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September 12, 2022

VIA ELECTRONIC MAIL

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board.secretary@bpu.nj.gov

Honorable Bob Gordon
Presiding Commissioner
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: In the Matter of the 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 Presiding Commissioner Gordon:

Atlantic City Electric Company (“ACE” or the “Company”), an Intervener in the above referenced proceeding, submits the following response to the September 9 Correspondence from the Division of Rate Counsel (“Rate Counsel”) and the email response from Petitioner.

In suspending the prior procedural schedule, your August 23rd Order required that “the parties must present, to myself, a new proposed procedural schedule” by September 9, for review and consideration. Without any prior outreach to the Company, Rate Counsel circulated a proposed schedule on September 7. The Company evaluated the proposal and responded on September 9 with an objection and alternative proposal, as explained in a cover email circulated among the Service List. Notably, the Company objected to Rate Counsel’s proposed schedule because it does not offer adequate time for the Company to prepare testimony in this proceeding, nor does it allow for ACE to provide rebuttal testimony in this proceeding. On September 9, in emails circulated among the Service List, the Company twice indicated a willingness to speak about the proposed dates and a willingness to accommodate Rate Counsel’s needs, without prejudice to the Company. Petitioner consented to both proposed schedules, but Rate Counsel failed to discuss reasonable alternatives to their proposed schedule with the Company, choosing to file correspondence with your office instead. Given this unfortunate disconnect, Petitioner has now sought a conference among the Parties to reach an amicable resolution of the dates. ACE supports Petitioner’s

recommendation and consents to participation in a conference to finalize the dates, which will be more efficient than the continued exchange of correspondence.

As an Intervener, the Administrative Procedure Rules plainly state that ACE “shall have *all the rights and obligations of a party to the proceeding.*” N.J.A.C. 1:1-16.1(b) (emphasis added). Rate Counsel recognizes ACE’s party status to the extent that it enables Rate Counsel to proffer discovery upon the Company, but appears less inclined to allow the Company the right to meaningfully testify or rebut testimony against it in this proceeding.¹ Rate Counsel takes this difficult position notwithstanding Rate Counsel’s contradictory claims that it requires ACE’s testimony to complete its own testimony (September 9 Correspondence, at 2) and that discussion of “ACE’s finances and electric infrastructure in Cumberland County *is clearly material, indeed central to this matter.*” (September 9 Correspondence, Exhibit C, at 1 (emphasis added)). ACE agrees that its finances and infrastructure are central to this case, which is why the Company sought full party status and has indicated, from the earliest procedural conference, that it would provide meaningful testimony in this proceeding to ensure a full and complete record. Rate Counsel’s allegation that “[h]istorically intervenors are not afforded pre-filed rebuttal testimony,” is not adequate justification for denying the Company its right as a party to this proceeding. Rate Counsel’s claim that “[a]llowing rebuttal testimony for intervenors in this case will inject additional confusion and delay to the proceeding,” has no foundation in fact.

ACE’s proposed schedule did not delay the proceeding, but, in the interest of accommodating the other parties to this proceeding, the Company has stated that it is open to scheduling deadlines that differ from the ones proposed in **Exhibit A**.² ACE informed all members of the Service List on September 9 that it would be willing to agree to a schedule that enables Rate Counsel to file its testimony subsequent to the Company’s testimony, but the Company would not consent to a schedule that proves prejudicial to its ability to file testimony as a full party to this proceeding. ACE also objected to Rate Counsel’s failure to include the Company in the filing of rebuttal. The Company maintains that this position is reasonable and appropriate.

As to the discovery allegations in the September 9 Correspondence, ACE has provided timely responses to numerous data requests proffered by Staff and Rate Counsel in this proceeding. However, Rate Counsel points to four responses that it finds deficient. The Company offers this response as justification for its objections to Rate Counsel’s discovery questions. In RCR-ACE-7, for example, Rate Counsel asked that the Company “[p]lease describe ACE’s ability to finance the electric expansion projects outlined in the Triad Report without jeopardizing the Company’s public service obligation to provide safe, adequate, and reliable service to all customers.” Response to this question calls for a narrative description of how ACE satisfies a statutory standard

¹ Rate Counsel even states that “ACE has been provided with intervenor status, and therefore does not share the same evidentiary burden as CCIA.” September 9 Correspondence at 2. Rate Counsel offers no legal basis for this claim nor offers any justification for why its position differs from the regulation governing intervention that plainly states that an Intervenor shall have the same rights and obligations of other parties.

