



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

ENERGY

IN THE MATTER OF THE ENERGY EFFICIENCY )  
PROGRAMS AND ASSOCIATED COST RECOVERY )  
MECHANISM PROCEEDINGS )  
)  
IN THE MATTER OF THE PETITION OF ATLANTIC )  
CITY ELECTRIC COMPANY FOR APPROVAL OF AN )  
ENERGY EFFICIENCY STIMULUS PROGRAM, AND )  
APPROVAL OF AN ASSOCIATED COST RECOVERY )  
MECHANISM AND BILL STABILIZATION ADJUSTMENT )  
PURSUANT TO N.J.S.A. 48:3-98.1 )

ORDER ADOPTING  
STIPULATION

BPU DOCKET NOS. EO09010056  
and EO09010063

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

On August 13, 2009, Atlantic City Electric Company ("ACE" or "Company"), the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the Staff of the New Jersey Board of Public Utilities ("BPU Staff" or "the Board Staff"), and the New Jersey Large Energy Users Coalition ("NJLEUC") (collectively, "Signatory Parties") entered into an agreement ("Stipulation") waiving the 180-day review period provided by N.J.S.A. 48:3-98.1(b), in connection with the Company's proposed Energy Efficiency Stimulus Program ("EE Program") and associated request for cost recovery.

By this Order, the Board considers the Stipulation extending the time frame for review of ACE's EE Program.

**Background and Procedural History**

On February 23, 2009, ACE filed the instant petition with the New Jersey Board of Public Utilities ("BPU" or "the Board") pursuant to the statutory requirements of the Regional Greenhouse Gas Initiative Act ("RGGI Act"), as codified in N.J.S.A. 48:3-98.1. The petition sought Board approval for the EE Program and simultaneous approval for the recovery of costs for the projects included within its proposed EE Program, as well as a Bill Stabilization

Adjustment ("BSA"). By letter dated March 25, 2009, in conformance with the terms of the Board's Order in In the Matter of the Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Resources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis Pursuant to N.J.S.A. 48:3-98.1, B.P.U Docket No. EO08030164, May 12, 2008 ("RGGI Order"), Staff advised ACE that the Company's petition was deemed administratively complete.<sup>1</sup>

### **ACE ENERGY EFFICIENCY STIMULUS PETITION**

In its petition, ACE requested approval of six (6) energy efficiency ("EE") programs having a total investment of approximately \$10 million over a twelve month period. The Company proposed the following EE programs:

#### **Residential Sub-Programs**

- The *Enhanced Residential HVAC Rebate Program*
- The *Repayment Plan Program*
- The *Whole House Program*

#### **Non-Residential Sub-Programs**

- The *Energy Efficiency Investment Program*
- *Building Commissioning and Operations & Maintenance ("O&M")*
- *Small Commercial Direct Installation*

ACE proposed to amortize program costs over a rolling five-year period and to recover costs through a component of a new Regional Greenhouse Gas Initiative ("RGGI") Recovery Charge ("Tariff Rider RGGI"), designed on a dollar per kilowatt-hour basis applicable to all Rate Schedules. The Company proposed an adjusted rate of return, based on a new weighted adjusted cost of capital ("WACC") that the petition stated would more accurately reflect current market conditions. In addition, ACE proposed a BSA provision, a monthly billing adjustment to the Company's distribution charge applied to specific customer classes, to allow for cost recovery of lost revenues associated with the EE programs, as well as for other similar EE programs that can potentially reduce the Company's level of energy delivery services.

By Order dated February 19, 2009, the Board retained this matter for review and hearing and, as authorized by N.J.S.A. 48:3-32, designated President Jeanne M. Fox as the presiding officer who was authorized to rule on all motions that arise during the proceeding and modify any schedule(s) that may be set as necessary to secure just and expeditious determinations in this matter. Subsequently, on May 15, 2009, President Fox issued an Order setting the procedural schedule in this matter.

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<sup>1</sup> N.J.S.A. 48:3-98.1(b) requires the Board to decide cost recovery issues within 180 days. Pursuant to the RGGI Order, Staff must review a petition for completeness within 30 days and, when a petition is determined to be administratively complete, set the beginning of the 180-day period. Accordingly, the 180-day period for a Board determination commenced on February 23, 2009.

On January 28, 2009, NJLEUC filed a Motion to Intervene in the proceeding. On March, 27, 2009, the Natural Resources Defense Counsel ("NRDC") filed a Motion to Intervene. By Orders dated March 27, 2009 and April 28, 2009, President Fox granted intervention to NJLEUC and NRDC, respectively.

