



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF
THE ATLANTIC CITY SEWERAGE)
COMPANY FOR AUTHORIZATION TO
MAKE, EXECUTE AND IMPLEMENT AN)
AGREEMENT OF SALE AND TO)
IMPLEMENT A PLAN OF DISTRIBUTION)
OF THE NET PROCEEDS THERE FROM

ORDER ADOPTING PARTIAL STIPULATION

BPU DOCKET NO. WM07080634

(SERVICE LIST ATTACHED)

BY THE BOARD:

On August 23, 2007, Atlantic City Sewerage Company (ACSC, Company or Petitioner), a public utility of the State of New Jersey, having its principal office located at 1200 Atlantic Avenue, Suite 300, Atlantic City, New Jersey, and subject to the jurisdiction of the New Jersey Board of Public Utilities (Board), filed a petition with the Board seeking authority to: (1) make, execute and implement an Agreement of Sale (Agreement) entered into on July 24, 2007, between Petitioner and Pagano Development Company, Inc. (PDC) and (2) implement a plan of distribution of the net proceeds from the sale of property that is the subject of the Agreement as a credit to customer bills. The Company also requested a waiver of the Board's advertising and bidding requirements as set forth in N.J.A.C. 14:1-5.6.

BACKGROUND/PROCEDURAL HISTORY

Petitioner operates a sewage collection and transmission system within the City of Atlantic City, Atlantic County, New Jersey and serves approximately 7,460 customers. ACSC does not treat any of the sewage it collects, instead transmitting all collected sewage to the Atlantic County Utilities Authority (ACUA) for treatment. ACSC does not meter sewage flows but bills its customers based on that customer's volumetric water usage. Individual customer water usage is determined by ACSC through data it receives from the Atlantic City Municipal Utilities Authority (ACMUA), the entity providing water service within the City of Atlantic City. Each year ACSC bills its customers based on water consumption during the prior year.

The Company owns certain real property located in Atlantic City on Huron Avenue also known as Marina Boulevard.¹ This property, known hereinafter as the Huron Avenue Property, was the subject of several previous petitions before the Board involving the sale of portions of the Huron Avenue Property.²

Petitioner now seeks to sell the remainder of the Huron Avenue Property pursuant to an Agreement of Sale with the Pagano Development Corp., dated July 24, 2007. (Petition, Exhibit L). Pursuant to the terms of the Agreement, PDC will pay ACSC \$27,500,000 for approximately 17.4 acres. The Agreement calls for four deposits of \$100,000 each and the balance of the \$27,100,000 to be paid at closing. The first deposit of \$100,000 was to be paid by PDC on the effective date of the Agreement. Said deposit is non-refundable. The second deposit of \$100,000 will be paid by PDC within ten business days following the day the buyer obtains preliminary site approval from the planning board of the City of Atlantic City. The third deposit of \$100,000 shall be paid by PDC within ten days of the date that the buyer obtains a Coastal Area Facility Review Act (CAFRA) permit³ for the project from the New Jersey Department of Environmental Protection. The fourth deposit of \$100,000 is to be paid within ten business days of the date that the buyer obtains final site plan approval for the project from the planning board of the City of Atlantic City. The balance of the purchase price, the sum of \$27,100,000 less real estate taxes and other expenses customarily adjusted, is due at the date of closing.

The Company selected Cushman and Wakefield (C&W) to market the Huron Avenue Property in November 2005. The Company stated that C&W was chosen because of its recent success in the sale of properties in Atlantic City, which included the sale of the Trump World's Fair site for \$25,150,000, and the sale of the former Children's Hospital of Philadelphia Seashore Home for \$7,500,000. C&W conducted an extensive national marketing campaign for the Huron Avenue Property, including the development of a website and the distribution of 4,000 brochures to developers in North and Central America. As a result of C&W's efforts, 33 groups expressed interest in looking more closely at the development opportunity. Of those who expressed interest, Pagano Development Corp. was the only interested party to follow through with a serious financial offer.

The Huron Avenue Property was originally acquired in 1920 for the location of two 36 inch force mains, which carry 95% of Petitioner's wastewater. The 1920 acquisition cost of the entire Huron Avenue Property was \$7,000. According to the petition, the highest and best use for the Huron Avenue property is residential, however, it is not on the Boardwalk and does not overlook the beach and has only 5.2 acres that are usable for development. The Petitioner states that there has never been a sale of such a large, non-casino property in Atlantic City that was not located on the Boardwalk. According to the Petition, there is no other prospective use of the Huron Avenue Property nor other prospective purchaser willing to acquire the property for more than the \$27,500,000 sale price.

