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March 7, 2022

<u>Via Electronic Mail</u>
Aida Camacho-Welch, Secretary
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RE: In the Matter of the Petition of Atlantic City Electric For Approval of the Modification of Power Purchase Agreements with Chambers Cogeneration L.P. and Logan Generating Company, L.P.
BPU Docket No.: EM21121253

Dear Secretary Camacho-Welch:

The Division of Rate Counsel ("Rate Counsel") thanks the Board of Public Utilities (the "Board" or "BPU") for the opportunity to provide these comments in reference to BPU Docket No. EM21121253. In a petition ("Petition") dated December 22, 2021, Atlantic City Electric Company ("ACE") proposed to modify and terminate ACE's last non-utility generator ("NUG") contracts with Starwood Energy Group Global, LLC ("Starwood"),[1] the owner of the Chambers and Logan cogeneration facilities.[2] Rate Counsel does not oppose the proposed contract modification, as ACE's ratepayers have the opportunity to potentially see reduced payments

[1] Chambers is jointly owned by Starwood and Atlantic Power.
[2] <u>I/M/O the Petition of Atlantic City Electric Company for Approval of the Modification of Power Purchase Agreements with Chambers Cogeneration Limited Partnership and Logan Generating Company, L.P.</u>, BPU Docket No. EM21121253, filed December 22, 2021.

relative to the current power purchase agreements ("PPAs") and Power Sales Agreements ("PSAs").[3] Additionally, while Rate Counsel is supportive of the goal to retire the last two major coal-fired generation units within New Jersey, Rate Counsel is concerned that the option to re-power the coal-fired generation with new gas-fired generation will decrease some of the identified environmental benefits associated with the proposed transaction. Rate Counsel also questions whether the asserted environmental benefits can be accurately quantified based on the information available at this time. Further, because the payment schedule is dependent on the time of the closing, and customer benefits in total are further dependent on future energy and capacity prices, the justness and reasonableness of the payments set forth in the Settlement Agreements between ACE and Starwood is uncertain. Rate Counsel's comments are detailed more fully below.

I. Background

The transactions proposed in the Settlement Agreements would accelerate the cessation of coal-fired generation from both NUG facilities. The proposed transaction may also reduce the current above-market payments by ACE under the NUG Contracts with Starwood for both facilities, each of which is set to expire in 2024. As discussed further below, the actual savings experienced by ACE's ratepayers depends on the date of closing as well as the future prices of energy and capacity.[4] Customer benefits will not begin until the Board approves ACE's proposal without modification and other contract modifications have closed.[5] The Petition was

[3] Collectively, the "NUG Contracts."
[4] See Petition, page 8.
[5] See Petition, Exs. I & J ¶¶ 5-6.

filed without the full Settlement Agreements being finalized.[6] Rather, ACE provided term sheets which it represented included what it believed to be the "key terms" of the transaction to be memorialized in the Settlement Agreements and of which it sought approval under N.J.S.A. 48:3-61(l).[7] Notwithstanding the fact that the full Settlement Agreements to be reviewed by the Board were not included with the Petition, ACE requested Board approval by the Board's March 23, 2022 meeting.[8] Otherwise, the Settlement Agreements between ACE and Starwood automatically terminate if the closing, as defined by the Settlement Agreement, does not occur by April 10, 2022. If the Settlement Agreements terminate, the existing NUG Contracts remain in full force and effect.[9]

Additionally, Starwood (the party on whom the asserted environmental benefits is wholly dependent) is not a party to the Petition and has not moved to intervene or participate. Instead, Starwood filed non-substantive letters in support of the petition.[10] ACE responded to discovery requests by providing information from Starwood in the form of hearsay, which ACE expressly stated it could not independently confirm.[11]

The full Settlement Agreements were eventually provided on the afternoon of January 25, 2022. Since the reduced customer payments would not occur until after closing, ACE continues to pay Logan and Chambers the full amounts under the existing PPA and PSA agreements.[12]

