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November 24, 2021

Client/Matter No. 22849-8

Via Email
Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, New Jersey 08625-0350

RE: I/M/O THE LETTER PETITION OF ATLANTIC CITY ELECTRIC COMPANY REQUESTING APPROVAL OF ITS RIDER REMOTE NET ENERGY METERING ("RNEM") TARIFF PURSUANT TO N.J.A.C. 14:1-5.11 AND N.J.A.C. 14:3-1.3

BPU Docket No. ET21101152

COMMENTS OF INTERSECT ENERGY, LLC

Dear Secretary Camacho-Welch:

Please accept these comments, submitted on behalf of Intersect Energy, LLC ("Intersect"), regarding the October 1, 2021 Letter Petition submitted by Atlantic City Electric Company ("ACE") requesting the Board's approval of ACE's proposed Rider RNM – Remote Net Energy Metering Tariff ("RNM Tariff"). Given the informal nature of the ACE filing, and ACE's proposal not to conduct a hearing on the application, Intersect has elected to file these comments in lieu of a motion to intervene in the docket. If the Board elects to address the application in a more formal manner, Intersect is prepared to file a motion to intervene if permitted to do so.

ACE's letter petition suggests that ACE's proposed RNM Tariff is "substantially similar to the approved tariff in place for JCP&L" and, therefore, warrants expedited review and approval by the Board. In many respects, ACE's comparison of its proposed RNM tariff rider to JCP&L's is accurate. However, ACE's version of the RNM tariff adds language that departs from the JCP&L tariff and is not authorized by the Clean Energy Act, the Board's net metering rules or the Board's remote net metering and solar transition orders. The first added thought, which has previously been rejected by the Board, would inordinately and unnecessarily delay the processing of interconnection requests, thereby threatening the timely completion of RNM projects and, therefore, their eligibility to receive solar subsidies. The second would unduly restrict the types and classes of customers eligible to participate in remote net metering projects. Thus, ACE's "add-ons" to the RNM Tariff would unjustifiably impede solar development by public entities and violate established Board policies that encourage such projects. The Board should reject these additions and strike them from ACE's proposed RNM Tariff.

I. The Board's Prior Approval of Proposed Public Entity RNM Agreements and Interconnection Applications as a Condition Precedent to the Company's Obligation to Process Interconnection Requests

ACE's first, and more egregious, departure from precedent and the approved JCP&L tariff takes the form an added sentence which, if approved, will be touted by ACE as Board authorization of ACE's current practice to delay action on interconnection requests, including the performance of time consuming engineering studies, until the Board first approves the projects at issue. Thus, in addition to the description of the remote net metering application and approval process set forth in the Board's September 17, 2018 Remote Net Metering Order ("RNM Order"), and the Clean Energy Act, N.J.S.A. 48:3-87.12, the proposed ACE RNM Tariff states, in part:

> ...BPU Staff will present the fully executed "Public Entity Certification Agreement" and Part I of the Interconnection application to the Board with a recommendation for approval or denial. *The BPU's approval or denial will guide the Company's action....* (ACE proposed RNM Tariff, Exhibit A, page 1), (Emphasis supplied).

This easily-overlooked, benign sounding language, appears to reflect an under-the-radar attempt by ACE to secure regulatory authorization for its now-established practice to refuse to address solar projects, and in particular those that the company considers to be "ghost projects" and "queue sitters"—e.g. projects that the Company does not consider to be sufficiently "real" to justify an expenditure of the Company's administrative and engineering resources—until compelled by the Board to do so The Board will recall that during the stakeholder process that preceded adoption of the July 28, 2021 Solar Successor Incentive Program Order ("SuSi Order"), ACE raised similar concerns, arguing that such projects were not sufficiently mature to warrant their attention and could negatively impact the Successor Program. Staff properly rejected ACE's arguments, upholding the right of all ratepayers to submit applications to participate in the solar market, in large part due to the absence of evidence that developers had submitted interconnection applications for projects that were known to be infeasible. Staff concluded that the minimum maturity requirements adopted by the Board for such projects provided EDCs with adequate protection against non-viable projects, and that RNM verification and management-related issues were intended to be administered by the program registration manager, rather than ACE. (See, SuSi Order at 96. See also, September 17, 2018 RNM Order at 7-8 detailing the approved RNM registration process). Staff's rationales apply with equal force here.

Intersect recognizes that the Board has yet to adopt rules governing RNM in accordance with the Clean Energy Act, N.J.S.A. 48:3-87.12, and that there is an ongoing stakeholder process devoted to addressing grid modernization and interconnection issues. However, the existing Orders regarding RNM and the SuSi successor program clearly set forth a detailed outline of the approved process which clearly contemplates that the Board, RNM applicants and the EDCs will work together to timely process and review RNM Agreements and Interconnection requests for proposed RNM facilities and that these processes will occur in parallel to enable projects to be completed in a timely fashion, within established project deadlines.

