



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Post Office Box 350  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

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 ) DOCKET NO. EO22020043

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**David Weinstein, Esq.**, Archer & Greiner P.C. on behalf of Cumberland County Improvement Authority  
**Cynthia L.M. Holland, Esq., Assistant General Counsel**, on behalf of Atlantic City Electric Company

**BY COMMISSIONER ROBERT M. GORDON:**

**I. BACKGROUND AND PROCEDURAL HISTORY:**

On February 2, 2022, the Cumberland County Improvement Authority (“CCIA” or “Authority”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking approval for the extension or expansion of Atlantic City Electric Company’s (“ACE”) electric public utility facilities (“Petition”). The Authority also requested that ACE fund the proposed extension or expansion, arguing that ACE’s original expenditure will be recovered from the business received.

On February 17, 2022, ACE filed a motion to intervene. On March 3, 2022, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed a letter of no objection to ACE’s motion. At its March 23, 2022 Meeting, the Board issued an Order that:<sup>1</sup>

1. Ordered that the Petition be retained by the Board for hearing pursuant to N.J.S.A. 48:2-32;
2. Designated myself, Commissioner Robert M. Gordon, as the Presiding Officer with authority to rule on all motions that arise during the pendency of this proceeding, and to

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<sup>1</sup> In re 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, Order dated March 30, 2022 (“March 30, 2022 Order”).

modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues;

3. Required any entity seeking to intervene or participate file the appropriate application with the Board by April 6, 2022, and any party wishing to file a motion for admission of counsel, pro hac vice, should do so concurrently;<sup>2</sup> and
4. Granted ACE's Motion to Intervene, finding that ACE met the standards for intervention as it has a significant interest in this proceeding and it will add measurably and constructively to the proceeding without causing delay.

On June 20, 2022, I issued a Prehearing Order with Procedural Schedule, and directed CCIA, Rate Counsel, and ACE (collectively, "Parties") to comply with its terms.<sup>3</sup>

Via correspondence dated August 18, 2022, CCIA requested suspension of the Procedural Schedule to allow for the filing of an amended petition. On August 23, 2022, I granted CCIA's request subject to the following conditions: 1) CCIA must file its amended petition on or before two (2) weeks from the date of the suspension order; 2) the Parties must provide a new proposed procedural schedule three (3) business days from the filing of the amended petition; and 3) the dates for the evidentiary hearings must remain the week of January 17, 2023.<sup>4</sup>

## **II. PROPOSED PROCEDURAL SCHEDULES**

CCIA filed its amended petition on September 6, 2022, rendering the deadline to submit the proposed procedural schedule to on or before September 9, 2022.<sup>5</sup> The Parties did not agree on a procedural schedule; however, Rate Counsel and ACE timely submitted separate schedules for my review and consideration. Thereafter, Rate Counsel, ACE and CCIA submitted correspondence regarding their respective positions, a summary of which is as follows:

### **ACE**

ACE argued that Rate Counsel's proposed schedule only afforded ACE approximately half the amount of time to prepare testimony as was afforded Rate Counsel. ACE suggested that ACE and Rate Counsel both submit their testimony on or prior to November 18, 2022. According to ACE, simultaneous filing of testimonies not only provides ACE and Rate Counsel equal time, it is procedurally consistent with the Procedural Schedule provided in my June 2022 Prehearing Order.<sup>6</sup>

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<sup>2</sup> As of April 6, 2022, the only Motion filed was ACE's Motion to Intervene which was granted by the full Board in the March 30, 2022 Order.

<sup>3</sup> In re 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, Prehearing Order with Procedural Schedule, BPU Docket No. EO22020043, Order dated June 20, 2022 ("June 2022 Prehearing Order").

<sup>4</sup> In re 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, Order Suspending Procedural Schedule, BPU Docket No. EO22020043, Order dated August 23, 2022.

<sup>5</sup> Id.

<sup>6</sup> See June 2022 Prehearing Order at Exhibit A.