[6] While Board Staff participated in the negotiation of these settlements, Rate Counsel was not involved in setting terms or conditions of the settlements.
[7] Petition at 8.
[8] Id. at13.
[9] Ibid.
[10] Letters of support dated January 26, 2022 were provided by Chambers Cogeneration, LP and Logan Generating Company, LP.
[11] See e.g. RCR-1.
[12] See Exs. I & J at ¶ 8. Closing occurs when ACE and Starwood: (a) enter into a Letter Agreement Regarding Continuation of Interconnection Rights and Obligations under Agreement for Purchase of Electric Power; (b) sign Mutual Release releasing each other certain claims under the Contracts or this Settlement Agreement (c) each shall have made certain "Final Payments."

According to the Payment Schedule included in the Settlement Agreements, the estimated $30.1 million in customer benefits began in January of 2022. Because ACE continues to pay the NUG contract term rates rather than the fixed payments, ratepayers have already lost $247,595 in customer benefits from Chambers and $315,664 from Logan on January 22, 2022. A condition precedent to closing is "BPU Approval" which is defined as "final and nonappealable order of the BPU, without conditions or modifications unacceptable to ACE or to [Starwood], which approves (i) this Settlement Agreement in its entirety, including payments to be made by ACE, (ii) assurance of cost recovery of all of ACE's costs of this Settlement Agreement from all benefiting customers and (iii) such other related matters as may be reasonably requested by ACE in its request to the BPU for BPU Approval."[13]

On January 26, 2022, the Board issued an order designating Commissioner Dianne Solomon as Presiding Commissioner.[14] On February 17, 2022, Commissioner Solomon issued an Order Setting Procedural Schedule and Ruling on Motions to Intervene and Participate. Rate Counsel's comments were set as due on or before March 7, 2022. If approved by the Board on March 23, 2022, ratepayers will have lost at least $2,434,650 in customer benefits according to the Payment Schedules set out in the Settlement Agreements, reducing the maximum benefit to ratepayers to less than $28 million.[15]

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[13] See Exs. I & J at ¶ 2(c).
[14] I/M/O the Petition of Atlantic City Electric Company for Approval of the Modification of Power Purchase Agreements with Chambers Cogeneration Limited Partnership and Logan Generating Company, L.P., BPU Docket No. EM21121253 (Jan. 26, 2022).
[15] Based on the sum of the amounts from January 22, 2022 to March 22, 2022, as listed under the "Customer Benefits" column of the Payment Schedules. See Petition, Exs. I & J, at 26.

II. The NUG Contracts with Logan and Chambers

ACE's Petition describes both facilities.[16] Chambers is a 285 MW cogeneration qualifying facility ("QF") located in Carney's Point, New Jersey. The primary fuel source for the Chambers facility is pulverized coal and the secondary fuel source is fuel oil. Chambers commenced commercial operation on March 15, 1994. ACE notes that Chambers is jointly owned, indirectly, by affiliates of Starwood (60% ownership) and by Atlantic Power (40% ownership). ACE describes Logan ("Logan") as a 225 MW cogeneration QF located in Logan Township, New Jersey. The primary fuel for the Logan facility is pulverized coal and the secondary fuel source is fuel oil. Logan commenced commercial operation on September 22, 1994. ACE notes that Logan is indirectly owned by affiliates of Starwood. Both facilities provide steam to an industrial customer located next to their respective facilities.[17] Chambers sells steam and electricity to Chemours Company.[18] Logan sells steam to Valtris Specialty Chemicals Company.[19] ACE notes that neither steam contract is involved in this Petition.[20]

Since both facilities are QFs under the Public Utilities Regulatory Policies Act of 1978 ("PURPA"),[21] ACE executed agreements with Chambers and Logan that contained terms and pricing consistent with the Board's avoided costs policies in effect at the time.[22] In September 1988, ACE and Chambers entered into a PPA that obligated ACE to contract Chambers to provide 184 MW of capacity and up to 187.6 MWh of energy during winter, and 173.2 MWh of