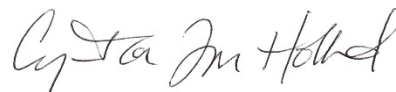
² **Exhibit A** was circulated to the Parties via the Service List prior to Rate Counsel’s correspondence, but Rate Counsel chose to file an earlier version. The Company does not respond to Rate Counsel’s initial point in the September 9 Correspondence, because it is made moot by the correct version of the proposed procedural schedule. Petitioner’s email of September 9 includes the same version as **Exhibit A**.

and is more appropriately stated in testimony. ACE objected and indicated that it would be preparing testimony on this point.³ ACE could have also objected on the grounds that a response to any question as to whether the Company is meeting its obligation to provide safe, adequate and reliable service is a conclusion of law, and not a request for facts as appropriate for discovery. If Rate Counsel contends that the Company is not meeting its legal obligation, it must be decided by a trier of fact, *not* by the parties and *not* in the discovery phase of this proceeding.

The Company understands that Rate Counsel is disappointed that it has not received all the answers sought thus far in discovery, but that does not justify the statements made in the second point of the September 9 Correspondence.⁴ The Company views these allegations as a further attempt to prejudice the case against ACE, which has yet to submit its expert witness testimony – and if Rate Counsel would have it, would not even have opportunity for rebuttal.⁵ This strategy seems to be aimed at limiting the Company’s ability to add measurably and constructively to the proceeding, which was the foundation for the Commissioner’s June 20 Order granting the Company full party status.

Ultimately, ACE is a full party to this proceeding and remains willing to work with the other parties to find a mutually agreeable schedule that advances this proceeding efficiently. As noted above, the Company twice indicated a willingness to speak about the proposed dates and an openness to accommodate Rate Counsel’s needs, without prejudice to the Company. Petitioner has now sought a conference to resolve these matters. The Company supports Petitioner’s recommendation and consents to participation in a conference to finalize the dates, which will be more efficient than the continued exchange of correspondence.

Respectfully submitted,



Cynthia L.M. Holland
An Attorney at Law of the
State of New Jersey

cc: Service List

³ Specifically, ACE stated that it “objects to the question as inappropriate for discovery. The parties have agreed to a procedural schedule wherein ACE has been afforded the opportunity to submit testimony describing such. ACE has indicated that it would put forward approximately four witnesses to address the statutory elements, including its ability to finance such expansions.”

⁴ See ACE Response to RCR-ACE-23, wherein ACE acknowledged that “over the past two years multiple conversations have been held with representatives to the CCIA where information has been shared regarding potential projects that the CCIA has brought to ACE to confirm feasibility. ACE has not identified any formal presentations or memoranda or other written or video documentation that has been provided to CCIA.” Neither the Company’s ongoing dialogue with a County Authority nor its failure to identify any memoranda associated therewith is a justification for denying the Company reasonable time for testimony preparation in this proceeding.

⁵ Although Rate Counsel did not oppose the Company’s Intervenor status when it would have been timely, Rate Counsel’s subsequent actions have the potential impact, intended or not, of restricting the Company’s rights and full participation in this proceeding.

Exhibit A

EXHIBIT A

Amended Procedural Schedule

**In the Matter of the 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**

Motions to Intervene/Participate	April 6, 2022
First Round Discovery Responses Submitted by ACE/CCIA	April 25, 27 and May 6, 2022
CCIA files Testimony	July 22, 2022
Second Round Discovery Requests	August 8, 2022
Second Round Discovery Answers - suspended	August 22, 2022
CCIA files amended petition with testimony	On or before September 6, 2022
First Round Discovery on amended petition	September 16, 2022
Responses to First Round Discovery on amended petition	September 27, 2022
Discovery Conference	Week of October 10, 2022
Second Round of Discovery on amended petition (if needed)	October 21, 2022
Responses to Second Round of Discovery on amended petition (if needed)	November 4, 2022
Intervenor ACE to file Testimony	November 18, 2022
Rate Counsel Testimony	November 18, 2022
Discovery on Rate Counsel and ACE Testimony	December 2, 2022
Responses to Discovery on Rate Counsel and ACE Testimony	December 16, 2022
ACE/CCIA Rebuttal Testimony	December 30, 2022
Discovery on Rebuttal Testimony	January 6, 2023
Responses to Discovery on Rebuttal Testimony	January 11, 2023
Evidentiary Hearings++ with oral surrebuttal	Week of January 17, 2023**
Initial and Reply Briefs	TBD by Commissioner Gordon after evidentiary hearings
Public Hearing (Should be conducted when appropriate)	TBD

+ Petitioner and Intervenor agree that discovery is ongoing and will endeavor to answer all discovery within fifteen days of service or earlier if possible.

++Subject to Commissioner Gordon's availability.

** Subject to confirmation of witness availability

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Extension of Electric Public Utility Facilities of Atlantic City Electric Company Pursuant to N.J.S.A. 48:2-27
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