ACE further argued that, contrary to Rate Counsel's position, ACE should have an opportunity to provide rebuttal testimony.

### Rate Counsel

According to Rate Counsel, the simultaneous filing of testimony would be unfair to ratepayers and counterproductive, causing confusion; as such, Rate Counsel requested to file its testimony after ACE's intervenor testimony so that Rate Counsel would have "the necessary information to file complete testimony on the proposed extension projects." Next, Rate Counsel claimed that ACE does not need additional time to prepare its testimony because it already disclosed the information on which it must present testimony. Thus, Rate Counsel proposed that ACE submit its testimony by October 7, 2022, and the Parties serve discovery on ACE's testimony by October 21, 2022.

Rate Counsel also argued that ACE should not have an opportunity for rebuttal testimony because it is an intervenor. Rate Counsel explained that, since intervenors do not have the same evidentiary burden as petitioners, intervenors should not receive opportunities normally reserved for petitioners. According to Rate Counsel, permitting intervenors to submit rebuttal testimony would lead to "additional confusion and delay."

### CCIA

CCIA submitted correspondence consenting to Rate Counsel and ACE's proposed schedules. CCIA acknowledged ACE's request for additional time to prepare testimony and Rate Counsel's concerns regarding ACE's schedule, and asked me to intervene to resolve the conflict.

CCIA also requested that the final procedural schedule include "a date for a discovery conference in the week following the deadline for discovery" and "a date for a settlement conference . . . after all testimony is submitted." CCIA noted that its expert witness would be unavailable during the week of October 30, 2022.

## **III. DISCUSSION AND FINDINGS**

I reviewed the Parties' proposed procedural schedules and correspondence pertaining thereto. I understand the need to balance expediency with the Parties' desire for equal time and opportunity. Pursuant to N.J.A.C. 1:1-14.6, the Presiding Officer "shall control the presentation of the evidence and the development of the record," and the Presiding Officer may also limit "the presentation of oral or documentary evidence" and "the submission of rebuttal evidence," as well as "take such other actions as are necessary for the proper, expeditious and fair conduct" of the proceeding. I want to ensure that the procedural schedule results in a full and complete record.

As such, I **HEREBY FIND** that the proposed procedural schedules submitted by ACE and Rate Counsel do not provide the necessary balance of the Parties' interests. I **FURTHER FIND** that the Procedural Schedule attached hereto as "Exhibit A" provides such balance, and resolves the issues raised herein. With regard to the simultaneous filing of testimony, I **HEREBY FIND** it is equitable, will result in a full and complete record, will not cause undue delay, and is consistent with the Procedural Schedule provided in the June 2022 Prehearing Order.<sup>7</sup> I **FURTHER FIND**

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<sup>7</sup> Id.

that, consistent with N.J.A.C. 1:1-14.6, and to ensure a full and complete record, CCIA, ACE, and Rate Counsel all may provide rebuttal testimony.

Therefore, I **HEREBY ORDER** that the Procedural Schedule attached hereto as "Exhibit A" be binding on the Parties and controlling in this matter as of the date of this Order.

I **FURTHER DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 9/30/22

  
ROBERT M. GORDON  
COMMISSIONER

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

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**EXHIBIT A**  
**Amended Petition 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	October 7, 2022
Responses to First Round Discovery on amended petition	October 17, 2022
Discovery Conference	TBD by the parties
Second Round of Discovery on amended petition (if needed)	October 28, 2022
Responses to Second Round of Discovery on amended petition (if needed)	November 4, 2022
Rate Counsel/Intervenor ACE to file 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/Rate Counsel 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
Discovery Conference (if needed)	TBD
Settlement Conference (if needed)	TBD

- + Petitioner and Intervenor agree that discovery is ongoing and will endeavor to answer all discovery within 15 days of service or earlier if possible.
- ++ Subject to Commissioner Gordon's availability.
- \*\* Subject to confirmation of witness availability.