



May 4, 2020

Via Electronic Mail

Aida Camacho-Welch
Secretary of the Board
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

**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**

Dear Secretary Aida Camacho-Welch:

On behalf of Natural Resources Defense Council ("NRDC"), please find enclosed a Letter in Opposition to Rate Counsel's Motion to Dismiss (dated April 13, 2020) in the above-referenced matter. Copies of this Letter are being provided to all parties on the service list by electronic mail only.

Please acknowledge receipt of this Letter.

Respectfully submitted,

/s/ William D. Bittinger
William D. Bittinger
Daniel Greenhouse
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
973.424.1166
wbittinger@easternenvironmental.org
dgreenhouse@easternenvironmental.org
*Attorneys for Natural Resources Defense
Council*

Cc: Service list

Introduction

The Natural Resources Defense Council (“NRDC”) respectfully requests the Board of Public Utilities (“Board”) deny Rate Counsel’s April 13, 2020 Motion to Dismiss. The thirteen program offerings contained in Atlantic City Electric’s (“ACE”) December 17, 2019 Amended Petition are consistent with the policy objectives identified in the 2019 Energy Master Plan (“EMP”) and enshrined by the New Jersey Legislature in the Plug-In Vehicle Act (“PIV Act”). In particular, the State of New Jersey has identified decreasing emissions from the transportation sector through vehicle electrification -- including electric vehicles (“EV”) -- as the single biggest policy opportunity for New Jersey to meet its goals under the Global Warming Response Act (“GWRA”).¹ Electrifying the transportation sector can simultaneously decrease air pollution, support the operation of the electric grid, and put downward pressure on electric rates to the benefit of all utility customers. Furthermore, the Board has the existing statutory authority to adjudicate petitions by electric utilities for investments in charging infrastructure that further the goals of the EMP and PIV Act. Moreover, ACE’s proposed offerings in this case are substantially similar to numerous utility filings that obtained approval in other states, which found that utility involvement in the build out of EV charging infrastructure (“EVSE”) is necessary and vital to rapidly growing the number of EVs on the road and achieving climate and greenhouse gas reduction goals. The considerations raised in Rate Counsel’s Motion are not unique to New Jersey, and they have not prevented 26 other state utility regulatory commissions from reviewing and approving 81 individual utility applications comparable to the ACE proposal.² For these, and the following reasons, we request the Board deny Rate Counsel’s Motion to Dismiss so as to not delay the set procedural schedule.

I. Atlantic City Electric’s Program Offerings are Important for the Successful Implementation and Attainment of New Jersey’s Climate and Clean Energy Goals

ACE’s 13 program offerings are critical to achieving the main goal of New Jersey’s EMP: the reduction of energy consumption and emissions from the transportation sector.³ The EMP sets

¹ Board of Public Utilities, 2019 New Jersey Energy Master Plan Pathway to 2050, at 59. (*hereinafter* “EMP”).

² (<https://www.atlasevhub.com/>) Atlashub is a tool that allows users to examine different EV policies across the country.

³ *Id.*

the ambitious policy goal that “the transportation sector should be almost entirely decarbonized by 2050.”⁴ Further, it identifies fossil-fuel powered transportation as the state’s “leading cause of air pollutants,” noting that 42 percent of state emissions are attributable to the transportation sector, well above the national average of 28 percent.⁵ Therefore, the EMP recommends the state take “concrete steps to start to phase out motor gasoline and conventional diesel consumption as quickly as possible.”⁶

The EMP goes on to identify a goal of 330,000 light-duty electric vehicles on the road by 2025. This target is based on New Jersey’s participation in the California Clean Cars program, which requires an aggressive ramp-up of EVs leading up to 2025. New Jersey was the first state in the country to pass legislation to join the California Clean Cars program, which led to eight other states joining the program and ultimately led to the national codification by USEPA and USDOT of clean car and fuel efficiency standards (which the Trump Administration is working to weaken).⁷ To meet this ambitious target, the EMP concludes New Jersey will require a “comprehensive ‘EV Ecosystem’ that provides consumers with easy access to charging infrastructure for EVs. . . ,” and is done in partnership with New Jersey’s public utilities.⁸

In identifying the single largest barrier to greater EV adoption, the EMP describes range anxiety,⁹ and the “chicken-and-egg problem”-- where the private sector has not made a business case to install charging infrastructure without a critical mass of EVs on the road, and there will not be a critical mass of EVs on the road until there is sufficient charging infrastructure to eliminate range anxiety. States across the nation with similar EV targets have also dealt with this problem and identified utility investments in EVSE, such as those proposed by ACE, as a critical utility service to overcome the barriers to faster and more wide-spread EV adoption by their residents. In fact, 26 different state utility regulatory commissions have approved 81 applications submitted by 45 different electrical utilities, representing a collective investment of nearly \$1.5

⁴ Id.

