



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

JON S. CORZINE
Governor

RONALD K. CHEN
Public Advocate
STEFANIE A. BRAND, ESQ.
Director

October 26, 2007

Via Hand Delivery

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

**Re: I/M/O the Petition of Atlantic City Electric Company
Pursuant to N.J.S.A. 48:2-13 and N.J.S.A. 48:3-9 for
Authority to Issue Short-Term Indebtedness Prior
To January 1, 2010
BPU Docket No. EF07080625**

Dear Secretary Izzo:

Please accept for filing an original and ten copies of these comments filed on behalf of the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") concerning the above-referenced matter. Enclosed is one additional copy. Please date stamp the copy as "filed" and return it to the courier. Thank you for your consideration in this matter.

Background

Atlantic City Electric Company (“Atlantic” or “the Company”) is a public utility corporation registered in the State of New Jersey and is engaged in the transmission, distribution and sale of electric energy to approximately 532,000 customers in eight (8) counties in the southern portion of the State.

On August 17, 2007 (as amended on September 20, 2007), Atlantic filed a Verified Petition (“Petition”) with the New Jersey Board of Public Utilities (“Board”) requesting authority under N.J.S.A. 48:2-13 and N.J.S.A. 48:3-9 to issue, from time to time, prior to January 1, 2010, up to \$250 million aggregate principal outstanding of short-term indebtedness, payable not more than twelve (12) months after the issuance date(s) thereof. Atlantic requests that it be authorized to borrow under one or more revolving credit facilities or bank loans, commercial paper, and/or short term notes.¹

Atlantic’s Petition states that the short-term debt financing is necessary to secure capital on a day-to-day basis for (i) debt maturities; (ii) working capital requirements, (iii) temporary financing of construction program expenditures; and (iv) general corporate purposes.²

Essentially, Atlantic is requesting that the authority granted by the Board in Docket No. EF05080685, wherein Atlantic was authorized to issue, renew or extend unsecured notes or other evidence of indebtedness not to exceed \$250 million in aggregate principal prior to January 1, 2008, payable not longer than twelve (12) months

¹ Petition, paragraph 5.

² Petition, paragraph 3.

following the issue date(s), be extended for two additional years, i.e., until January 1, 2010.³

Analysis

N.J.S.A. 48:3-9, the primary statute under which Atlantic seeks Board approval for the relief requested in the Petition, provides in pertinent part as follows:

No public utility shall, unless it shall have first obtained authority from the board to do so;

- (a) Issue any stocks, or bonds, notes or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or
- (b) Permit any demand note to remain unpaid for a period of more than 12 months after the date thereof.
The board shall approve any such proposed issue, with or without hearing at its discretion, when satisfied that such issue is to be made in accordance with law and the purpose thereof is approved by the board.

By its December 5, 2005 Order in Docket No. EF05080685, the Board approved a financing petition by Atlantic similar to the one it now proposes. Atlantic's 2005 petition requested Board authorization to borrow up to \$250 million on a short-term basis, prior to January 1, 2008. In approving the Company's 2005 petition, the Board made the following findings with respect to the then-proposed transaction:

"The Board, after investigation, having considered the exhibits submitted in this matter and being satisfied that issuance, from time to time, of Short-Term Debt as proposed by Petitioner is to be made in accordance with law, is in the public interest and approving the purposes thereof, HEREBY ORDERS that Petitioner be and is HEREBY AUTHORIZED to issue unsecured short-term indebtedness payable not more than twelve (12) months after the date or dates thereof, from

³ Petition, paragraph 4

time to time prior to January 1, 2008, in an aggregate principal amount outstanding at any one time not in excess of \$250 million.”⁴

With the instant Petition, Atlantic now comes before the Board requesting authority to borrow, from time to time, up to \$250 million at any given time, prior to January 1, 2010. In effect, this would extend for an additional two years the same authority that was granted by the Board in 2005.