[16] Petition at 2.
[17] Id. e 4.
[18] Separate from this proceeding, Rate Counsel understands that Starwood is negotiating extensions to the current steam contracts for both facilities and that the future steam needs of its current customers would be met through gas-fired boilers that have yet to be installed in these facilities.
[19] Petition at 4.
[20] Ibid.
[21] 16 U.S.C. § 2601 et seq.
[22] Petition, page 3.

energy during summer. ACE notes that the existing PPA terminates in March 2024. In August 1988, ACE and Logan entered into a PPA that obligated ACE to purchase 200 MW of energy and capacity from the facility. The Logan PPA terminates during 2024.[23] ACE states that, by the time both facilities became operational in 1994, the pricing terms for both PPAs exceeded the market value for both energy and capacity.[24]

ACE notes that the electricity ACE receives through the Logan and Chambers PPAs is not used by the Company to supply the needs of its retail distribution customers. ACE further notes that its customers do not receive direct supply benefits from the two PPAs, but ACE's customers do pay the above-market costs of both PPAs. ACE also states that it does not earn a return on, or benefit from, the two PPAs.[25]

ACE provided an exhibit of the projected obligations of the existing PPAs that ACE would be obligated to pay to Logan and Chambers through 2024. This is presented in Table 1 below:

Table 1 Contract cost for ACE to Logan and Chambers through 2024 ($ millions)

Plant	Contract Capacity Costs	Contract Energy Costs	Incentive Payment	Contract Costs
Chambers	$131.8	$56.0	$4.7	$192.5
Logan	$134.8	$86.0	$4.5	$225.3
Total	$266.6	$142.0	$9.2	$417.8

ACE notes that the terms of the PPAs require ACE to pay Starwood $417.8 million over the remainder of the two PPAs.[26] Capacity costs represent 63 percent of the contract costs, energy

[23] Id., page 4. The Petition does not state the month in 2024 when the Logan PPA will expire.
[24] Id., page 5.
[25] Ibid.
[26] Id., page 8.

costs represent 34 percent of the contract cost, and incentive payments make up the rest at about 3 percent.[27]

Because the energy and capacity of the two facilities are directly sold into the PJM wholesale market, ACE's ratepayers would not pay the full $417.8 million shown in Table 1. The energy and capacity revenues from PJM have historically offset the PPA contract obligations. In its Petition, ACE states that it contracted with third-party consultant ICF to provide a forecast of future energy and capacity revenues for the remainder of the PPAs.[28] Based on ICF's energy and capacity forecast, ACE projected future offsets for the remainder of the PPA terms. ACE's projected offset amounts and the subsequent net ratepayer costs for the remainder of the two PPAs are shown in Table 2 below.

Table 2 Revenue offsets and Net Ratepayer Cost of Existing NUG Contracts through 2024 ($ millions)

Plant	PJM Capacity Revenue Offset	PJM Energy Revenue Offset	PJM Revenue Offsets	Net Customer Costs
Chambers	($22.0)	($49.4)	($71.5)	$121.0
Logan	($27.5)	($60.4)	($87.9)	$137.4
Total	($49.6)	($109.8)	($159.3)	$258.5

Table 2 shows that ACE projects that the net ratepayer obligations for the remainder of the PPAs would be $258.5 million based on ICF's projections of energy and capacity. With the offsets, capacity costs represent 84 percent of the customer cost of the remaining contract, energy costs represent 12 percent of the customer cost of the remaining contract, and the incentives represent 4 percent of the customer cost of the remaining contract.

[27] Direct Testimony of Mario Giovannini, BPU Docket No. 21121253, filed December 22, 2021, page 8, Table A and Schedule (MG)-2.
[28] Id. at 9, lines 11-14.

