



State of New Jersey  
DEPARTMENT OF THE PUBLIC ADVOCATE  
DIVISION OF RATE COUNSEL  
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December 4, 2009

**Via Hand Delivery**

Honorable Kristi Izzo, Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

**RE: In the Matter of the Petition of Atlantic City Electric Company for the Approval of the Sale of Certain Land and Premises Situate in the Township of Maurice River, in Part, and the city of Millville, in Part, County of Cumberland and State of New Jersey to R.W.V. Land & C.M. Livestock, L.L.C. Pursuant to N.J.S.A. 48:3-7  
BPU Docket No. EM02050313**

Dear Secretary Izzo:

The New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") submits this Reply Letter Brief to the New Jersey Board of Public Utilities ("BPU" or "the Board") in the referenced matter. Enclosed please find an original and ten copies of Rate Counsel's Letter Brief. We are enclosing one additional copy of the materials transmitted. Please stamp and date the copy as "filed" and return it to our courier.

## ARGUMENT

The initial briefs filed in this matter fail to dispute Rate Counsel's central point: that all three experts, whose opinions have been offered as evidence, agree that the offer by the New Jersey Department of Environmental Protection ("NJDEP") represents the highest monetary value for the property of the Atlantic City Electric Company ("ACE")<sup>1</sup>.

In rendering an opinion regarding a "Comparison Of The Millville 1350/Atlantic Transaction With DEP's Offer" the Gustella Associates Supplemental Economic Analysis offered as evidence by Millville 1350<sup>2</sup> admits that the offer by the NJDEP is 2.8% more than that offered by its client using a 5.0% discount rate. The Environmental Intervenors<sup>3</sup> prepared Table 3 (p. 19, Environmental Intervenors Brief) that compares the three expert opinion reports and constitutes the evidence before the Board demonstrating agreement that the NJDEP offer represents the highest monetary value for the property.

In addition, since the initial briefs were filed the State of New Jersey has conducted an election in which the voters chose to support \$200 million of additional borrowing for open space, farmland and historic preservation. Thus, the

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<sup>1</sup> / *In the Matter of the Petition of Atlantic City Electric Company for Approval of the Sale of Certain Land and Premises Situate in the Township of Maurice River, in part, and the City of Millville, in part, County of Cumberland and the State of New Jersey to R.W.V. Land & C.M. Livestock, L.L.C. pursuant to N.J.S.A. 48:3-7, ("Petition"), BPU Docket No. EM02050313, filed May 22, 2002.*

<sup>2</sup> / R.W.V. Land & C. M. Livestock, L.L.C., a New Jersey Limited Liability Company (and Millville 1350, L.L.C., the entity created to act as the developer, collectively, "Millville 1350" as the buyers)

<sup>3</sup> / The New Jersey Conservation Foundation, the New Jersey Audubon Society, the Association of New Jersey Environmental commissions and Citizens United to Protect the Maurice River and its Tributaries, Inc. ("Environmental Intervenors").

commitment to open space preservation and support of the citizens of the State of New Jersey has been recently demonstrated by the democratic process. The Board should take notice of this development pursuant to *N.J.A.C. 1:1-15.2* and recognize the wishes of the citizens of the State in considering their decision.

ACE, in its brief, merely states that “nothing came up at the September 23, 2009 hearing” which “indicates that ACE’s Petition should not be approved.” In essence, ACE argues that if a petition is filed with the Board pursuant to *N.J.S.A. 48:3-7* and meets the bare requirements set forth in the statute, the Board has no discretion but to approve the petition. To accept that reasoning would be to ignore the statutory authority charging the Board with the responsibility to examine and insure the integrity of the sale process of utility property for the public benefit. Requiring a petition to be filed, examined by the Board and as in this instance, contested, insures ratepayer and New Jersey interests are protected.

Similarly, Millville 1350 argues in its brief that there is “no basis for the Board to second guess ACE’s Business judgment entering into the Purchase Agreement”. (Millville 1350 Brief, p. 16) To accept this argument by Millville 1350 would be to admit the Board has no jurisdiction or authority under the statute to review the Petition and determine if the proposed sale serves the public interest. (See, *I/M/O Application of West Jersey and Seashore Railroad Co.*, 46 *N.J. Super.* 543, 547 (App. Div. 1957; certif. denied, 25 *N.J.* 491 (1957).) One of the filing requirements under *N.J.A.C. 14:1-5.6(a) 6.* states in part, “whether it is the best price or rental available” which clearly indicates that the Board finds the highest monetary

price attainable to be of critical importance in its consideration of the Petition. The Board is empowered by statute to insure the public interest is protected through the procedures established to consider the evidence and rule upon the Petition.

Millville 1350 also argues that the Board should recognize its substantial commitment in terms of expense and effort in meeting the contingencies of the Purchase Agreement between ACE and Millville 1350. “These ‘experts’ have also completely ignored the undisputed evidence of Millville 1350’s ongoing commitment, backed by substantial expenditure of time, effort, and money, to acquire the subject Property and pursue the planned development...” (Millville 1350 Brief, p. 19.) It would be inappropriate for the Board to consider these expenses and efforts in evaluating the fair market value of the property to the ratepayer since these expenses do not inure to the public benefit or were spent in the public interest. The costs and efforts Millville 1350 cites in support of its position inure to its own benefit, not the public’s. Furthermore, Millville 1350 cannot cite to evidence in the record supporting of its position. Millville 1350 cannot point to any accounting, receipts or other means of determining the value of the expenses referenced by Millville 1350 in the record. In addition, Millville was aware of the need for Board review and approval.

Millville 1350 argues that on the one hand, for purposes of evaluating the fair market value of the property, the Board should consider the expenses and efforts of Millville 1350 in meeting its obligations under the Purchase Agreement; while on the other hand Millville 1350 also argues that the Board should ignore the inherent

value of the environmental considerations when considering the Petition because, “there is no unlimited ‘public interest’ standard under N.J.S.A. 48:3-7.” (Millville 1350 Brief, p. 39.) Millville 1350 is creating issues with which to contradict itself, all in an effort to obfuscate the fact that the existing NJDEP offer represents the highest monetary value for the property in the Petition. Accordingly, these arguments should be rejected.

### CONCLUSION

Rate Counsel requests that the Board reject the offer contained in the Petition and order the sale to the NJDEP on the terms outlined in its most recent offer.

Respectfully yours,

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BPU Docket No. EM02050313

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