Following the filing, the Company, Board Staff, and Rate Counsel and other interested parties (the "Parties") engaged in discovery and participated in numerous settlement and discovery conferences. As of result of the discovery and conferences undertaken by the Parties, and at the request of Board Staff, the Company filed a number of modifications to its original EE Program on May 29, 2009 ("May 29 Program"). The May 29 Program was forwarded to the Center for Energy, Economic, and Environmental Policy ("CEEEP") for performance of a cost benefit analysis ("CBA") for each component of the May 29 Program. Until such time as the CBA is completed, the Parties are unable to determine whether there are any issues that may require an evidentiary hearing.

### **PROPOSED STIPULATION**

Since the Parties' discussions in this matter might not be completed by August 24, 2009, the day that the statutory 180-day period for Board action on cost recovery expires, the Signatory Parties have agreed to extend and waive this date in order to provide CEEEP with additional time to complete its CBA and the Parties with additional time to continue their discussions so that the Board will have a fuller and more accurate record for review of the EE Program and issue a final determination in this matter. NRDC was given notice of the proposed Stipulation and took no position.

The attached Stipulation contains a provision to move forward consideration of ACE's EE Program and proposed BSA:

4. In Order to allow sufficient time for the administrative processing of the Company's Petition, including evidentiary hearings, if necessary, the signatory Parties agree that the RGGI date noted above should be waived. The signatory Parties therefore, pursuant to N.J.S.A. 48:2-213, request that the Board issue an Order prior to August 24, 2009 waiving the 180 day RGGI Act period for purposes of allowing completion of the procedural processing of the Company's petition.

### **DISCUSSION AND FINDINGS**

N.J.S.A. 48:2-21.3 allows any public utility to file with the Board a written stipulation waiving the effective date of any tariff or rate, subject to the Board's approval. In this case, to make a decision within the statutory time frame, it would have been necessary for the Board to consider the EE Program and BSA without the benefit of the CBA for each of the components of the revised EE Program. Analyses such as the CBA assist the Board in its decision-making in this type of case. Furthermore, no parties have opposed the Stipulation and the extension of the review period it contains, and ACE has agreed to the waiver. The Board **FINDS** that the need for a CBA, as well as the need of the parties to continue their discussions, justifies an extension of time beyond the statutory period.

For the foregoing reasons, the Board **HEREBY APPROVES** the attached Stipulation.

DATED: 8/19/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

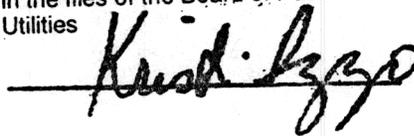
  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

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**IN THE MATTER OF THE ENERGY  
EFFICIENCY PROGRAMS AND  
ASSOCIATED COST RECOVERY  
MECHANISM PROCEEDINGS**

**BPU DOCKET NO. EO09010056**

**IN THE MATTER OF THE PETITION OF  
ATLANTIC CITY ELECTRIC COMPANY  
FOR APPROVAL OF AN ENERGY  
EFFICIENCY STIMULUS PROGRAM,  
AND APPROVAL OF AN ASSOCIATED  
COST RECOVERY MECHANISM AND  
BILL STABILIZATION ADJUSTMENT  
PURSUANT TO N.J.S.A. 48:3-98.1**

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**BPU DOCKET NO. EO09010063**

**STIPULATION**

**APPEARANCES:**

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Assistant General Counsel

**and**

**Nicholas W. Mattia, Jr., Esquire**  
Dickstein Shapiro LLP

for Petitioner, Atlantic City Electric Company

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Assistant Deputy Public Advocate,

for the Department of the Public Advocate, Division of Rate Counsel (**Ronald K. Chen,**  
Public Advocate, **Stefanie A. Brand,** Director)

**Caroline Vachier, Alex Moreau, Jessica L. Campbell, Kerri A. Kirschbaum, and**  
**Anne Marie Shatto,** Deputy Attorneys General,

for the Staff of the New Jersey Board of Public Utilities (**Anne Milgram,** Attorney  
General of New Jersey)

**Paul F. Forshay, Esquire and Yefat Levy, Esquire**  
Sutherland Asbill & Brennan LLP

for the Intervenor, New Jersey Large Energy Users Coalition

**TO THE NEW JERSEY BOARD OF PUBLIC UTILITIES:**

**BACKGROUND**

On February 23, 2009, the New Jersey Board of Public Utilities (the "Board") accepted for filing a Petition (the "Petition") submitted by Atlantic City Electric Company ("ACE" or the "Company") pursuant to the statutory requirements of the Regional Greenhouse Gas Initiative Act (the "RGGI Act"), as more fully set forth in N.J.S.A. 48: 3-98.1. The filing was assigned Docket No. EO09010063 and was related to the Board's generic economic stimulus (energy efficiency) initiative (BPU Docket No. EO09010056). The Petition sought Board approval for an Energy Efficiency Stimulus Program ("EE Program") and simultaneous approval for the recovery of costs for projects included within its proposed EE Program, as well as a Bill Stabilization Adjustment ("BSA"). By letter dated March 25, 2009, in conformance with the Board's May 12, 2008 Order in Docket No. EO08030164 implementing the requirements of the RGGI Act, the Board's Staff advised the Company that (i) the Petition was deemed to be "administratively complete" and (ii) the 180 day period prescribed by the RGGI Act for final Board determination of the filing would commence as of February 23, 2009. Based upon the February 23, 2009 "filing" date, the Parties have determined that the 180 day period prescribed by the RGGI Act shall expire on or about August 24, 2009 (the "RGGI date").

