



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF)
ATLANTIC CITY ELECTRIC COMPANY FOR)
THE APPROVAL OF THE SALE OF)
TRANSFORMERS AND OTHER EQUIPMENT)
PURSUANT TO THE "RESTORE" AGREEMENT) DOCKET NO. EM20070475

Parties of Record:

Philip J. Passanante, Esq., Atlantic City Electric Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND

By Order dated July 11, 2007, the New Jersey Board of Public Utilities ("Board") approved the sale of transformers by Atlantic City Electric Company ("ACE" or "Company"), Jersey Central Power and Light Company, and Public Service Electric and Gas Company pursuant to a Spare Transformer Sharing Agreement under the Spare Transformer Equipment Program ("STEP").¹ Under the STEP agreement, a participating utility may be called upon to sell transformers to another participating utility if an act of terrorism results in the destruction or long-term disabling of that utility's electric transmission substations. The STEP Order also determined that such sales are in compliance with the Board's Affiliate Relations Standards, which are currently codified at N.J.A.C. 14:4-3.1 et seq. ("Affiliate Relations Standards").

ACE RESTORE PETITION

On July 1, 2020, ACE filed a petition ("Petition") seeking Board approval of the potential sale of spare transmission power transformers and other equipment, pursuant to N.J.S.A. 48:3-7, resulting from ACE's participation in the Agreement for Regional Equipment Sharing for Transmission Outage Restoration ("RESTORE" or "RESTORE Agreement"). In the Petition, ACE

¹ In re the Joint Verified Petition of Atlantic City Electric Company, Jersey Central Power and Light Company, Public Service Electric and Gas Company and Rockland Electric Company for the Approval of the Sale of Transformers Pursuant to a Spare Transformer Sharing Agreement and Associated Matters, BPU Docket No. EM06110802, Order dated July 11, 2007 ("STEP Order").

also sought confirmation that any sales of transformers and other equipment by ACE under the RESTORE Agreement are compliant with the Affiliate Relations Standards.

As noted in the Petition, RESTORE is an equipment-sharing initiative by which participating utilities may sell spare transformers and other equipment to another utility following a Triggering Event. According to ACE, the RESTORE Agreement will ensure system reliability by eliminating the long lead times normally associated with manufacturing and acquiring transformers.

According to the RESTORE Agreement, a Triggering Event is defined as “a catastrophic event creating an urgent grid need in which, for an extended period of time, a participant loses its ability to serve significant load, is at imminent risk for losing significant load, or cannot maintain grid stability”. By defining Triggering Event more broadly than the STEP Agreement, RESTORE enables a participating utility to obtain critical equipment following events other than acts of terrorism.

Currently, approximately 30 utilities from around the country are signatories to RESTORE. Exelon Business Services Company, LLC (“Exelon”), ACE’s parent company, executed a Joinder Agreement on behalf of the six (6) electric utility operating companies within Exelon in December 2018, by which ACE became a signatory to RESTORE.

As noted in the RESTORE Agreement, a buyer shall pay the seller the replacement cost or net book value of the equipment, at the seller’s option, plus equipment preparation and transportation costs and taxes. Additionally, each RESTORE participant must maintain a certain amount of spare equipment for each equipment class in which it participates, and designate such equipment as subject to being sold to other participating utilities upon the occurrence of a Triggering Event. Exelon has determined that the available spares would currently be sourced from ACE’s affiliated utilities and not from ACE.

ACE also noted that the RESTORE Agreement defines “spare equipment” as including transformers and other items as may be specified by the RESTORE Committees. While ACE only foresees the potential need to sell transformers, the RESTORE Agreement provides flexibility to include other transmission-related items such as circuit breakers and switches. Additionally, there are no fees to be a member of RESTORE.

RATE COUNSEL COMMENTS

On December 1, 2020, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed comments with the Board indicating that it did not object to the potential sale of spare transmission transformers and other transmission-related equipment by ACE pursuant to the RESTORE Agreement.² Additionally, Rate Counsel stated that it would not object to the Board finding such sales to be in compliance with the Affiliate Relations Standards.³ However, Rate Counsel requested that Board approval be conditioned on certain provisions designed to protect against anti-competitive behavior while ensuring fairness to ratepayers⁴ which are incorporated herein.