Based on Rate Counsel’s understanding of the governing law, and precedent established by the Board concerning Atlantic’s 2005 petition, the Board must find the proposed financing is in the public interest in order to approve the Petition. It is within this framework that Rate Counsel analyzed Atlantic’s Petition and offers the following comments.

On the question of need, Rate Counsel believes that the Petition and supporting documentation adequately establishes need for the authority Atlantic seeks. Atlantic intends to use the proceeds from short-term debt transaction(s) for (i) debt maturities; (ii) working capital requirements, (iii) temporary financing of construction program expenditures; and (iv) general corporate purposes.⁵ Indeed, Atlantic routinely maintains an outstanding balance of short-term debt, as illustrated below. The following table shows Atlantic’s month-end outstanding short-term debt balances for the period January 2005 through August 2007.

⁴ *I/M/O the Petition of Atlantic City Electric Company, Pursuant to N.J.S.A. 48:2-13 and N.J.S.A. 48:3-9 for Authority to Issue Short-Term Indebtedness Prior to January 1, 2008*, BPU Docket No. EF05080685, Order dated December 5, 2005, page 2.

⁵ Petition, paragraph 3.

ATLANTIC CITY ELECTRIC COMPANY
Month-End Short-Term Debt Balance⁶
\$(000)

MONTH/YEAR	2005	2006	2007
January	\$29,700	\$71,062	\$7,100
February	\$14,300	\$64,906	\$6,950
March	\$ 9,250	\$80,793	\$13,700
April	\$14,000	0	\$68,649
May	\$68,460	\$93,000	\$104,340
June	\$117,240	\$90,500	\$169,987
July	\$126,500	\$117,000	\$61,600
August	\$71,420	\$64,000	\$31,960
September	0	0	
October	0	0	
November	0	0	
December	0	\$1,200	

Atlantic's precise day-to-day short-term debt requirements cannot be predicted with certainty.⁷ Atlantic's cash flow and cash requirements fluctuate daily and seasonally.⁸ Therefore, while the precise amounts cannot be determined beforehand, it is virtually certain that Atlantic will have a continuing need to borrow capital on a short-term basis beyond January 1, 2008, when the authority the Board granted in Docket No. EF05080685 expires. For example, Atlantic presently has \$50 million of Medium-Term Notes that will mature during 2008.⁹ Conceivably, Atlantic could use short-term debt to refund those maturities until a favorable time is determined to re-issue Medium-Term Notes. Atlantic may also require short-term debt funds to finance portions of its ongoing construction program on a temporary basis until more permanent financing can be

⁶ Atlantic response to RCR-1.

⁷ Atlantic response to RCR-12.

⁸ Atlantic response to RCR-14.

⁹ Petition, Exhibit A-2.

arranged. The following table shows Atlantic's anticipated capital expenditures over the next three years.

**ATLANTIC CITY ELECTRIC COMPANY
Electric Construction Budgets**

2007	\$165,353,000
2008	\$153,274,000
2009	<u>\$110,638,000</u>
Three-Year Total	<u>\$429,265,000</u>

A \$250 million short-term debt borrowing ceiling was established by the Board for Atlantic in October 1999, and has remained at that level since its establishment.¹⁰

Atlantic's actual short-term borrowings over the past two years speak to its requirement for a significant level of short-term financing authority. While Atlantic previously has not borrowed up to the \$250 million limit, the availability of additional credit provides Atlantic financial flexibility to better time both long-term and short-term capital markets to its advantage and to the advantage of New Jersey ratepayers.

As a result of the Board's Affiliate Standards audit and BPU Docket No. EA02020095, Atlantic agreed to discontinue investing in the money pool of its corporate parent, Pepco Holdings Inc. ("PHI") as of October 15, 2006.¹¹ Nor is Atlantic obtaining short-term funds from the money pool. Nevertheless, Atlantic presently has, and seeks to continue, several options for obtaining short-term capital. At the present time, Atlantic only has commercial paper outstanding.¹² However, Atlantic also has access up to \$500 million in short-term capital through PHI's \$1.5 billion credit facility that has been established with a group of sixteen banks and trust companies. The availability of this

¹⁰ Atlantic response to DR-3.