2. Following the filing of the Company's Petition, representatives from the Company, Board Staff, the Division of Rate Counsel and other interested parties (referred to jointly as the "Parties" engaged in extensive discovery and participated in a number of settlement and discovery conferences. As a result of the discovery and conferences undertaken by the Parties, and at the request of the Board's Staff, the Company, on May 29, 2009, filed a number of modifications to its original EE Program. The revised EE Program was forwarded to

the Center for Energy, Economic and Environmental Policy (“CEEEP”) for performance of a Cost Benefit Analysis (“CBA”) for each of the components of the revised EE Program. While the Parties anticipate that the CBA will be completed shortly; until such time as the CBA is completed, the Parties are unable to determine whether there are any issues that may require an evidentiary hearing. As such, the Parties are unable to finalize a procedural schedule at this time.

3. In light of the fact that the Parties’ discussions in this matter might not be completed by the RGGI date, the Parties have discussed the need for an extension and waiver of the RGGI date in order to provide the Board with additional time to complete the administrative processing of the Petition and issue a final determination in this matter.

Accordingly, the Parties hereby **STIPULATE AND AGREE** as follows:

#### **STIPULATED MATTER**

4. In order to allow sufficient time for the administrative processing of the Company’s Petition, including evidentiary hearings, if necessary, the Parties agree that the RGGI date noted above should be waived. The Parties therefore, pursuant to N.J.S.A. 48:2-21.3, request that the Board issue an Order prior to August 24, 2009 waiving the 180 day RGGI Act period for purposes of allowing completion of the procedural processing of the Company’s Petition.

#### **FURTHER PROVISIONS**

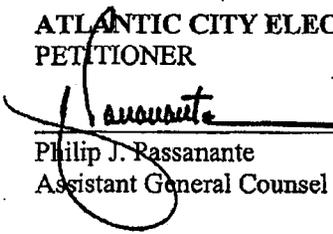
5. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this

Stipulation is not adopted in its entirety by the Board, in any applicable Order(s), then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

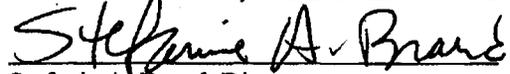
WHEREFORE, the Parties hereto do respectfully submit this Stipulation and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

**ATLANTIC CITY ELECTRIC COMPANY  
PETITIONER**

By:

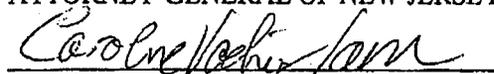
  
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**DEPARTMENT OF THE PUBLIC ADVOCATE  
RONALD K. CHEN, PUBLIC ADVOCATE**

  
Stefanie A. Brand, Director  
Division of Rate Counsel

**STAFF OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES  
ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY**

By:

  
Caroline Vachier  
Deputy Attorney General

**NEW JERSEY LARGE ENERGY USERS COALITION  
INTERVENOR**

By:

\_\_\_\_\_

August \_\_, 2009

Stipulation is not adopted in its entirety by the Board, in any applicable Order(s), then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

**WHEREFORE**, the Parties hereto do respectfully submit this Stipulation and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

**ATLANTIC CITY ELECTRIC COMPANY  
PETITIONER**

By: \_\_\_\_\_  
Philip J. Passanante  
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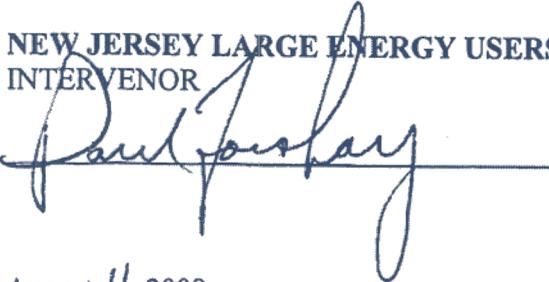
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By: \_\_\_\_\_  
Caroline Vachier  
Deputy Attorney General

**NEW JERSEY LARGE ENERGY USERS COALITION  
INTERVENOR**

By: 

Date: August 11, 2009

**NATURAL RESOURCES DEFENSE COUNCIL  
INTERVENOR**

**By:**

**Date:** August , 2009

I/M/O the Petition of Atlantic City Electric Company for Approval  
of an Energy Efficiency Stimulus Program, and Approval of an  
Associated Cost Recovery Mechanism and Bill Stabilization Adjustment

Pursuant To N.J.S.A. 48:3-98.1

BPU Docket Nos. EO09010056 and EO09010063

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