¹ The subject property is more formally designated as 1401 Marina Boulevard, Atlantic City, New Jersey. It is designated Block 580, Lot 1 on the Atlantic City tax map.

² See: I/M/O Atlantic City Sewerage Company (Docket No. WM98980790, September 23, 1998); I/M/O Atlantic City Sewerage Company (Docket No. WM98090790, January 14, 1999); I/M/O Atlantic City Sewerage Company, (Docket No. WE03040331, October 20, 2003), and I/M/O Atlantic City Sewerage Company, (Docket No. WM04050336, February 23, 2005).

³ N.J.S.A. 13:19

During the course of a condemnation proceeding conducted pursuant to the acquisition of a portion of the Huron Avenue property by the South Jersey Transportation Authority (SJTA), two appraisals were prepared. One appraisal was prepared by SJTA on June 22, 2002 by Integra Realty Resources. That appraisal found that the Huron Avenue Property, after the taking was valued at \$25,800,000. The second appraisal was prepared by Appraisal Consultants Corp. on behalf of the Company on June 16, 2003. The June 16, 2003 appraisal was submitted in support of the Company's claim to just compensation from the SJTA and valued the Huron Avenue Property after taking at \$52,200,000.

Petitioner asserts that sale of the property will not affect its ability to render safe, adequate and proper service to its customers.

Based upon the above, as well as the unique nature of the Huron Avenue Property, the Petitioner requested waiver of the bidding and advertising requirements in N.J.A.C. 14:1-5.6. The Company stated that numerous attempts have been made over the years to market the Huron Avenue Property and C&W has expended considerable time over the course of 2006-2007 in marketing and negotiating with prospective developers for the purchase of the Huron Avenue Property. One acceptable offer was received, the offer of PDC in the amount of \$27,500,000. The Petitioner states that the offer of \$27,500,000 is considered strong for a non-Boardwalk development site, especially given the current depressed real estate housing environment. PDC presented the best offer to purchase the Huron Avenue Property. There was no other prospective use of the Huron Avenue Property or another prospective purchaser who was willing to acquire the Huron Avenue Property for more than the \$27,500,000 sale price. Accordingly, the petition requests that the Board authorize the making, execution and implementation of the Agreement and waive the bidding and advertisement requirements of N.J.A.C. 14:1-5.6(b).

PROPOSED METHOD OF DISTRIBUTION

The Petitioner also requests that the Board issue an Order providing for the distribution of Net Proceeds. Exhibit "N" to the Petition computes the method of distribution as in accordance with the Board Order in Docket Nos. WM871001283 and WM 87030219, dated February 26, 1988, which adopted a Memorandum of Understanding (MOU). The MOU addressed the eventual disposition of the Huron Avenue Property. In part, the \$27,500,000 purchase price will be adjusted for expenses associated with marketing, the original cost of the property, legal fees and miscellaneous costs. The purchase price will further be reduced by Federal Income Taxes and the relocation and repairs of the force mains. All costs are projected and actual costs will be applied when they become known and measurable. Pursuant to the MOU, one-half of the net proceeds should be credited to Petitioner's customers' bills.

The Petitioner proposes to use the actual number of customers as of the date of distribution. If the July 31, 2007 date were utilized, the level of customers would be 7,460, which translates to a credit per customer of \$669. Petitioner also proposes to retain one-half of the net proceeds for distribution to its shareholders.

As a result of the Stipulation, it is anticipated that approximately \$4,989,773 of the proceeds from the sale of the Huron Avenue Property will be returned to ratepayers once final payment is received by the Petitioner. The proceeds of \$4,989,773 are approximately one half of the expected net proceeds and such distribution is in accordance with the prior MOU.

The number of customers that will receive this refund shall be based upon the actual number of customers as of the date of distribution. Each customer will receive an equal share. Utilizing the July 2007 number of customers, it is expected that the credit per customer will be \$669 which is approximately 139% of the average residential customer's annual bill of \$482.

