



Agenda Date: 3/23/22
Agenda Item: 2F

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF 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.) DOCKET NO. EM21121253

Parties of Record:

Cynthia L. M. Holland, Esq., Atlantic City Electric Company
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

BACKGROUND

In 1999, the New Jersey State Legislature enacted the Electric Discount and Energy Competition Act ("EDECA")² which restructured the electric power industry in New Jersey. EDECA noted that, "Electric power services are available in the wholesale markets at prices substantially lower than the current cost of electric power generation and supply services provided to retail customers by this State's electric public utilities".³ As such, EDECA authorized the New Jersey Board of Public Utilities ("Board" or "BPU") to approve the buyout of a power purchase agreement ("PPA") with a non-utility generator ("NUG") which is the result of the renegotiation, restructuring, or termination of a previous NUG PPA, if it determines that such buyout will result in "a substantial reduction in the total stranded costs of the utility".⁴

¹ Commissioner Robert M. Gordon did not participate.

² P.L. 1999, c.23, C.48:3-49 et seq.

³ N.J.S.A. 48:3-50(b)(3).

⁴ N.J.S.A. 48:3-61(l)(1).

Atlantic City Electric Company (“ACE” or “Company”) entered into a PPA with Chambers Cogeneration Limited Partnership (“Chambers”) in September 1988, under which Chambers agreed to sell 184 megawatts (“MW”) of capacity, and up to 173.2 MWh of energy during the winter, and 187.6 MWh of energy during the summer, to ACE. The existing PPA is scheduled to terminate in March 2024. ACE and Chambers are also parties to a separate Power Sales Agreement (“PSA”) that monetizes the value of energy and capacity above the maximum values set in the PPA and allows the Company to generate additional revenues for the benefit of customers.

The Company entered into a PPA with Logan Generating Company, L.P. (“Logan”) in August 1988, pursuant to which Logan agreed to sell 200 MW of energy and capacity to ACE. The existing PPA is scheduled to terminate in December 2024. Additionally, ACE and Logan are parties to a separate PSA. According to ACE, all energy and capacity purchased by the Company pursuant to the PPAs and the PSAs with Chambers and Logan is sold into the PJM wholesale market in an effort to mitigate cost impacts to ACE customers, and is not used by ACE to supply the needs of its retail distribution customers.

PETITION

On December 22, 2021, ACE filed a petition with the Board seeking approval of settlement agreements (“Settlement Agreements”) between ACE and Chambers, and ACE and Logan, as well as Modified Power Purchase Agreements (“Modified PPAs”), pursuant to which ACE will modify existing PPAs and terminate existing PSAs with Chambers and Logan, respectively (“Petition”).

As noted in the Petition, the proposed transaction involves the modification and termination of the last of ACE’s contracts to purchase electricity from NUGs. Specifically, ACE requested to modify the existing Chambers and Logan PPAs such that existing interconnection rights would be preserved but coal-fired electric generation would cease, and the existing Chambers and Logan PSAs would be terminated.

According to the Petition, the PPAs would be modified such that certain interconnection rights and obligations in the PPAs will survive and Chambers and Logan may continue to sell into the PJM market for the transition period. The Company stated that this approach will allow status quo operations with respect to the plants until the transaction and transition are completed.

As part of the transaction, ACE will make a series of negotiated fixed monthly payments for the remaining term of the existing PPAs and PSAs, which will be partially offset by customer benefit payments from Chambers and Logan. According to the Petition, these customer benefit payments will result in customer savings of up to \$30 million over the remaining term of the existing agreements, consisting of approximately \$14 million on the Chambers agreement and approximately \$16 million on the Logan agreement. However, the Company noted that the actual amount of customer savings will depend on the date of the closing of the PPA modifications and PSA terminations.

Absent the proposed transaction, ACE estimated that its contract payments to the plants from January 2022 through December 2024 would total approximately \$417.8 million, which would be offset by PJM revenues of approximately \$159.3 million, resulting in total customer costs of approximately \$258.5 million. Under the terms of the transaction, ACE estimated that its payments to the plants from January 2022 through December 2024 would total approximately

\$258.5 million, which would be offset by customer benefit payments from the plants of approximately \$30 million, resulting in total customer costs of approximately \$228.5 million.