⁵ Id. at 59.

⁶ Id.

⁷ *See* Clean Cars Law; 2011 Clean Car Standards.

⁸ EMP, at 46-65

⁹ Range anxiety is the fear of running out of charge before a driver reaches his or her destination.

billion in utility customer funds in programs that deploy charging infrastructure and undertake other actions to accelerate the electrification of the transportation sector.¹⁰

This stated “chicken and egg” issue is most acute in South Jersey and in the coverage of ACE’s service area, which has some of the lowest population density in the state and the largest expanse of protected lands -- primarily the 1.1 million acres of the New Jersey Pinelands National Reserve. This has created a situation where the private market has not provided extensive EVSE coverage throughout the region and especially outside of the major Shore towns in Cape May County and Atlantic City proper. Notably, there is a clear paucity of Direct Current Fast Charging (“DCFC”) EV chargers that are critical for EV drivers making either long commutes or day trips to the Jersey Shore and provide universal charging for all EV drivers. This is painfully obvious through the examination of any major EVSE phone app, like PlugShare, which clearly exhibits a EVSE charging desert in South Jersey outside of the aforementioned charging hot spots.

The importance of electrification of transportation in South Jersey is also acute because, even though the region is less densely populated than other areas of the state, it still is burdened with air pollution levels that create a public health hazard. Most of this pollution is especially acute in summer months, as ground level ozone emitted especially by light duty vehicles creates ozone alert days. According to the American Lung Association 2020 State of the Air report, Camden, Gloucester and Ocean Counties all received F grades for air quality on ground level ozone, including 24, 20 and 17 orange alert days, respectively. Atlantic and Cumberland Counties had significantly better air quality, and ranked as high as a B. Cape May and Burlington Counties did not have air monitors to provide air quality data. Camden County had the worst grade in the state for particulate air pollution from PM 2.5, garnering the only C grade in the state. The total number of pediatric and adult asthmatic cases in all of the Southern New Jersey counties in the ACE service area is 38,947 and 120,128, respectively, and the total number of COPD cases is

¹⁰ (<https://www.atlasevhub.com/>) Atlashub is a tool that allows users to examine different EV policies across the country.

79,685. The removal of fossil-fuel powered light duty auto emissions can have a direct positive impact on air quality and public health as the current COVID-19 pandemic has exposed.¹¹ Additionally, states have found that transportation electrification has the potential to benefit all utility customers, even those that do not yet have an EV, if charging is integrated properly in a way that benefits the grid. The EMP acknowledges that electrifying the transportation sector can provide benefits such as electric grid distribution, peak load shaving, and providing power back to the grid -- benefits and effects that fall squarely in the realm of a regulated utility.¹² EV investments also put downward pressure on rates for all utility customers-- the benefits of which are well understood--regardless of whether they own an EV.

A recent analysis by Synapse Energy Economics, entitled Electric Vehicles are Driving Electric Rates Down, concluded that “EVs offer a key opportunity to reduce harmful emissions and save customers money at the same time.”¹³ That study examined two utility service territories with the highest number of EVs of any in the U.S.: Pacific Gas & Electric (“PG&E”) and Southern California Edison (“SCE”). It found, based on real-world data, that EVs are pushing electric rates down, largely because they tend to charge overnight when people are sleeping and there is plenty of spare capacity on the grid.

Synapse evaluated the revenues and costs associated with EVs from 2012 through 2018 in PG&E and SCE service territories. They compared the new revenue the utilities collected from EV drivers to the cost of the energy required to charge those vehicles, plus the costs of any associated upgrades to the distribution and transmission grid and the costs of utility EV programs (similar to those proposed by ACE) that are deploying charging stations for all types of EVs. In total, EV drivers contributed an estimated \$584 million more than the associated costs. And this finding is not merely a result of the fact that most EV drivers in PG&E and SCE territory remain on default rates and pay high upper-tier prices as a result. Even if three in four were on time-of-

¹¹ American Lung Association, State of the Air 2020. Available at, <http://www.stateoftheair.org/city-rankings/states/new-jersey/>

¹² EMP, at 61-62

¹³ Frost *et al.* Synapse Energy Economics, Electric Vehicles are Driving Electric Rates Down, at 1 (June 2019), available at <https://www.synapse-energy.com/sites/default/files/EV-Impacts-June-2019-18-122.pdf>.

use rates designed for EVs, those drivers would still have provided approximately \$450 million in net-revenues.