STIPULATION

This matter was retained by the Board for hearing. After extensive discovery and several settlement conferences, the Parties⁴ reached a partial settlement which is more fully set forth in the attached Partial Stipulation⁵ as summarized below. Additionally, as referenced in the Stipulation, on appraisal of the Huron Avenue property (the Appraisal) dated January 29, 2008, was prepared by Value Research Group, LLC and was submitted to the Board on February 25, 2008. The appraised value was \$26,172,000, \$1,328,000 less than the purchase price of \$27,500,000. The Parties stipulate that:

- 1 The Board should issue an Order authorizing ACSC, pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, to proceed to closing of title pursuant to the Agreement of Sale filed in this matter at any time during a period of five (5) years from the date of such Order. In accordance with the provisions of N.J.A.C. 14:1-5.6 (i) (v) sic, the Company submitted the Appraisal which determined a fair market value for the Huron Avenue Property in excess of the selling price. Based upon the Company's actions, C&W's marketing efforts, and the Appraisal, the sales price of the property appears to be higher than the fair market value of the property to be sold. This is the first time the Company has received a viable offer of the Huron Avenue Property despite years of marketing efforts. There is no relationship between the Company and PDC other than transferor and transferee. (Settlement Paragraph 44).
2. The Parties agree the Board should waive the bidding and advertising requirements contained in N.J.A.C. 14:1-5.6. The Parties reached this conclusion on the following factors:
 - a. The waiver will not adversely affect the public interest.
 - b. There is no other likely prospective purchaser of the property. Numerous attempts have been made over the years to market the Huron Avenue Property and C&W expended considerable time over the course of 2006-2007 marketing and negotiating with prospective developers for the purchase of the Huron Avenue Property. After all these years, one acceptable offer was received.
 - c. The sale of the property shall not affect the ability of the utility to render safe, adequate and proper service.
 - d. Based upon the Appraisal, the Company's actions and C&W's marketing efforts, the sales price of the property appears to represent in excess of the fair market value of the property to be sold. Moreover, this is the first time the Company has

⁴The parties to this matter are the Petitioner, the Department of the Public Advocate, Division of Rate Counsel, and the Staff of the Board of Public Utilities.

⁵Cited paragraph references are in the settlement document. This is only a summary, the full settlement document controls, subject to the Board's findings and conclusions contained herein.

received a viable offer on the Huron Avenue Property despite years of marketing efforts.

- e. There is no relationship between the Company and PDC other than transferor and transferee.
 - f. Although the subject property still remains used and useful for utility purposes, the bulk of the Huron Avenue Property will not be used and useful for utility purposes following the sale. Rather, one of the force mains currently located centrally on the Huron Avenue Property, will be located elsewhere on the Huron Avenue Property. ACSC will take back an easement where the two force mains will be located. As a result, the Huron Avenue Property may be sold, without disturbing its public utility purpose. Moreover, following the sale of the Huron Avenue Property, the bulk of the Huron Avenue Property will no longer be used and useful. (Settlement Paragraph 45).
3. Pursuant to the MOU, fifty percent of the net proceeds from the sale of the Huron Avenue Property shall be returned to ratepayers and fifty percent shall be available for distribution to shareholders. The Parties further agree that review of the calculation of the net proceeds, the implementation of any plan of distribution, and any rate making issues related to the sale of the Huron Avenue Property should take place at a later date, when such matters are properly brought before the Board. Such a plan of distribution and ratemaking shall be consistent with the MOU. No distribution of proceeds to customers or shareholders shall be made without prior Board approval. ACSC will retain any such monies in an interest bearing account until such distribution is ordered by the Board. (Settlement Paragraph 46).
4. The Petitioner may agree to waive certain provisions of the Agreement limited to requirements that PDC meet certain targets concerning approvals for development of the Huron Avenue Property. Should ACSC agree to such waivers, it need not seek approval of this Board, so long as such waivers will not have the effect of reducing the purchase price or extending the closing date beyond that provided for in the Agreement (Settlement Paragraph 47).

DISCUSSIONS AND FINDINGS

Based on a review of the record in this matter including the Appraisal conducted to determine the value of the Huron Avenue Property, the Board believes that the \$27,500,000 acquisition price for the Huron Avenue Property is based upon the fair market value of the Huron Avenue Property.

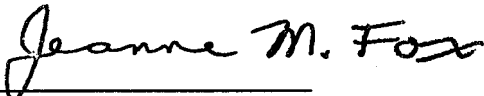
The Board, having reviewed the Partial Stipulation, HEREBY FINDS the Partial Stipulation to be reasonable, in the public interest and in accordance with the law. The Board is satisfied that the Petitioner's efforts to market this property, which included the selection of Cushman and Wakefield to market this property, as well as the Appraisal performed by Value Research Group, LLC dated January 29, 2008, as described above, are reasonable and warrant the waiver of the advertising and bidding requirements as set forth in N.J.A.C. 14:1-5.6. Based upon the foregoing, the Board HEREBY ADOPTS the Partial Stipulation as its own, incorporating by reference the terms and conditions as if fully set forth herein, subject to the following:

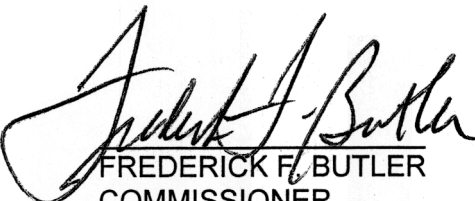
- a. Pursuant to due Agreement of Sale annexed to the Petition is this matter
- b. The Board HEREBY WAIVES the advertising and bidding requirements as set forth in N.J.A.C. 14:1-5.6 (b) pursuant to the satisfaction of the waiver requirements set forth in N.J.A.C. 14:1-5.6(i):
 - 1 The waiver will not adversely affect the public interest.
 - 2. Although the subject property still remains used and useful for utility purposes, the bulk of the Huron Avenue Property will not be used and useful for utility purposes following the sale. Rather, one of the force mains currently located centrally on the Huron Avenue Property, will be located elsewhere on the Huron Avenue Property. ACSC will take back an easement where the two force mains will be located. As a result, the Huron Avenue Property may be sold, without disturbing its public utility purpose. Moreover, following the sale of the Huron Avenue Property, the bulk of the Huron Avenue Property will no longer be used and useful.
 - 3. There is no other likely prospective purchaser of the property.
 - 4. The sale of the property shall not affect the ability of the utility to render safe, adequate and proper service.
 - 5. Based upon the Appraisal, the Company's actions and C&W's marketing efforts, the sales price of the property appears to represent in excess of the fair market value of the property to be sold. Moreover, this is the first time the Company has received a viable offer on the Huron Avenue Property despite years of marketing efforts.
 - 6. There is no relationship between the Company and PDC other than transferor and transferee.
 - 7. Numerous attempts have been made over the years to market the Huron Avenue Property and C&W expended considerable time over the course of 2006-2007 marketing and negotiating with prospective developers for the purchase of the Huron Avenue Property. After all these years, one acceptable offer was received.
- c. Within 45 days of receipt of the final payments, the Petitioner shall file with the Board a petition requesting final disposition of all escrow funds including the calculation of the Net Proceeds, the implementation of any plan of distribution, and any rate making issues related to the sale of the Huron Avenue Property. Such plan of distribution shall be consistent with the MOU. All monies that are collected shall be escrowed in an interest bearing account and shall not be distributed without specific Board approval.
- d. The Petitioner shall notify the Board within 45 days if any significant terms of the sale are modified.

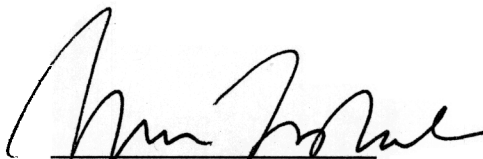
The effective date of this Order is as dated below.

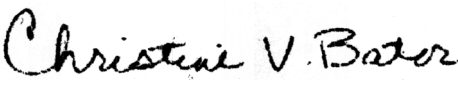
DATED: 4/14/08

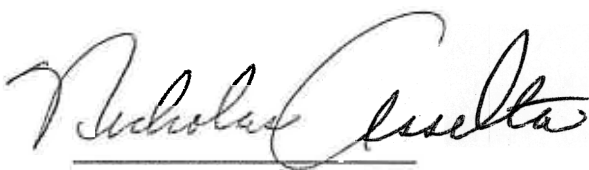
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

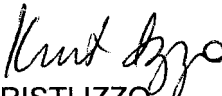

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

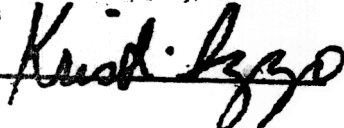

CHRISTINE V. BATOR
COMMISSIONER


NICHOLAS ASSELTA
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


KRISTI IZZO

In the Matter of the Petition of the Atlantic City Sewerage Company
for Authorization to Make, Execute and Implement an
Agreement of Sale and to Implement a Plan of
Distribution of the Net Proceeds There From
BPU Docket No. WM07080634