¹¹ Atlantic responses to RCR-9 and DR-13.

¹² Atlantic response to RCR-7.

credit to Atlantic serves as backup liquidity for Atlantic's existing commercial paper program. PHI's credit facility expires on May 5, 2012.¹³

As for the cost of obtaining short-term capital, Atlantic proposes to continue obtaining competitive bids, as to interest rates and terms, from at least three commercial paper dealers. Atlantic explained in a discovery response: "On any day that Atlantic needs to borrow, quotes are taken from the three (3) dealers on the cost and term for Atlantic commercial paper. The best rate and term are taken which ensures the most efficient rate for that day for Atlantic borrowings. Each dealer knows that it is competing against two (2) other dealers and that the lowest bidder will win the business."¹⁴ Competitive bidding of this nature is vital and beneficial to Atlantic and to New Jersey ratepayers and should be encouraged to continue.

Atlantic anticipates that the cost of issuing short-term debt via commercial paper will result in an interest rate spread of between zero and 45 basis points when compared with the 90-day LIBOR (London Interbank Offered Rate), based on historical experience.¹⁵ The following table illustrates interest rate spreads between Atlantic's commercial paper and the one-month LIBOR during 2007.

¹³ Standard and Poor's "Ratings Digest," dated September 7, 2007, page 3, provided by Atlantic in response to DR-11.

¹⁴ Atlantic response to DR-18.

¹⁵ Atlantic response to DR10.

ATLANTIC CITY ELECTRIC COMPANY
Atlantic Commercial Paper Spread v. One-Month LIBOR¹⁶

	Weighted Average CP Rate	Average One-Month LIBOR	Spread (Basis Points)
January 2007	5.36%	5.32%	4
February 2007	5.37%	5.32%	5
March 2007	5.46%	5.32%	14
April 2007	5.40%	5.32%	8
May 2007	5.37%	5.32%	5
June 2007	5.40%	5.32%	8
July 2007	5.42%	5.32%	10
August 2007	5.95%	5.50%	45

Both major ratings agencies, i.e., Moody's and Standard and Poor's, conclude that at least over the next twelve months, Atlantic's internal and external sources of liquidity are expected to be adequate to support the Company's needs.¹⁷

Recommendation

Rate Counsel has carefully reviewed Atlantic's Petition, as well as the Company's responses to Rate Counsel and Board Staff data requests. Based on this review, Rate Counsel is not opposed to the relief sought in the Petition. The Company provides transmission, distribution and sale of electric energy services to approximately 532,000 customers in eight (8) counties in southern New Jersey. With the aid of the requested financing authority sought in the Petition, the Company should have adequate resources and financial capability to properly and adequately serve its New Jersey customers. The intent of Atlantic's Petition in the instant proceeding appears to meet the Board's public interest standard in that short-term debt financing for Atlantic is both necessary and

¹⁶ Atlantic response to RCR-15.

¹⁷ Atlantic response to DR-11.

efficient, and that Atlantic intends to continue obtaining favorable rates and terms on short-term financings through competitive bids with at least three competitors. This practice should continue.

Approval of the Petition should not include authorization to include in rate base any specific assets that will be acquired as a result of the financings contemplated in the Petition. The determination of any assets to be included in rate base and the ratemaking impact of serving customers, including the impact of the transaction on the Company's capital structure and capital costs, should be addressed in a future base rate proceeding.

In response to a Board Staff request in this proceeding, Atlantic prepared a draft order approving the instant Petition.¹⁸ Within the draft order, Atlantic proposed six provisions to Board approval of the Petition. Rate Counsel supports each of the provisions and urges the Board to adopt same. The specific provisions are as follows:

1. Within 30 days after the close of each fiscal quarter, Petitioner shall file with the Board a statement setting forth in reasonable detail the amounts of its unsecured indebtedness outstanding, the dates of issue and maturity and the rates of interest thereon;
2. This Order shall not be construed as a certification that the securities proposed to be issued will be represented by tangible or intangible assets of commensurate value or investment costs;
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of the tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
4. This Order shall not affect or in any way limit the exercise of the authority of this Board or of this State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any other matter affecting the Petitioner.

