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June 9, 2022

Via Electronic Mail

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

**Re: I/M/O Petition of Cumberland County Improvement Authority for the
Approval of the Extension of Electric Public Utility Facilities of Atlantic City
Electric Company Pursuant to N.J.S.A. 48:2-27
BPU Docket No. EO22020043**

Dear Commissioner Gordon:

We write on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”), in response to the letter to the Commissioner submitted by counsel for the Petitioner, Cumberland County Improvement Authority (“CCIA”), in the above-captioned matter. Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities (“Board”) in I/M/O the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, copies of this letter are being filed with the Secretary of the Board and provided electronically to each person on the service list by electronic mail only. No paper copies will follow. **Please acknowledge receipt of this comment letter.** Thank you.

Summary

Rate Counsel objects to the above-referenced letter from counsel for CCIA as improper, and asks that the letter be stricken from the record. As a threshold matter, Rate Counsel received the CCIA letter five minutes before the beginning of the prehearing conference, and did not have an opportunity to review it before the prehearing conference. Counsel for CCIA specifically requested that the Commissioner consider the letter in his decision regarding the issues to be identified in the pre-hearing order without affording any other party the opportunity to review and respond. CCIA's unsolicited written argument is unfairly prejudicial to ratepayers, and adds continued confusion to this proceeding. The arguments advanced by CCIA do not appear to have any merit or are entirely unsupported by credible evidence. Accordingly, due to both its impropriety and its lack of foundation and merit, Rate Counsel respectfully requests that CCIA's letter submitting written argument to Your Honor be stricken from the record.

1. Standing

The Verified Petition is unclear as to CCIA's authority to bring this Petition.¹ While the statute may not impose requirements on who may petition the Board, "standing is not automatic, a litigant usually has no standing to assert the rights of a third party." Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436 (App. Div. 2011) (citation and internal quotation marks omitted), certif. denied, 210 N.J. 478 (2012). Here, it appears that CCIA may be a third party bringing a claim on as of yet unnamed beneficiaries. Since no specific project is at issue, CCIA is not a "customer" or "applicant" asking the Board to order ACE to extend service to one or more of its projects.

¹ As discussed at the Prehearing Conference, CCIA intends to file testimony that may further explain this issue. At this time, however, CCIA's standing to bring this petition is unclear and therefore is an issue to be resolved during the pendency of this matter.

2. “Current energy supply”

CCIA’s argument that it did not allege that ACE has failed to provide safe, adequate and proper service to the County is squarely contradicted by the Verified Petition, which repeatedly emphasizes the inadequacy of ACE’s electric distribution system within Cumberland County. In the Verified Petition, CCIA asserts multiple claims that ACE fails to provide “safe, adequate and proper” service. See, CCIA Petition at Paragraph 8 (“the current electric infrastructure in the County is insufficient to power the large-scale manufacturing, educational labs, solar generation projects, and overall stifles investment and development in the County. . . .”); Paragraph 9 (ACE’s map demonstrates “the clear and general need for electric infrastructure investment in the County and the disparity in service between Cumberland County and neighboring surrounding counties.”); Paragraph 11 (“The County, in this petition, has identified examples of specific development projects that are currently incapable of being immediately interconnected due to the current deficiency in electric service capacity on the ACE system.”); Paragraph 12 (“In particular, CCIA sees the need to construct the electric utility infrastructure necessary to provide safe, proper, and adequate electricity in these identified Redevelopment Areas Without the electric utility infrastructure expansion or extension, economic development in the County is stymied until the system can accommodate the necessary load demands for the development.”); Paragraph 15 (“Despite the best efforts and good faith from ACE, the County simply does not currently have the electric utility infrastructure required to develop the pending proposed projects or the significant redevelopment generally identified in the Redevelopment Areas.”); Paragraph 20 (“the following descriptions of specific projects hindered by the currently limited electric capacity”); Paragraph 25 (“the developers and the County are limited, and currently unable to move forward on many of these projects due to inadequate electric utility infrastructure.”) (emphases added).

Throughout the Verified Petition tries to “thread the needle” with contradictory claims that ACE’s existing electric grid is both adequate for current customers but inadequate to meet the County’s future needs. If ACE’s “existing facilities” are inadequate to accommodate the County’s needs, the adequacy of ACE’s service is an issue in this case. Essentially, the Verified Complaint CCIA asserts claims against ACE under N.J.S.A. 48:2-23.

3. “Economic benefit”

This is an issue in the case, and should not be part of the prehearing process. Essentially, CCIA must prove that there are economic benefits, and concedes that it needs to file testimony to support that assertion. At this time, Rate Counsel does not believe there is sufficient evidence to support economic benefit, but that is a matter to be determined at this case proceeds. For purposes of this letter, CCIA’s argument should be ignored. This is an issue in the case and should be treated accordingly.

Conclusion

Rate Counsel respectfully requests that CCIA’s letter to Your Honor be stricken from the record. In the alternative, Rate Counsel believes the above supports its position on the issues present in this case.

Respectfully submitted,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ David Wand
T. David Wand, Esq.
Deputy Rate Counsel

c: Service List