SERVICE LIST

Ira G. Megdal, Esq. Stacey Mitchell, Esq. Cozen O'Connor 457 Haddonfield Road Cherry Hill, NJ 08002	Maria Moran, Director Dante Mugrace, Bureau Chief Joseph Quirolo, Legal Specialist Michael Kammer, Supervisor David Gartenberg, AAll Division of Water Board of Public Utilities Two Gateway Center Newark, NJ 07102
Robert Fitzgerald, President Carl S. Cordek Atlantic City Sewerage Company 1200 Atlantic Avenue Suite 300 Atlantic City, NJ 08401	Elise Goldblat, DAG James McGuire, DAG Caroline Vachier, DAG Alex Moreau, DAG Cynthia L. Miller, DAG Dept. of Law & Public Safety Division of Law 124 Halsey Street P.O. Box 45029 Newark, NJ 07101
Stephanie Brand, Director Christine Juarez, ADPA Susan McClure, DPA Department of the Public Advocate Division of Rate Counsel 31 Clinton Street Division of Rate Counsel P.O. Box 46005 Newark, NJ 07101	Andrea Crane The Columbia Group One North Main Street P.O. Box 810 Georgetown, CT 06829

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF
THE ATLANTIC CITY SEWERAGE
COMPANY FOR AUTHORIZATION TO
MAKE, EXECUTE AND IMPLEMENT AN
AGREEMENT OF SALE AND TO
IMPLEMENT A PLAN OF DISTRIBUTION
OF THE NET PROCEEDS THEREFROM

DOCKET NO: WM-07080634

PARTIAL STIPULATION

APPEARANCES:

Ira G. Megdal, Esq., (Cozen O'Connor, attorneys) for the Petitioner, The Atlantic City Sewerage Company

Christine M. Juarez and Gina Hunt, Assistant Deputy Public Advocates, on behalf of the Department of the Public Advocate, Division of Rate Counsel (**Ronald K. Chen**, Public Advocate, **Stefanie A. Brand**, Director)

Alex Moreau and Cynthia L. Miller, Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities (**Anne Milgram**, Attorney General of New Jersey)

TO: THE NEW JERSEY BOARD OF PUBLIC UTILITIES

I. PROCEDURAL HISTORY

The Atlantic City Sewerage Company ("ACSC" or "Petitioner") filed a petition in Docket No. WM-07080634 on August 23, 2007, requesting that the New Jersey Board of Public Utilities ("BPU" or the "Board") authorize ACSC to: (1) make, execute and implement an Agreement of Sale (the "Agreement") entered into on July 24, 2007 by and between ACSC and Pagano Development Company, Inc. ("PDC"), and (2) implement a plan of distribution of the

net proceeds as a credit to customer bills. Petitioner also requested waiver of the Board's advertising and bidding requirements contained in N.J.A.C. 14:1-5.6.

2. This matter was retained for hearing at the Board. Discovery has been propounded by the Division of Rate Counsel ("Rate Counsel") and Board Staff (with ACSC, collectively the "Parties"), and ACSC has completely responded to all such discovery. Two settlement meetings were held at the BPU's offices in Newark, New Jersey.

II. BACKGROUND

3. The Company owns certain real property which is located on Huron Avenue in Atlantic City, New Jersey ("Huron Avenue Property"). The Huron Avenue Property has previously been the subject of several proceedings held before the Board.

4. On February 26, 1988, the Board issued an Order in Docket Nos. WM87101283 and WM87030210 which, *inter alia*, had the effect of adopting a Memorandum of Understanding ("MOU"). The MOU addressed the eventual disposition of the Huron Avenue Property. Pursuant to the MOU, upon the sale of the subject property, fifty percent (50%) of the net proceeds ("Net Proceeds") of sale shall be distributable to the ratepayers of ACSC and fifty percent (50%) of the Net Proceeds of sale shall be distributed to ACSC which may in its sole and absolute discretion distribute such Net Proceeds to the then current shareholders of ACSC. The term Net Proceeds is defined as gross proceeds received from the sale of the subject property, less certain adjustments as described in paragraph 5 of the MOU. The MOU provides that the Net Proceeds distributable to ratepayers shall, at the discretion of the Board, either be paid directly to the ratepayers or applied as a credit against the rates otherwise payable by the ratepayers. The MOU does not provide a specific formula for distribution of net proceeds to

ratepayers. Rather, the fixing of such a formula is subject to the approval of the Board in a proceeding which is initiated by a petition to the Board.

5. Beginning in 1998, portions of the Huron Avenue Property were sold in connection with two condemnations by government entities and portions of the Net Proceeds associated therewith were distributed to the Company's customers in accordance with Orders of this Board.

A. New Jersey Department of Transportation Condemnation

6. The first condemnation involved the New Jersey Department of Transportation ("NJDOT")

7. In February 1998, NJDOT offered to purchase two portions of the Huron Avenue Property which were within the then proposed site of the Atlantic City/Brigantine Connector. The net offer to purchase the subject parcels was \$7,109,817.