Were comparable analysis done in New Jersey, the net revenue may be smaller because there are fewer EVs in New Jersey, but the results would almost certainly be similar. EV drivers in New Jersey are likely already putting downward pressure on utility rates to the benefit of all customers. And those benefits will continue to grow in the future as additional vehicles are added to the grid.

Another study completed by M.J. Bradley & Associates demonstrates similar benefits on the East Coast. The study found that the EV adoption levels needed to meet New York's climate goals would provide more than \$75 billion in net benefits, including \$24 billion in reduced utility bills for all utility customers stemming from the same effect already observed in the real world by the Synapse study.¹⁴ The New York analysis also estimates that drivers in the state could realize \$34 billion in reduced fuel and maintenance costs. Utility customers in New Jersey deserve to realize the same cost savings.

The Energy Information Agency tracks "household energy insecurity" and documents that "nearly a third of U.S. households reported facing a challenge in paying energy bills or sustaining adequate heating and cooling in their home in 2015."¹⁵ That number will likely only increase as a result of the current economic crisis. Utility regulators, consumer advocates, and environmentalists have a robust history of working together to reduce utility bills, especially for low-income households. But it's time for utility policy to target the total household energy bill. We should not focus on the average American household's \$1,300 annual electric bill while ignoring the \$2,000 to \$3,000 that the average household spends every year on gasoline. For the last 40 years, driving on electricity has been the cost equivalent of driving on dollar-a-gallon gasoline, and it is projected to stay that way for the next 30 years.¹⁶ In contrast, while gasoline prices are low now, they will likely spike dramatically as soon as demand picks up. Because

¹⁴Electric Vehicle Cost-Benefit Analysis, MJ Bradley & Associates, available at https://mjbradley.com/sites/default/files/NY_PEV_CB_Analysis_FINAL.pdf

¹⁵ <https://www.eia.gov/consumption/residential/reports/2015/energybills/>

¹⁶ Max Baumhefner, Go Electric to Avoid the Holiday Gas Price Roller Coaster, NRDC, 2018

electricity is generated from a diverse set of domestic fuels and because it is carefully regulated by state agencies, its price is inherently more stable, delivering energy cost savings households can bank on.

New Jersey should not let New York's citizens be alone in capturing such potential benefits but should act quickly to authorize programs, such as those proposed by ACE, that accelerate EV adoption and, in doing so, pull forward billions of dollars in potential reduced utility bills and reduced consumer expenditures to the benefit of all utility customers in the state.

II. The PIV Act Grants the Board Explicit and Broad Authority to Act on Utility EV Filings

Rate Counsel's motion asserts the Board lacks the authority to approve ACE's petition. It should be noted that only a handful (e.g. California, Oregon, Nevada) of the 26 states that have approved utility programs comparable to those proposed by ACE have done so pursuant to explicit and specific legislative authority. The vast majority of state utility commissions that have authorized utility investments to accelerate transportation electrification have done so pursuant to their generic and broad regulatory authority, just as the NJ Board could. Furthermore, the legislature has, in fact, granted the Board explicit and specific authority to consider programs such as those proposed by ACE. The Plug-In Vehicle Act ("PIV Act") enshrines the goals of the 2019 EMP and the Clean Cars EV mandate into law and provides the Board with far-reaching and explicit authority to take actions it deems necessary to achieve those goals. Specifically, the New Jersey Legislature declared "that increased use of plug-in electric vehicles can contribute significantly to the attainment of existing State air pollution and energy goals, including the objectives of the 'Global Warming Response Act,' P.L.2007, c.112 (C.26:2C-37 et seq.) and the State's Energy Master Plan." N.J.S.A. 48:25-1. The Legislature goes on to specifically enumerate key targets and policy goals for the state of New Jersey for the use of plug-in electric vehicles in the state, and *the development of plug-in electric vehicle charging infrastructure* to support that use. N.J.S.A. 48:25-3(a) (emphasis added). The specific goals established by the Legislature include:

1. At least 330,000 of the total number of registered light-duty vehicles in the State shall be plug-in electric vehicles by December 31, 2025;

2. At least 2 million of the total number of registered light-duty vehicles in the State shall be plug-in electric vehicles by December 31, 2035;
3. At least 85 percent of all new light-duty vehicles sold or leased in the State shall be plug-in electric vehicles by December 31, 2040;
4. At least 400 Direct Current Fast Chargers shall be available for public use at no fewer than 200 charging locations in the State;
5. At least 1,000 Level Two chargers shall be available for public use across the State by December 31, 2025, and after initial installation, those EVSE may be upgraded to higher power or DC Fast Chargers as appropriate by the owner or operator of the EVSE;
6. Aggressive goals for charging infrastructure build-out at multi-family residential properties;
7. Aggressive goals for charging infrastructure build-out at franchised overnight lodging establishments;
8. The electrification of state-owned non-emergency light-duty vehicles, with the electrification of 25 percent of the state fleet by 2025 and full electrification by 2035;
9. A rapid transition to electrify NJ Transit buses with all purchases being full electric in 2032 and a mandate that 10 percent of bus purchases made by the NJ Transit Corporation are electric by 2024, 50 percent by 2026 and 100 percent by 2032, with an initial priority for routes in low-income, urban or environmental justice communities; and
10. Other goals for medium-and heavy-duty vehicle electrification and infrastructure adopted by the NJDEP by December 31, 2020.

