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July 6, 2022

Via Electronic Mail

Hon. Carmen D. Diaz, Acting Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
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Re: I/M/O Letter Petition of Atlantic City Electric Company for a Waiver of the Requirements of N.J.A.C. 14:1-5.6 and for Approval Pursuant to N.J.A.C. 14:1-1.2 of the Sale of Certain Utility Assets to Lund's Fisheries, Inc. BPU Docket No. EM22050338

Dear Acting Secretary Diaz:

Please accept for filing the comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") 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 comment 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 does not object to the sale of the above-referenced property by Atlantic City Electric Company (“ACE” or the “Company”), subject to the conditions set forth herein.

Background

ACE filed a Petition for a waiver of the requirements of N.J.A.C. 14:1-5.6 and for approval pursuant to N.J.A.C. 14:1-1.2 of the sale of certain utility assets to Lund’s Fisheries, Inc. (the “Petition”) on May 12, 2022, asking the Board of Public Utilities (“Board”) to approve the proposed sale of certain property consisting of three ABB 2000 KVA/480v pad mounted transformers, along with ancillary poles and equipment (the “Assets”), which are currently located on Lund’s property (the “Assets”). *Petition, p. 2.* The sale price is \$70,108, which is the approximate value of the Assets on the Company’s books. *Petition, pp. 2-3; 6/17/22 Certification of Julie E. Giese.* ACE supported its Petition with the April 26, 2021 Equipment Agreement between ACE and Lund’s, to sell the Assets, and the June 17, 2022 Certification of Julie E. Giese, Director of Accounting for Pepco Holdings LLC, ACE’s parent company. The Petition does not state a closing date for the proposed sale; however, ACE admits that it is conditioned on Board approval. *Petition, p. 3.*

The purchaser is Lund’s Fisheries, Inc., a commercial class customer of ACE since April 1998. Lund’s currently receives electric distribution service under ACE’s AGS-Secondary and MGS-Secondary tariffs. ACE currently receives approximately \$630,000 in annual revenue from Lund’s operations in Cape May. Lund’s has inquired into changing its class of service from Secondary electric distribution service to Primary electric distribution service. Changing its service class to Primary would save Lund’s approximately \$73,000 per year, reducing ACE’s

annual revenue from Lund's by that amount. Lund's has the unilateral right to change its class of service, by installing utility equipment similar to the Assets from a third-party supplier. Doing so would cost Lund's approximately \$148,000, including approximately \$70,000 to purchase the equipment and approximately \$78,000 to install it. In that case, ACE would need to remove the Assets. ACE represents that, if the Assets were removed, ACE would consider the Assets to be no longer used and useful to its operations and would permanently retire them on its books. Thus, ACE would realize no further value from the Assets. Selling the Assets to Lund's will realize their current value for ACE while saving approximately \$78,000 for Lund's. ACE states that Lund's has been a reliable customer, and the cost savings would assist Lund's business operations.¹ *Petition, pp. 2-4.*

ACE proposes to credit the net proceeds from the sale of the Assets to ratepayers in its next base rate case. *Petition, p. 4.*

Analysis under Applicable Board Statute and Regulations

The applicable law for a utility conveyance of property is N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. Under N.J.A.C. 14:1-5.6, ACE may sell utility property without Board approval if it can establish that the sale is in the ordinary course of business, the value does not exceed \$100,000, and it is no longer used and useful to ACE. N.J.A.C. 14:1-5.6(d)(1). ACE concedes that the proposed sale of the Assets does not meet those criteria. Accordingly, ACE asks that the Board allow the sale of the Assets by exercising its authority under N.J.A.C. 14:1-1.2(b) to waive N.J.A.C. 14:1-5.6(d)(1). ACE asserts that its Petition shows good cause for the requested

¹ The Petition indicates that Lund's relationship to ACE is solely as a customer of the utility.

waiver. The Board may waive sections of its rules if, among other reasons, full compliance would adversely affect ratepayers. N.J.A.C. 14:1-1.2(b)(1).

The Company has determined that selling the Assets to Lund's would benefit ACE's ratepayers by providing a credit to them equal to the sale price in ACE's next base rate case. If ACE does not sell the Assets to Lund's, Lund's may purchase replacement equipment from a third-party supplier and require ACE to remove the Assets. ACE would then receive no further revenue from the Assets.

Conclusion

Rate Counsel does not object to the proposed sale of the Assets. However, it is Rate Counsel's recommendation that the accounting for the proceeds of the sale of the Assets be reviewed in ACE's next base rate filing or other appropriate proceeding directed by the Board. Rate Counsel further recommends that, from the time of closing on the sale of the Assets to Lund's until ACE's next base rate case, ACE should credit the proceeds from the sale of the Assets to its deferred liability account with interest to accrue for the benefit of ratepayers in the interim.

Rate Counsel reserves all rights to review the Company's accounting for all costs and revenues from the installation, ownership, operation, maintenance and sale of the Assets in ACE's next base rate filing or other appropriate proceeding for prudence, recoverability and allocation. Accordingly, in any Order approving the sale of the Assets, Rate Counsel

respectfully asks the Board to require ACE to meet the conditions set forth below:

1. ACE shall notify the Board and Rate Counsel if it anticipates any material changes in the sale.
2. From the time of closing on the sale of the Assets to Lund's until ACE's next base rate case, ACE shall credit the proceeds from the sale of the Assets to its deferred liability account with interest to accrue for the account of ratepayers in the interim.
3. Rate Counsel retains all rights to review all accounting, costs and proceeds related to the acquisition, installation, ownership, operation, maintenance and sale of the Assets in ACE's next base rate case or other appropriate proceeding.
4. Approval of the sale does not include or imply any position as to the prudence, recoverability or allocation of the costs of acquiring, owning, operating, maintaining or selling the Assets.
5. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future Petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting the Petitioner.

Respectfully submitted,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ *Brian Weeks*
Brian Weeks, Esq.
Deputy Rate Counsel

c: Service List (via electronic mail)

**I/M/O the Petition of Atlantic
City Electric Company for
Approval of Lund's Fisheries
Asset Sale**

BPU Docket No. EM22050338

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