III. Proposed Transaction

The transaction proposed in the Settlement Agreements, if approved, would allow the Logan and Chambers facilities to transition their steam production from coal-fired generation to gas-fired generation.[29] For Logan, Starwood would cease coal-fired electric generation and coal combustion within three months of closing the transaction.[30] For Chambers, Starwood would cease coal-fired electric generation and coal combustion upon the receipt of all regulatory approvals for steam production with gas-fired boilers.[31] Moreover, Chambers would reduce its coal combustion to only the quantity needed to satisfy its steam contract obligations while it transitions to natural gas fired boilers.[32]

In return, ACE would pay Starwood fixed amounts for the remainder of the PPAs. The Company notes that payment schedules are fixed and based on ICF's modeling.[33] ACE's proposed fixed payment terms are provided in Exhibits I and H to the petition. These are summarized in Table 3 below:

Table 3 Fixed Monthly Payments to Starwood Before Customer Benefit Adjustment

[29] Petition at 9.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Direct Testimony of Mario Giovanni, page 12, lines 12-14.

Payment	Date	Chambers	Logan
1	Jan-22	$1,885,530	$2,403,897
2	Feb-22	$2,278,741	$3,105,702
3	Mar-22	$5,013,382	$3,851,634
4	Apr-22	$4,222,045	$3,508,467
5	May-22	$4,223,000	$3,544,398
6	Jun-22	$4,507,249	$3,793,876
7	Jul-22	$4,043,903	$3,441,854
8	Aug-22	$4,069,431	$3,566,076
9	Sep-22	$4,551,877	$3,834,953
10	Oct-22	$4,052,849	$2,791,683
11	Nov-22	$4,489,207	$3,757,146
12	Dec-22	$4,105,309	$3,310,887
13	Jan-23	$2,543,572	$2,023,115
14	Feb-23	$3,307,438	$2,822,208
15	Mar-23	$5,709,580	$3,497,784
16	Apr-23	$4,500,630	$3,827,918
17	May-23	$4,525,429	$3,862,863
18	Jun-23	$4,339,607	$3,654,785
19	Jul-23	$4,020,555	$3,361,648
20	Aug-23	$4,072,227	$3,473,210
21	Sep-23	$4,395,751	$3,741,818
22	Oct-23	$3,905,682	$3,041,346
23	Nov-23	$4,338,751	$3,707,230
24	Dec-23	$4,092,051	$3,385,482
25	Jan-24	$2,907,197	$2,325,070
26	Feb-24	$3,459,471	$2,951,967
27	Mar-24	$3,413,885	$3,438,804
28	Apr-24	$0	$3,738,499
29	May-24	$0	$3,792,627
30	Jun-24	$0	$3,619,671
31	Jul-24	$0	$3,136,516
32	Aug-24	$0	$3,473,140
33	Sep-24	$0	$3,669,700
34	Oct-24	$0	$3,029,030
35	Nov-24	$0	$3,647,427
36	Dec-24	$0	$3,354,308
37	Subtotal	$106,974,350	$121,486,736
	Total	$228,461,086	

Table 3 above shows the fixed payments for both facilities before the negotiated customer benefit adjustment. ACE asserts that the proposed fixed fee payment with the customer benefit adjustments for the two facilities will result in ratepayer savings of up to $30 million over the remainder of the NUG Contracts as shown in Table 4.

Table 4 Customer Benefit and Projected Net Customer Costs ($ millions)

Plant	Gross Customer Costs	Customer Benefit	Net Customer Costs
Chambers	$121.0	($14.05)	$107.0
Logan	$137.4	($15.95)	$121.5
Total	$258.5	($30.00)	$228.5

Since the payments and customer benefit adjustments are fixed, the payments will not move with changes in energy and capacity prices. This has implications discussed in more detail below.