Additionally, the proposed transaction would result in the discontinuance of coal-fired electric generation at Chambers and Logan, following brief transition periods. The purpose of the specified transition periods is to facilitate the orderly cessation of coal-fired operations, and in the case of Chambers, to obtain necessary approvals to produce steam using natural gas-fired boilers with fuel oil back-up.

PROCEDURAL HISTORY

By Order dated January 26, 2022, the Board retained the Petition for hearing and, pursuant to N.J.S.A. 48:2-32, designated Commissioner Dianne Solomon as the Presiding Commissioner authorized to rule on all motions that arise during the pendency of the proceedings and modify any schedules.⁵ The January 26, 2022 Order further directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by February 9, 2022.

On January 26, 2022, Chambers and Logan submitted comments to the Board in support of the Petition. Chambers and Logan also urged the Board to grant the relief sought by ACE on an expedited schedule.

On February 9, 2022, the Sierra Club, 350NJ-Rockland, and Environment New Jersey submitted joint comments to the Board in support of the Petition.

On February 17, 2022, Commissioner Solomon issued an Order establishing the procedural schedule in this matter.⁶ The February 17, 2022 Order also noted that no motions to intervene and/or participate were filed on or before the bar date of February 9, 2022. Therefore, Commissioner Solomon ordered that the parties to this proceeding consisted of the Company and the New Jersey Division of Rate Counsel (“Rate Counsel”). The February 17, 2022 Order also set a deadline for the submission of comments by the parties, with Rate Counsel’s comments due on or before March 7, 2022, and ACE’s comments due on or before March 14, 2022.

RATE COUNSEL COMMENTS

On March 7, 2022, Rate Counsel submitted comments in this matter indicating that it did not oppose ACE’s proposed contract modification, as ACE’s ratepayers would have the opportunity to potentially see reduced payments relative to the current PPAs and PSAs. (Rate Counsel Comments at 1 to 2). However, Rate Counsel expressed concern about the environmental benefits associated with the transaction, as the contract would allow the plants to potentially resume electric generation with new gas-fired generation. (Id. at 2). Rate Counsel further stated

⁵ In re 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., Order Designating Commissioner and Setting Manner of Service and Bar Date, BPU Docket No. EM21121253, Order dated January 26, 2022 (“January 26, 2022 Order”).

⁶ In re 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., Order Setting Procedural Schedule and Ruling on Motions to Intervene and Participate, BPU Docket No. EM21121253, Order dated February 17, 2022 (“February 17, 2022 Order”).

that the justness and reasonableness of the payments set forth in the Settlement Agreements remains uncertain because the payment schedule is dependent on the timing of the closing, and total customer benefits are dependent on future energy and capacity prices. (Id.) Therefore, Rate Counsel recommended that the Board require ACE to track how much revenue would have been earned had ACE continued to sell the plants' capacity and energy into the PJM markets, rather than enter into these agreements. (Id. at 13). According to Rate Counsel, this data will help inform the parties of the true financial value of this transaction and assist in negotiating future agreements. (Id.)

ACE COMMENTS

On March 11, 2022, ACE submitted reply comments in this matter. ACE stated that there was no opposition to its proposed transaction by any party. (ACE Comments at 1). Additionally, the Company asserted that its request fully satisfied the applicable standard of review codified at N.J.S.A. 48:3-61(l)(1). (Id. at 3). However, ACE took exception to Rate Counsel's recommendation that the Board require ACE to track the revenue level that would have been earned if ACE continued to sell capacity and energy in the PJM markets rather than enter these agreements. Specifically, ACE argued that Rate Counsel cannot attach strings to this transaction in the form of additional reporting to later confirm, to Rate Counsel's satisfaction, "the true financial value of this transaction." (Id. at 4).