¹⁸ Atlantic response to DR-23.

5. Petitioner shall submit to the Office of the Economist and to Board Staff copies of all resolutions that shall be adopted by the Board of Directors of Petitioner during the term of this Order, which shall have the effect of changing the amount of unsecured indebtedness within the limits established by the Order. Such submittals shall be for informational purposes only, and shall be made within ten (10) days following the taking of such action by Petitioner's Board of Directors; and
6. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised prior to January 1, 2010.

In addition to the provisions enumerated above, Rate Counsel respectfully submits that the following provision should also be adopted by the Board:

7. On each day where the Petitioner determines that it requires short-term funds in the form of commercial paper, Petitioner shall first obtain competitive bids from at least three (3) commercial paper dealers. Petitioner shall then select the bid representing the lowest rate and best terms to Atlantic and its New Jersey ratepayers. Petitioner shall also maintain records of each bid received so as to be able to demonstrate, after the fact, that the winning bid indeed was competitive and represented the lowest rate and best terms to Atlantic and to its New Jersey ratepayers

These provisions will satisfy the concerns of Rate Counsel that Board approval is limited to the transactions as herein described, does not indicate authorization to include any specific assets or amounts in rate base, does not indicate authorization for any other ratemaking treatment, including Atlantic's regulated capital structure and capital costs, and does not establish precedent with respect to approval of future financing petitions.

Hon. Kristi Izzo, Secretary

October 26, 2007

Page 11

Furthermore, Rate Counsel respectfully reserves its right to examine this transaction in the context of any future rate cases the Company may have.

Respectfully Submitted,

RONALD K. CHEN
NEW JERSEY PUBLIC ADVOCATE

Stefanie A. Brand
Director, Rate Counsel

By: s/ Kurt S. Lewandowski
Kurt S. Lewandowski, Esq.
Assistant Deputy Public Advocate

C: Hon. Jeanne M. Fox, President
Hon. Frederick F. Butler, Commissioner
Hon. Joseph L. Fiordaliso, Commissioner
Hon. Christine V. Bator, Commissioner
Service list (via electronic mail and U.S. Regular Mail)

**I/M/O the Petition of Atlantic City
Electric Company Pursuant to N.J.S.A.
48:2-13 and N.J.S.A. 48:3-9 for Authority
to Issue Short Term Indebtness Prior to
January 1, 2010
BPU Docket No.: EF07080625**

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

Nusha Wyner, Director
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Schultheis
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Michael Tavani
Office of the Economist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Mark C. Beyer, Chief Economist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Wojciak
Office of the Economist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Elise Goldblat, SDAG
Dept.. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Anthony J. Kamerick
Vice President & Treasurer
Pepco Holdings, Inc. -EP5604
701 Ninth Street, N.W.
Washington, DC 20068

Philip J. Passanante, Esq.
Asst. General Counsel-89KS42
Atlantic City Electric Company
800 King Street, 5th Floor
P.O. Box 231
Wilmington, DE 19899-0231

Jeffery E. Synder
Assistant Treasurer -89KS33
Atlantic City Electric Company
800 King Street, 5th Floor
P.O. Box 231
Wilmington, DE 19899-0231

Roger E. Pederson, Manager
Regulatory Affairs - NJ-63ML38
Atlantic City Electric Company
5100 Harding Highway
Mays Landing, NJ 08330

David Peterson, Consultant
10351 Southern Maryland Boulevard
Suite 202
Dunkirk, MD 20754-9500

Stefanie A. Brand, Esq.,
Director
Division of Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Ami Morita, Esq.
Division of Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Christine Juarez, Esq.
Division of Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Kurt S. Lewandowski, Esq
Division of Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101