IV. Discussion

Pursuant to N.J.S.A. 48:3-61(*l*)(1), the Board may approve the buydown or buyout of a NUG PPA if it determines the transaction, inclusive of all costs, "will result in a substantial reduction in the total stranded costs of the utility." The resulting savings must be passed on to ratepayers on a full and timely basis.[34] Once a buyout or buydown is approved by the Board, the statute prohibits it from being modified, except as requested jointly by the parties to the contract (i.e. ACE and Starwood).[35] The following sections provide additional detail to Rate Counsel's observations and assessment of the proposed transactions.

[34] N.J.S.A. 48:3-61(l)(1) (emphasis added).
[35] N.J.S.A. 48:3-61(l)(4).

Retirement of Coal Plants

One of the potential public benefits of the transaction is that it would facilitate the retirement of the last two coal-fired generation plants within New Jersey. In the absence of the transaction, Starwood would continue to operate the two plants as coal-burning units through 2024 under their existing NUG Contracts.[36] The Petition proposes to accelerate the retirement process for both plants, but not completely eliminate continued coal combustion at the two facilities. As noted earlier, the Chambers facility would continue to combust coal in order to satisfy its current steam contracts with Chemours.[37] Logan would cease coal-fired generation within three months, and Chambers would continue to combust coal until the natural gas boilers are in place (with all approvals). Starwood notes that the existing coal piles at each facility would be used until such time that the coal-fired generation is not needed.[38] Without knowing when Starwood would receive its permits for the new gas boilers for Chambers, it is not clear as to the exact timing when coal-fired generation would actually cease at Chambers.

Interconnection of Facilities

Starwood has indicated that it plans to renegotiate the two steam contracts for both Logan and Chambers. Both steam contracts are not part of this Petition, and are wholly the responsibility of Starwood.

Starwood has applied to PJM for interconnection agreements for the two facilities. The two interconnection agreement queue numbers are currently AG2-450 and AG2-451. Both numbers are for battery storage resources.[39] At this time it is not known when or if Starwood

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[36] S-ACE-27.
[37] RCR-21.
[38] See RCR-22.
[39] See PJM New Services Queue (available at https://www.pjm.com/planning/services-requests/interconnection-queues.aspx)(last visited Mar. 4, 2022).

will actually install batteries at the two facilities. The Board has no authority over whether the batteries are installed or not. Rate Counsel notes that the existing transmission and distribution infrastructure already in place at the two facilities would be advantageous to the placement of new resources regardless of fuel type.

Pricing

As noted earlier, under the payment schedule in the Settlement Agreements ratepayers have already lost at least $2,434,650 in customer benefits.[40] Additionally, since the proposed payment stream for the two facilities is fixed for the remainder of the current PPA contract terms, if energy prices and capacity prices increase above the ICF projections, then the incremental revenues would not offset the fixed payments to Starwood. In other words, if PJM prices rise too far beyond the ICF projections, ACE customers would be better financially had ACE simply sold the units' capacity and energy in the PJM markets. ACE notes that this is a risk of the NUG Contracts.[41] In its forecasting, ICF assumed that future capacity prices would be $113.05/MW-day for the 2023/24 capacity year and $124.14/MW-day for the 2024/25 capacity year.[42] Rate Counsel agrees that the two ICF capacity price forecasts are higher than the 2022/23 capacity price of $97.86/MW-day, but lower than the 2021/22 capacity price of $165.73/MW-day.[43] Should energy and capacity prices turn out lower than projected, ratepayers would not need to make up the shortfall in payments to Starwood. This would be a benefit for ratepayers.[44] If, however, energy and capacity prices turn out higher than projected, ratepayers will actually receive no financial benefit.

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[40] See n.15, supra.
[41] RCR-ENG-20.
[42] Direct Testimony of Mario Giovannini, page 10, line 7.
[43] Id. at 10, lines 10 - 11.
[44] Direct Testimony of Mario Giovannini, page 12, line 17-19.