Further, ACE opined that conditioning the Board's approval on additional reporting, as suggested by Rate Counsel, could undermine the transaction. (Id. at 5). According to ACE, it is unlikely that reporting on this data will assist in negotiating future agreements, as ACE's NUG contracts are the last such agreements. (Id.) Additionally, ACE stated that even if energy and capacity prices increase compared to projections, it does not guarantee that customers would have been better off had the existing agreements continued. (Id.) In particular, the Company stated that Rate Counsel did not account for the risk in monetizing capacity revenue at PJM, as penalties for non-performance could eliminate some, if not all, capacity revenue. (Id.) Further, ACE stated that factors such as coal price increases, longer outages, and higher environmental costs could increase the units' marginal cost to PJM, which could cut into any potential margin offered by higher energy prices. (Id.) Therefore, ACE urged the Board not to condition the approval of the transaction on such reporting. (Id.)

Additionally, ACE stated that the transaction will end coal-fired generation in New Jersey, consistent with State policy, while requiring Logan and Chambers to cause any future owners of the units or the associated real property not to combust coal at the units or at the associated real property. (Id. at 6). ACE stated that a final Board Order is a condition precedent to closing of these contracts, and noted the Company is willing to accept a letter from Rate Counsel indicating that it would not appeal the Order. (Id.) Should Rate Counsel not timely consent to not appealing the Order, ACE indicated that it will "explore other reasonable options to ensure that ratepayers receive the benefits of these PPA modifications." (Id.) ACE requested that the Board approve the transaction without condition and by Order effective immediately. (Id. at 7).

DISCUSSION AND FINDINGS

The Board reviewed the record in this proceeding, including the Petition, discovery, and comments received. The Board also considered ACE's responsibility to make reasonable efforts to renegotiate its NUG contracts with Chambers and Logan to mitigate its stranded costs, consistent with the objectives of EDECA and the terms of the Board's Order in Docket No.

ER13030186.⁷ As such, and based upon its review, the Board is **HEREBY SATISFIED** that the Company's claimed savings to customers is reasonably supported by the Petition and related analysis of the relevant information, including the consideration of forward energy prices, simulated dispatch of the plants, and projected capacity prices.⁸ Accordingly, the Board **HEREBY FINDS** the Company's proposed payments to Chambers and Logan, as required under the Settlement Agreements, to be just and reasonable, and the Board **FURTHER FINDS** that the Settlement Agreements and Modified PPAs, based upon current projections, will substantially reduce the Company's stranded costs, as required by N.J.S.A. 48:3-61(l)(1), and are in the public interest.

The Board notes that the proposed transaction includes an agreement among ACE, Chambers, and Logan that coal-fired electric generation will cease at the facilities permanently, following brief transition periods. By discontinuing coal-fired electric generation at the plants, the last remaining sources of large-scale coal-fired generation in New Jersey will be eliminated. As noted in the 2019 New Jersey Energy Master Plan, "New Jersey has seen a steady decrease in greenhouse gas emissions, a decline that has indeed been largely due to the closing of coal plants in the state."⁹ As such, the cessation of coal-fired generation at Chambers and Logan, as described in the Settlement Agreements, will reduce the emission of carbon and other pollutants within the State, which will help to further the goals of the EMP. Therefore, the Board **HEREBY FINDS** that the cessation of the use of coal at the Chambers and Logan facilities provides environmental benefits to customers and the State, and is in the public interest.

The Board is cognizant of Rate Counsel's recommendation that the Company be required to track its expected revenues associated with the plants in the absence of this transaction. According to Rate Counsel, this recommendation would "help inform the parties of the true financial value of this transaction and assist in negotiating future agreements."¹⁰ The Company subsequently took exception to Rate Counsel's recommendation, arguing that it would be impossible to provide Rate Counsel's requested analysis, and that such a condition could undermine the transaction.¹¹ The Board acknowledges the Company's concern that there would be insufficient information available to enable it to provide a highly accurate evaluation of the transaction, as factors such as generation output, outage duration, and environmental costs would remain unknown following the closing of the transaction. However, the Board believes that it would be appropriate for the Company to provide additional information following the closing of this transaction which would allow the parties to gauge the efficacy of the Modified PPAs and Settlement Agreements. Accordingly, the Board **HEREBY DIRECTS** ACE to collaborate with Board Staff and Rate Counsel