N.J.S.A. 48:25-3 (a)(1)-(10).

The ten goals contained in the Act are ambitious and far reaching. Recognizing the significant regulatory action necessary to achieve the goals established by the Act, the Legislature, in the same section of the PIV Act, explicitly provided that the Board may “pursuant to P.L.2019, c.362 (C.48:25-1 et al.) and any other existing statutory authority, adopt policies and programs to accomplish the goals established pursuant to this section.” N.J.S.A. 48:25-3(b). Based on a plain language reading of this section, the Board has the ability to act in furtherance of the ten enumerated goals contained in Section 3 of the PIV Act. Importantly, many of the explicit goals

identified by the Legislature originate in the EMP and many of them relate to charging infrastructure that ACE's program offerings would help achieve.

In addition to the broad grant of authority provided to the Board by the Legislature, the Legislature also directed the Board to establish a light-duty plug-in electric vehicle incentive program in Section 4 of the PIV Act--to be funded using the Plug-in Electric Vehicle Fund described in Section 7 of the Act, which states: “[m]oneys in the fund shall be used by the board solely for the purpose of disbursing the incentives established pursuant to sections 4 and 6 of P.L.2019, c.362 (C.48:25-4 and C.48:25-6).”¹⁷ Thus, the plain language of the PIV Act clearly indicates that the identified revenue streams and associated procedures in Section 7 only apply to incentive programs established under Section 4 and 6 of the Act, and not the attainment of the comprehensive set of goals contained in Section 3 of the Act or any other section.

Based on the plain language of the PIV Act, the Board is well within its authority to evaluate utility filings in furtherance of the goals identified in Section 3. The purported limitations on funding sources described by Rate Counsel rely solely on Section 7 of the PIV Act, and place no limitations on the types of funding, policies, or programs that may be leveraged to accomplish the goals of the Act. In its own reading of the Act, Rate Counsel focuses exclusively on the funding-streams identified in Section 7, the Plug-in Electric Vehicle Fund, and not the broad and explicit grants of authority contained in sections 1, 3, and 11 of Act.¹⁸

Rate Counsel's interpretation of N.J.S.A. 48:25-10 is similarly flawed. Section 10 of the PIV Act indicates that “an entity owning, controlling, operating, or managing electric vehicle service equipment shall not be deemed an electric public utility solely because of such ownership, control, operation, or management.”¹⁹ Therefore, a plain reading of the PIV Act indicates that a non-utility entity would not be regulated as a utility solely because it owns, controls, operates, or manages charging infrastructure. Section 10 does not bar utility involvement in the construction, ownership, or operation of EVSE infrastructure, nor establish such actions as a competitive

¹⁷ N.J.S.A. 48:25,4,7.

¹⁸ Rate Counsel Motion at 24-25. Rate Counsel's discussion of the PIV Act in this section is wholly limited to language contained in Section 7 of the Act.

¹⁹ N.J.S.A 48:25-10.

service. Statutes equivalent to N.J.S.A. 48:25-10 that exempt non-utility EV charging companies from regulation as public utilities exist in 26 other states, but they have not prevented those states from approving 55 different applications by 28 different utilities, representing a collective investment of \$1.374 billion in programs similar to those proposed by ACE.

Similarly, none of the arguments or principles of utility regulation upon which Rate Counsel relies, including its used and useful argument, are unique to New Jersey. States across the country with comparable or identical laws and regulations have nonetheless authorized 81 utility applications comparable to the program and offerings proposed by ACE.²⁰

Conclusion

Based on the foregoing, NRDC respectfully requests the Board deny Rate Counsel's Motion to Dismiss. None of the arguments raised by Rate Counsel are unique to New Jersey and the state should not be alone in failing to reap the benefits that widespread transportation electrification can provide to all utility customers.

Respectfully submitted,

/s/ William D. Bittinger
William D. Bittinger
Daniel Greenhouse
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102
973.424.1166
wbittinger@easternenvironmental.org
dgreenhouse@easternenvironmental.org
Attorneys for Natural Resources Defense Council

Date: May 4, 2020

²⁰ See, e.g., Atlas Public Policy, EV Hub, available at <https://www.atlasevhub.com/>