For illustrative purposes, Rate Counsel calculated what the necessary expected increase in capacity and energy prices would have to be to eliminate the static $30 million (now $28 million) in ratepayer benefits. If actual capacity prices are $143.05/MW-day for the 2023/24 auction and $154.14/MW-day for 2024/25 auction, then ratepayers would have earned $5.76 million more in customer benefits had the existing NUG contracts continued. These prices are higher than the 2022/23 clearing price of $97.86/MW-day, but lower than the historical price of $165.73/MW-day from the 2021/22 auction. For energy prices, if actual prices are about $9/MWh higher than the ICF forecast, this would result in ratepayers losing $26.1 million in ratepayer benefits under the transaction proposed in the Petition, as opposed to continuing the existing NUG Contracts. Combined, the two changes would result in $31.9 million of foregone ratepayer benefits of the existing NUG Contracts.

While actual energy and capacity prices are uncertain, there is some risk that the full $28 million in ratepayer benefits will not be realized if actual energy and/or capacity prices are higher than the ICF forecasted prices.[45] Rate Counsel recognizes that, so long as the new customer costs are less than the customer costs of the NUG Contracts, then the proposed transaction could possibly provide ratepayer benefits up to $28 million, minus the amounts listed as due prior to closing. However, this amount of savings is not guaranteed. For this reason, Rate Counsel recommends that the Board require ACE to track how much revenue would have been earned had ACE continued to sell capacity and energy in the PJM markets rather than enter these agreements. This data will help inform the parties of the true financial value of this transaction and assist in negotiating future agreements.

[45] See e.g. Reuters, U.S. natgas up 4% as Ukraine war causes global oil and gas prices to soar (Mar. 2, 2022), available at https://www.reuters.com/article/usa-natgas/u-s-natgas-up-4-as-ukraine-war-causes-global-oil-and-gas-prices-to-soar-idINL1N2V516N.

III. Conclusion

Based on the foregoing, Rate Counsel does not oppose ACE's proposal to modify the NUG Contracts for both Chambers and Logan. Rate Counsel acknowledges that the proposed transaction would accelerate the retirement process for the two QF facilities, but would not immediately eliminate coal-fired generation at either facility. Starwood would continue to combust coal at Chambers, until it installs natural gas-fired combustion boilers. The new natural gas-fired boilers would enable Chambers to continue to provide steam if Starwood is successful at renegotiating the current steam contract. Because of the various contingencies and additional use of natural gas-fired generation, Rate Counsel believes that the environmental benefits of this transaction are not easily quantified and likely less than articulated. Nonetheless, the BPU regulates utility rates not air emissions, and on that basis Rate Counsel believes there is sufficient reason to not oppose this transaction.

With regards to the financial benefits of this transaction, Rate Counsel notes that the "up to $30 million" of ratepayer benefits will likely be reduced by at least $2,434,650 before closing and are also contingent on the accuracy of ICF's energy and capacity price forecasts. Should actual energy and capacity prices be higher than the ICF forecast, that would erode some of the fixed benefits. Should energy and capacity prices increase by some combination of $9/MWh and $30/MW-day over the proposed Settlement Agreements, ratepayers would be in a worse financial position than with the existing NUG Contracts. While Rate Counsel does not believe that ICF's forecasts are unreasonable, we recognize that actual energy and capacity prices may be different than the ICF forecasts. Therefore, Rate Counsel cannot confirm that the payments required under the Settlement Agreements are just and reasonable. Whether the Settlement

Agreements will result in a substantial reduction in the total stranded costs of the utility, as the Board is required to find under N.J.S.A. 48:3-61(l)(1), remains to be seen – before closing, the future ratepayer benefits will continue to decrease and depend on future energy/capacity prices, which have proven difficult to predict. Proper reporting will allow the Board to at least see if the predictions were accurate.

Rate Counsel thanks the Board for the opportunity to provide these comments.

Respectfully submitted,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ *David Wand*
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C: Service List (via electronic mail)

I/M/O the Petition of Atlantic City Electric Company for Approval of the Modification of Power Purchase Agreements with Chambers and Logan Generating Companies
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