8. Following sale negotiations, NJDOT agreed to pay ACSC for the property the agreed upon estimated fair market value of \$9,177,383, less the estimated costs of environmental investigation, remediation and cleanup of \$277,383 ("State Reserve"), for a total amount of \$8,900,000. Any portion of the State Reserve not utilized by NJDOT was to be returned to ACSC.

9. On September 10, 1998 the Company filed a petition with the Board, requesting authority to make, execute and implement the agreement reached with NJDOT and to implement a plan of distribution of the net proceeds therefrom.

10. By Order Authorizing Sale, in Docket No. WM98090790, dated September 23, 1998, the Board determined to bifurcate the proceeding and to address by the Order Authorizing Sale the request for authorization to make, execute and implement the agreement. In the Order

Authorizing Sale, the Board stated that it would address implementation of a plan of distribution of the net proceeds in a subsequent Order.

11. By the Order Authorizing Sale, the Board authorized the Company to make, execute and implement the Agreement, and to proceed to close the sale of the subject property. The Board also directed that the Company deposit the net proceeds of the sale in an interest bearing account. The Company proceeded to a closing of the sale of the two portions of the Huron Avenue Property.

12. By its subsequent Order of Implementation, in Docket No. WM98090790, dated January 14, 1999, the Board authorized a method of distribution of the net proceeds of sale. In that Order of Implementation, the Board referred to the MOU.

13. By the Order of Implementation, the Board authorized the creation of an additional fund of \$277,000 as an environmental clean-up reserve fund ("Clean-Up Fund"). The Clean-Up Fund was over and above the State Reserve.

14. Moreover, the Company was ordered to distribute fifty percent of the Net Proceeds to ACSC ratepayers on the basis of an equal share per customer, to each customer of record as of September 23, 1998.

15. The Board also determined in the Order of Implementation that all or a portion of the State Reserve, and all or a portion of the Clean-Up Fund should be held in escrow in an interest bearing account.

16. On April 22, 2003, the Company filed a petition seeking, *inter alia*, authorization to distribute the excess State Reserve and Clean-Up Fund.

17. The final distribution of proceeds, including the State Reserve and Clean-up Fund was approved by the Board in its Decision and Order dated October 20, 2003.

18. In accordance with the Board Order, the Company distributed \$212,095.53 in the form of a bill credit of \$29.13 to all customers of record as of October 31, 2003.

B. South Jersey Transportation Authority Condemnation

19. The second condemnation which affected the Huron Avenue Property involved the South Jersey Transportation Authority ("SJTA"). The SJTA proposed to construct a U-Turn Project known as the "Huron Avenue U-Turn Project (the "U-Turn Project") consisting of, *inter alia*, a ramp over a portion of the Huron Avenue Property (the "U-Turn Parcel").

20. On or about August of 2002, SJTA informed the Company that, in accordance with the Eminent Domain Act, SJTA intended to acquire the U-Turn Parcel that consisted of .97 acres or 42,253 square feet, along with a temporary construction easement over .425 acres or 18,513 square feet, for \$1,845,000.

21. Unbeknownst to ACSC, in the early Fall of 2002, SJTA, without authorization, entered upon the U-Turn Parcel to begin construction of the U-Turn Project.

22. When ACSC discovered that the SJTA had entered upon ACSC property, ACSC advised SJTA that SJTA would be required to compensate ACSC for the use of the U-Turn Parcel during construction.

23. Prior to reaching an agreement concerning the sale of the U-Turn Parcel, SJTA and the Company reached an agreement entitled Right of Entry, Access and Hold Harmless Agreement (the "Right of Entry"). The Right of Entry authorized SJTA to enter onto the U-Turn Parcel in advance of its acquisition and required payment of compensation for purposes of commencing construction of the U-Turn Project.

24. Pursuant to Section 1(e) of the Right of Entry, SJTA was required to pay to the Company rental for the use of the U-Turn Parcel as follows: the sum of \$945 per day

commencing September 16, 2002 until the date of settlement on all issues relating to compensation for the proposed acquisition or the date of the commencement of eminent domain proceedings. In the event that SJTA completed construction and vacated the temporary construction easement at an earlier date, rent would be reduced as of such date to the amount of \$657 per day for subsequent days. If Petitioner and SJTA were unable to reach a settlement on all issues relating to compensation by January 1, 2003, any and all rents thereafter paid to Petitioner were to be credited to the final compensation determined to be due to Petitioner for the property and rights acquired by virtue of the acquisition.