⁷ In re the Petition of Atlantic City Electric Company to Reconcile and Update the Level of its Non-Utility Generation Charge ("NGC"), its Societal Benefits Charge ("SBC") and its Systems Control Charge ("SCC") (2013), BPU Docket No. ER13030186, Order dated May 29, 2013. See Page 5, Paragraph 8, in which the parties agreed that "ACE will make a good faith effort to re-initiate discussions" with Chambers and Logan "regarding possible renegotiation of the NUG contracts and mitigation of the costs incurred thereunder."

⁸ The Board notes that the Company's estimates were based upon monthly customer benefit payments by Chambers and Logan beginning in January 2022. However, monthly customer benefit payments will not commence until the Board has approved the proposal and the various contract modifications and terminations have closed. Therefore, the actual customer benefit payments by Chambers and Logan will ultimately total less than \$30 million.

⁹ See 2019 New Jersey Energy Master Plan: Pathway to 2050 ("EMP"), at Page 20.

¹⁰ Rate Counsel Comments at 13.

¹¹ ACE Comments at 5.

within the Company's current Non-Utility Generation Charge ("NGC") proceeding (Docket No. ER22020038) in developing information to be filed in future NGC matters that will assist Board Staff and Rate Counsel in evaluating the cost effectiveness of this transaction.¹²

Therefore, the Board **HEREBY FINDS** that the proposed transaction, based upon current projections, will provide a net benefit to ACE customers and to the State. Additionally, the Board **FURTHER FINDS** that the transaction includes appropriate safeguards to protect ratepayers from the risks associated with non-payment, potential PJM penalties, as well as the risks of any costs associated with plant closures, operations, and the termination of the contracts. Accordingly, the Board **HEREBY APPROVES** the Settlement Agreements and Modified PPAs, for which the associated costs will be subject to review and recovery in the Company's future NGC filings.

The Board **HEREBY DIRECTS** ACE to provide the following information:

1. Within 15 days of the closing of the PPA modification and PSA termination, ACE shall provide notification of the closing to the Board and Rate Counsel, which shall include updated payment schedules which detail the Company's fixed monthly payments to each plant, the monthly customer benefit payments to be received from Chambers and Logan, and a summary explaining any material difference between the final payments and benefits and the estimated payments and benefits.
2. Within 15 days of the cessation of coal-fired electric generation at Chambers, ACE shall provide notification to the Board and Rate Counsel that coal-fired generation has ceased at Chambers.
3. Within 15 days of the cessation of coal-fired electric generation at Logan, ACE shall provide notification to the Board and Rate Counsel that coal-fired generation has ceased at Logan.
4. Within 30 days of the commencement of the production of steam using natural gas-fired boilers with fuel oil back-up at Chambers, ACE shall provide notification of this commencement to the Board and Rate Counsel.

The Board **HEREBY RATIFIES** the decisions made by Commissioner Solomon during the pendency of this proceeding for the reasons stated in the February 17, 2022 Order.

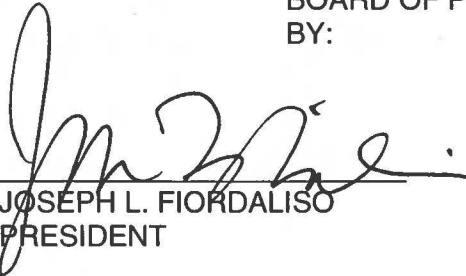
The Company's costs remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

¹² In re the Petition of Atlantic City Electric Company to Reconcile and Update the Level of its Non-Utility Generation Charge and its Societal Benefits Charge (2022), BPU Docket No. ER22020038, Petition dated February 1, 2022.


This Order shall be effective on March 23, 2022.

DATED: March 23, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER




DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF 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.

DOCKET NO. EM21121253

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