends that there will be redundant communications between the proposed Kennett Square facility and ACE's Incident Management Team in Mays Landing.⁴⁴ The Company states that satellite phones will also be in place at both facilities to provide back-up communications in addition to landlines and cell phones.⁴⁵ However, the fact that transmission system operations and distribution operations personnel will be approximately 100 miles apart and unable to communicate face-to-face during an emergency ostensibly qualifies as an increased risk, which should be carefully considered by the Board. This increased risk is especially apparent in the context of an EMP event that may disrupt satellite, cell, and landline communication systems. While the Company states that it will comply with NERC requirements for personnel communication, this does not guarantee that such options between transmission and distribution operators will work when needed.⁴⁶ Currently, transmission and distribution operators can still communicate face-to-face during an emergency. Due to these concerns, Rate Counsel strongly recommends that the Board direct ACE to provide additional assurance of communication between necessary personnel before granting, or as a condition to granting, the Company's request.

⁴³ Response to S-ENG-9.

⁴⁴ Response to S-ENG-7.

⁴⁵ Response to S-ENG-8.

⁴⁶ Failure of Verizon's wireless network was identified as a major contributor to the delays in ACE customer restoration following the outages on June 23, 2015. See NJBPU Division of Reliability and Security, June 23, 2015 "Bow Echo" Weather Event: Report and Recommendations on the Response and Restoration of Electric Utility Outages at Page 10 (August 26, 2015)(available at <https://www.state.nj.us/bpu/pdf/boardorders/2015/20150921/9-11-15-6B.pdf>)

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E. Disposition of the Current Transmission Operations Center Employees and Space

The Petition states that there are approximately seventeen (17) employees at Mays Landing “who perform some portion of the transmission system control function.”⁴⁷ These 17 employees perform the equivalent of 15.25 full-time transmission function employees.⁴⁸ ACE will offer these employees the option to relocate permanently to the TSO North facility.⁴⁹ ACE anticipates that only “an equivalent of 10 employees will be allocated to performing [ACE]” transmission functions at the new TSO North Facility.⁵⁰ However, any employees that choose not to relocate will remain at the Mays Landing facility in a distribution role.⁵¹ If they choose to remain, their salaries and benefits will not change in their new distribution roles.⁵² The Company expects most of the seventeen employees will elect to remain at Mays Landing.⁵³ ACE plans to create six new Senior Substation Operator positions to reassign current transmission system operators who choose to stay in May Landing.⁵⁴ The six new Senior Substation Operators would utilize the space vacated by the transmission system control operations personnel.⁵⁵ ACE does not explicitly state to what positions the other eleven transmission operators will be reassigned.⁵⁶ Since ACE characterizes this as a voluntary decision by its employees, ACE asserts “employees will not be separated as a result” of the consolidation. The Board’s Order approving the merger of Exelon Corporation and Pepco Holdings, Inc. limited the number of involuntary reductions due to merger integration to a total of twenty-five

⁴⁷ Petition at ¶8.

⁴⁸ Response to RCR-ENG-8.

⁴⁹ Petition at ¶8.

⁵⁰ Response to RCR-ENG-16

⁵¹ Petition at ¶8.

⁵² Response to S-ENG-10.

⁵³ Petition at ¶8.

⁵⁴ Response to RCR-ENG-17.

⁵⁵ Response to RCR-ENG-19.

⁵⁶ Ibid.

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(25) ACE positions.⁵⁷ Any approval by the Board should reaffirm the requirements of that Order.

Based on the limited number of positions for transmission operators at the new facility and the lack of distribution roles at the current facility (without the creation of new ones), Rate Counsel has serious reservations regarding the prudence of ACE's employee strategy and whether it complies with the intent of the employment requirements set forth in the Merger Order. The Board should not approve the current Petition without first addressing whether the moving of 17 employees to fill 10 full-time positions complies with the Board's Merger Order requirements.

F. Prudency Review

Rate Counsel recommends that the prudence and recoverability of these costs should be addressed when Company provides information on associated costs for the proposed TSO North facility as part of the Company's next base rate case and as part of the Company's annual transmission formula rates proceeding. While the proposed 17 percent pro rata allocation of consolidation costs for ACE is based on ACE's transmission share, the NERC Task Force noted that federal cost recovery mechanisms have yet to be developed.⁵⁸ Further, the President's Executive Order "Coordinating National Resilience to Electromagnetic Pulses" tasked the Secretary of Homeland Security to, among other things, identify cost recovery measures by March 29, 2020. To date, these cost recovery measures have not been identified, therefore Rate Counsel, nor the Board, can determine with certainty that ACE's proposed recovery method is reasonable.⁵⁹ By choosing to proceed without definitive guidance or clear policy on cost

⁵⁷ IMO the Merger of Exelon Corporation and Pepco Holdings, Inc., BPU Dkt. EM14060581 at 11 (Mar. 6, 2015).

⁵⁸ See EMP Task Force: Strategic Recommendations at 3.

⁵⁹ Id. at 3, n.11.

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recovery, the Company should assume the risk that future guidance or policy measure will make this investment obsolete and therefore imprudent.

IV. CONCLUSION

Based on the foregoing, Rate Counsel reserves its rights to challenge, in any relevant federal or state rate proceeding, the recovery of the costs associated with the Company's filing. Due to the pending state of any industry guidelines or regulations and the mercurial nature of the industry best practices on which Exelon bases the need for its relocation of transmission center operations, Rate Counsel cannot agree that the Company has sufficiently shown the proposed relocation of ACE's transmission system operations is in the public interest or currently "necessary and proper" for the Company's provision of safe, adequate, and proper service. The Company failed to explain in detail the "industry best practices." Further, the Company's allusions to EMP hardening are based on only the most general of policy statements, for which specific guidelines have yet to be developed. Moreover, despite the Company's assurance that it will employ several redundant communication methods, it remains unclear whether these options (all of which operate electronically) will be sufficient or whether additional requirements will be mandated following conclusion of the currently ongoing research and development by NERC and other federal agencies, such as the Department of Homeland Security.

Accordingly, Rate Counsel does not believe the Company has provided a sufficient basis on which the Board can find that the proposed consolidation plan is currently in the public interest. The Company has failed to show that it is necessary and proper for the continued provision of safe, adequate, and proper service. In the event the Board chooses to approve the relocation of the transmission center operations, such approval should be conditioned upon the

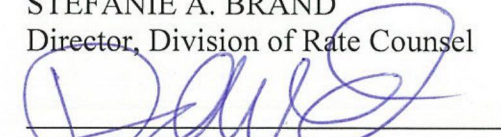
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conditions outlined in these comments, a subsequent prudency review, or audit in future Board proceedings.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By:



T. David Wand, Esq.
Assistant Deputy Rate Counsel

c: Service List

In the Matter of the Relocation and
Consolidation of Atlantic City
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System Operations Control Function
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