² See Rate Counsel Comments at 4.

³ Id. at 5.

⁴ Id. at 6 to 7.

ACE REPLY COMMENTS

On February 15, 2021, ACE filed reply comments. In its comments, ACE acknowledged Rate Counsel's lack of objection to the Petition.⁵ However, ACE recommended a modification to Rate Counsel's proposed condition which stated, "[t]he Board retains the right to examine the books and records of ACE and any affiliate in connection with any transaction related to the approvals granted in this matter, whether or not such affiliate is regulated by the Board".⁶ According to the Company, ACE will not transact with an affiliate under RESTORE as any transactions would involve RESTORE members outside the Exelon family.⁷ Therefore, ACE recommended that Rate Counsel's proposed condition be revised to state, "This Order shall in no way be construed to limit the jurisdiction and authority of the Board and the State of New Jersey over ACE or its affiliate companies".⁸ According to the Company, the condition as revised and proposed by ACE is more consistent with Rate Counsel's stated request that "the Order of approval specifically state that the grant of relief does not affect the Board's jurisdiction".⁹ ACE further indicated that it did not object to the other conditions proposed by Rate Counsel.¹⁰

DISCUSSION AND FINDINGS

As noted in the Petition, RESTORE is designed to enable participating utilities access to transmission power transformers and other critical equipment following a Triggering Event. By participating in RESTORE, there is the potential that ACE can eliminate the long lead times normally associated with acquiring this equipment and be able to avoid extended system degradation. Therefore, the Board **FINDS** that the proposed sale of transformers and other equipment pursuant to the RESTORE Agreement is in the public interest and will not negatively impact ACE's ability to render safe, adequate, and proper service.

The Board has the authority to waive its rules pursuant to N.J.A.C. 14:1-1.2(b), which provides that "[i]n special cases and for good cause shown," the Board may relax or permit deviations from these rules. Further, in accordance with the general purposes and intent of its rules, the Board shall waive sections of its rules if "full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate, and proper service, or the interests of the general public."¹¹

As noted herein, the purpose of the RESTORE Agreement is to ensure system reliability by eliminating long lead times normally associated with manufacturing and acquiring transformers. Requiring further action to effectuate the sale of transformers upon a Triggering Event would thwart the underlying purpose of the RESTORE Agreement. The Board **FINDS** that full compliance with the rules at N.J.A.C. 14:1-5.6 requiring petitions for the approval of the sale or lease of property would adversely affect the interests of the general public and the ability of ACE to continue to render safe, adequate, and proper service upon a Triggering Event as delineated in the RESTORE Agreement.

⁵ See ACE Reply Comments at 2.

⁶ See Rate Counsel Comments at 7, Condition No. 4.

⁷ See ACE Reply Comments at 3, Footnote No. 3.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ *Ibid.*

¹¹ N.J.A.C. 14:1-1.2(b)(1).

The Board's Affiliate Relations Standards establish standards for transactions between an electric or gas utility and its affiliates, and are designed to prevent anti-competitive behavior and cross-subsidization. Since other Exelon utilities are also signatories to RESTORE, ACE may potentially purchase or sell transformers or other equipment to an affiliate under the RESTORE Agreement. However, the RESTORE Agreement establishes specific conditions under which these transactions may occur. Additionally, ACE agreed to separately track all expenses associated with RESTORE and to immediately notify the Board and Rate Counsel of any proposed conveyance of transformers or other equipment under the RESTORE Agreement.¹² Accordingly, the Board **FINDS** that proposed transactions under the RESTORE Agreement do not violate the Affiliate Relations Standards codified at N.J.A.C. 14:4-3.1 et seq.