25. The Company's April 22, 2003 petition which sought authorization to distribute the excess State Reserve and Clean-Up Fund, also sought authorization to make, execute and deliver the "Right of Entry, Access and Hold Harmless Agreement".

26. The Right of Entry was approved by the Board in its Decision and Order in Docket No. WE03040331, dated October 20, 2003

27. SJTA then initiated condemnation proceedings in the Superior Court of New Jersey, Atlantic County, Law Division (Docket No. ATL-L-2944-03) and paid an initial amount of \$1,845,000 to the Company.

28. SJTA and the Company subsequently entered into settlement negotiations. The result was the execution by the Company and SJTA of a Consent Order for Final Judgment.

29. By virtue of the Judgment, SJTA agreed to pay over to Petitioner an additional \$930,000 over and above the initial condemnation proceeds of \$1,845,000, for a total of \$2,775,000. The Judgment was executed by both parties and submitted to the Court for execution.

30. As a result, Superior Court Judge Carol E. Higbee entered an order dismissing the case, by virtue of the settlement.

31 On July 14, 2004, the Executive Committee of Petitioner adopted a resolution accepting the settlement offer from SJTA in the amount of \$2,775,000.

32 By way of an Amended Petition filed on July 29, 2004, the Company sought authorization to distribute the \$2,775,000 condemnation proceeds and previously acquired rental payments (plus interest and minus expenses) as a credit to customer bills.

33 By Board Order dated February 23, 2005 in Docket No. WM04050336, the Board approved the Stipulation of settlement authorizing distribution of the proceeds and rental income in the form of a bill credit.

III. PETITIONER CONDUCTED EXTENSIVE MARKETING EFFORTS ON THE HURON AVENUE PROPERTY.

34 The Company sought proposals to market the property from various real estate firms. Four companies, including Cushman & Wakefield ("C&W") responded to the request. The Company selected C&W to market the remainder of the Huron Avenue Property in November of 2005. The Company believed that C&W's recent success in the marketing and sale of two other prominent Atlantic City Boardwalk-front development parcels demonstrated its expertise in high end real estate sales. C&W also offered one of the lowest commission rates of 3% of the final sales price plus \$16,000 of expenses.

35. C&W's most recent transactions included the \$25,150,000 sale of the 2.5 acre Trump World's Fair ("Trump") site to Bruce Toll and the \$8,000,000 sale of the former 3.0 acre Children's Hospital of Philadelphia Seashore Home ("CHOP") site to a North Jersey developer. C&W had conducted extensive national marketing campaigns for both these sites and

the Company believed that C&W had fresh, up-to-the-minute knowledge of all the investors with interest in Atlantic City development.

36. The Company has represented that like the Trump and CHOP sites, the Huron Avenue Property does not allow casino development. The Company believed that the highest and best use for the Huron Avenue Property was residential development. The Huron Avenue Property is not located on the Boardwalk, and does not overlook the beach. Therefore, the Company believed that the Huron Avenue Property was even further limited for residential development than the Trump and CHOP sites.

37. To the Company's knowledge, there has never been a sale of a large, non-casino development parcel (such as the Huron Avenue Property) in Atlantic City that was not located on the Boardwalk.

38. C&W prepared a very detailed marketing brochure that included concept plans prepared by SOSH Architects. C&W also developed a website for the Huron Avenue Property that contained extensive additional due diligence materials and a brochure was sent to a list of over 4,000 developers in North and Central America.

39. C&W followed up with numerous email and phone contacts in order to generate competitive interest in the Huron Avenue Property. As a result of that effort, 33 groups expressed interest in looking more closely at the development opportunity. C&W's marketing efforts continued throughout the Spring and Summer of 2006.

40. In the end, PDC presented the best offer to purchase the Huron Avenue Property in the amount of \$27,500,000. The Company believes the terms of the deal were strongly negotiated on both sides, resulting in an Agreement of Sale that was acceptable to both parties.

41 The Company contends that the offer of \$27,500,000 is extremely strong for a non-Boardwalk development site, especially since the Company believes the current housing environment is weak.

42. The 17.5 acre Huron Avenue Property has only 5.2 acres that are usable for development. The purchase price therefore equates to a unit price of \$5,288,462 per usable acre.

Over the years, other attempts have been made to market the Huron Avenue Property. The property was listed with a realtor for years and never received a single offer. The \$27,500,000 offer was the best offer received after years of marketing and negotiation.

43 An appraisal (the "Appraisal") dated January 29, 2008, and prepared by Value Research Group, LLC was submitted to the Board on February 25, 2008. The appraised value was \$26,172,000, or \$1,328,000 less than the purchase price of \$27,500,000.