The Board also considered the additional conditions offered by Rate Counsel and the Company's response. The Board agrees that the conditions suggested by Rate Counsel will ensure fairness and provide protection to ratepayers. Accordingly, the Board accepts Rate Counsel's proposed conditions and incorporates them herein. The Board is also cognizant of the Company's request to modify a certain condition proposed by Rate Counsel related to affiliate transactions. ACE asserted that Rate Counsel's proposed condition "exceeds what is necessary to adjudicate the matter at this time" given that there will "likely" be no affiliate transactions under RESTORE.¹³ However, the Board notes that in the Petition, ACE sought confirmation that any sales of transformers and other equipment by ACE under the RESTORE Agreement be deemed compliant with the Affiliate Relations Standards.¹⁴ As a result, the possibility exists that ACE will purchase equipment from or sell equipment to an affiliate under RESTORE. Therefore, the Board believes that the condition proposed by Rate Counsel is necessary to ensure ratepayer protection in the event that ACE does transact with an affiliate. Accordingly, the Board incorporates the condition as proposed by Rate Counsel herein.

After careful review and consideration of the Petition, exhibits, discovery and comments submitted in this matter, the Board **HEREBY APPROVES**, pursuant to N.J.S.A. 48:3-7, the potential sale of transformers and other equipment by ACE in accordance with the terms and conditions of the RESTORE Agreement. The Board, having found good cause, **HEREBY WAIVES** the applicability of N.J.A.C. 14:1-5.6 to transfers made pursuant to the RESTORE Agreement. Additionally, such sales shall be deemed in compliance with the Affiliate Relations Standards under N.J.A.C. 14:4-3.1 et seq.

The Board's approval is subject to the following conditions:

1. ACE shall maintain accounting records sufficient to separately track all expenses associated with the RESTORE Agreement.
2. Any equipment purchased by ACE under the RESTORE Agreement shall be obtained at the lowest possible cost to ratepayers so far as is reasonably practicable.
3. To the extent that ACE sells any equipment for a purchase price above its book value, the excess of the purchase price over book value shall be applied to the cost of purchasing a replacement transformer or other equipment needed to meet the Company's required obligations under the RESTORE Agreement.

¹² See Petition at Paragraph 35.

¹³ See ACE Reply Comments at 3.

¹⁴ See Petition at Paragraph 7.


4. ACE shall immediately notify the Board and Rate Counsel of any proposed purchase or conveyance of transformers or other equipment pursuant to the RESTORE Agreement.
5. Notice shall be provided to the Board and Rate Counsel upon revision, change or modification of any of the terms, conditions, requirements or obligations under the RESTORE Agreement.
6. ACE shall submit annual filings to the Board, with copies to Rate Counsel, that include a description of any changes to the RESTORE Agreement; ACE's required obligations and any changes thereto; as well as a breakdown of its RESTORE Agreement costs, together with supporting documentation. The annual filings will also include supporting documentation for all transactions reported under Condition (4) above, including competition prices and lead times for all transactions.
7. ACE shall provide simultaneous notice to the Board and Rate Counsel upon filing a rate application with the Federal Energy Regulatory Commission ("FERC") seeking to modify its transmission rates to recover costs associated with the RESTORE Agreement, together with copies of all such filings.
8. The Board and Rate Counsel reserve their rights to review any federal or state rate recovery filing related to RESTORE.
9. This Order is based upon the specific and particular facts of this case and shall not affect the Board's jurisdiction over utility property transactions pursuant to N.J.S.A. 48:3-7.
10. The Board retains the right to examine the books and records of ACE and any affiliate in connection with any transaction related to the approvals granted in this matter, whether or not such affiliate is regulated by the Board.

The Company's costs remain subject to audit by the Board. This Order shall not preclude, nor prohibit, the Board from taking any actions determined to be appropriate as a result of any such audit.

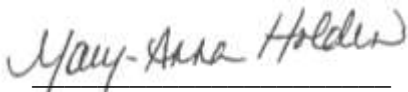
This Order shall be effective on April 3, 2021.

DATED: March 24, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

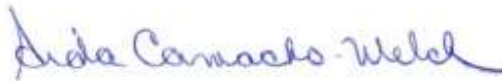


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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THE "RESTORE" AGREEMENT

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