IV. STIPULATED MATTERS

44. The parties hereto stipulate that they agree that the Board should issue an order authorizing ACSC pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6 to proceed to closing of title pursuant to the Agreement of Sale annexed to the Petition filed in this matter at any time during a period of five (5) years from the date of such order. In accordance with the provisions of N.J.A.C. 14:1-5.6(i)(v) the Company submitted the Appraisal. Based on the Company's actions, C&W's marketing efforts, and the Appraisal, the sales price of the property appears to be higher than the fair market value of the property to be sold. Moreover, this is the first time the Company has received a viable offer on the Huron Avenue property despite years of marketing efforts. There is no relationship between the Company and PDC other than transferor and transferee.

45. The Parties hereto agree that it would be appropriate for the Board to waive the

bidding and advertising requirements contained in N.J.A.C. 14:1-5.6. The Parties reached this conclusion based on the following factors:

- (a.) The waiver will not adversely affect the public interest.
- (b.) There is no other likely prospective purchaser of the property. Numerous attempts have been made over the years to market the Huron Avenue Property and C&W expended considerable time over the course of 2006-2007 marketing and negotiating with prospective developers for the purchase of the Huron Avenue Property. After all these years, one acceptable offer was received.
- (c.) The sale of the property shall not affect the ability of the utility to render safe, adequate and proper service.
- (d.) Based upon the Appraisal, the Company's actions and C&W's marketing efforts, the sales price of the property appears to represent in excess of the fair market value of the property to be sold. Moreover, this is the first time the Company has received a viable offer on the Huron Avenue property despite years of marketing efforts.
- (e.) There is no relationship between the parties other than that of transferor and transferee.
- (f.) Although the subject property still remains used and useful for utility purposes, the bulk of the Huron Avenue Property will not be used and useful for utility purposes following the sale. Rather, one of the force mains currently located centrally on the Huron Avenue Property, will be relocated elsewhere on the Huron Avenue Property. ACSC will take back an easement wherein the two force mains will be located. As a result, the Huron Avenue Property may be sold, without disturbing its public utility purpose. Moreover, following the sale of the Huron Avenue Property, the bulk of the Huron Avenue Property will no longer be used and useful.

46. The parties agree that pursuant to the MOU, fifty percent of the Net Proceeds from the sale of the Huron Avenue Property shall be returned to ratepayers and fifty percent shall be available for distribution to shareholders. The parties further agree that review of the calculation of the Net Proceeds, the implementation of any plan of distribution, and any rate making issues related to the sale of the Huron Avenue Property should take place at a later date, when such matters are properly brought before the Board. Such plan of distribution and ratemaking shall be consistent with the MOU. No distribution of proceeds to customers or shareholders shall be made without prior Board approval. ACSC will retain any such monies in

an interest bearing account until such distribution is ordered by the Board.

V. MISCELLANEOUS

47. The parties agree that the Petitioner may agree to waive certain provisions of the Agreement limited to requirements that PDC meet certain target dates concerning approvals for development of the Huron Avenue Property. Should ACSC agree to such waivers, it need not seek approval of this Board, so long as such waivers will not have the effect of reducing the purchase price or extending the closing date beyond that provided for in the Agreement. In the event that ACSC agrees to such a waiver, ACSC will notify Board Staff and Rate Counsel within ten (10) days.

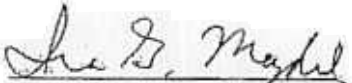
48. This Stipulation represents a mutual balancing of interests and, therefore, is intended to be accepted and approved in its entirety. In the event this Stipulation is not adopted in its entirety by the Board, then any party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

49. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of the referenced proceedings. Except as expressly provided herein, neither ACSC, the Board, Board Staff, nor Rate Counsel shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein.

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.

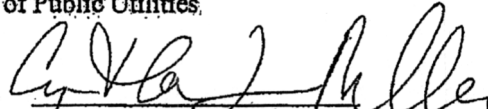
THE ATLANTIC CITY SEWERAGE
COMPANY

BY:


Ira G. Megdal, Esquire
Cozen O'Connor

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey
Board of Public Utilities

BY:


Alex Moreau, DAG
Cynthia L. Miller, DAG

3/25/08

RONALD K. CHEN
PUBLIC ADVOCATE

Stefanie A. Brand
Director, Division of Rate Counsel

BY:


Christine M. Juarez
Assistant Deputy Public Advocate

3/26/08

DATED: March 6, 2008