With regard to RNM submissions made to the Board, the Orders specify that the Public Entity Certification Agreement and a standard form Interconnection Application are to be delivered to Staff and the EDC. Staff and the EDC then review the Public Entity Certification Agreement and Interconnection Application for administrative completeness and the EDC provides its recommendations to Staff. If Staff deems the application to be complete, the EDC then makes a recommendation to Staff to either approve or deny the application. This process is accurately captured in the JCP&L and proposed ACE RNM Tariffs.

However, ACE's proposal to interject a procedural speed bump into the RNM application and approval process—an impediment that would enable ACE to do nothing to advance an interconnection request until final Board action on the application--was neither addressed nor authorized by the Clean Energy Act or the Board Orders issued under its authority, and for good reason. As previously noted, Staff has recognized the problems associated with ACE's "ghost project" proposal and properly rejected it in the SuSi proceeding and should do so again here. There are other related issues as well.

The "ghost project" proposal would clearly exacerbate a developing project completion timeline issue that is currently being discussed in the grid improvement stakeholder proceeding. In that proceeding, an issue has been raised regarding the ability of developers to complete solar projects and achieve operating status within the limited window of time allotted by Board in its project approvals, with many large projects required to be operational within 12 months. However, with increasing regularity, the processing of interconnection applications by PJM and ACE have extended beyond the allotted time periods, thus necessitating developer applications to the Board for extensions. As such extensions are only considered by the Board on a case- by-case basis, with extensions by no means assured--even in instances where the delays are caused solely by the actions or inaction of third parties—this necessarily interjects an unwelcome level of uncertainty and risk that customer interest will be lost and financing jeopardized simply because the interconnection process takes too long.

ACE's proposal to delay all action on an interconnection request until final Board approval of a RNM application would greatly exacerbate the likelihood that projects will not be completed and operational with the narrow time limits established by the Board for these projects. There is no countervailing policy, legal argument or potential benefit that supports ACE's proposal, whose evident purpose is to reduce or delay the growing number of solar projects sought to be developed within its service territory. The proposal significantly increases the risk to solar developers and public entities that seek in good faith to develop RNM projects to achieve energy savings and foster economic growth and job creation, in violation of the Board's policy to encourage such projects and solar generally. This result is clearly unnecessary as ACE can effectively mitigate its "ghost project" risk by imposing deposit and payment terms on developers that are calculated to hold ACE harmless should a project prove to be infeasible or is not completed. Further, as Staff has pointed out, the Board's minimum maturity requirements provide assurance to ACE and the other EDCs that they will not be compelled to expend uncompensated resources on projects that are not "real".

It should be underscored that Intersect does not raise this as a hypothetical issue or as one that merely speculates regarding ACE's reasons for including the unauthorized language in its draft RNM Tariff. Intersect elected to file these comments as a direct result of a current experience with ACE involving the development of a RNM project with The Authority (formerly the Cumberland County Improvement Authority). The Cumberland project is a large RNM project that will provide considerable energy cost savings and economic development revenues to the County and, therefore, has become the subject of considerable local attention. As part of the project, and in accordance with the Board's net-metering rules, Intersect submitted a Level 2/3 Interconnection Application to ACE and posted the full deposit required. Based on its compliance with all process and financial requirements, Intersect fully anticipated that ACE would timely commence the necessary engineering studies and related work while Intersect simultaneously pursued its development efforts, including seeking RNM approval from the Board.

As had been the case with two prior Intersect RNM projects, ACE agreed to perform the engineering study and certain ancillary tasks pending the Board's disposition of the instant RNM tariff application. Both parties recognized that Board approval of the proposed RNM Tariff was also necessary for the Cumberland project to be approved. As late as September 1, 2021, ACE continued to assure Intersect of ACE's willingness to pursue the interconnection and related work on a parallel path with the Company's tariff application and the project approval application. However, despite its repeated assurances, ACE has now notified Intersect that ACE will not perform any further tasks or conduct the engineering study (which in itself is expected to take several months to complete) until the Board approves both the RNM tariff and Intersect's application for the Authority project. ACE's current position, which would be officially sanctioned if ACE's proposed tariff language is adopted by the Board, has the clear potential to endanger the Cumberland project (and all others like it) by inordinately delaying it and threatening its completion.

This is not an isolated incident. In fact, the industry's growing concerns regarding ACE's inability or unwillingness to timely respond to interconnection requests for solar projects has been further underscored by the November 1, 2021 Verified Petition filed by Centrica Business Solutions, Inc. ("Centrica"). Centrica's petition seeks Board approval to extend the commercial operating deadline for its Millville net metering project to enable Centrica to qualify for a Solar Transition Incentive under the TREC program. While not addressed to the pending RNM Tariff application, the factual recitation that underlies Centrica's request for relief is relevant in that it chronicles months of long delays by ACE in processing Centrica's interconnection request, delays that are presented as solely attributable to ACE. The delays included five months to negotiate the interconnection deposit (notably the negotiated deposit paid was one-third of the amount originally sought by ACE) and several months for ACE to forward invoices and revised cost estimates. ACE advised Centrica that the estimated time to complete the work would be 12-18 months after the Interconnection Agreement was executed, the work was invoiced and payment was received.

These delays underscore the compelling need to reject ACE's proposed tariff language. The actual delays associated with the Millville project to date, when added to ACE's projected 12-18 month timeline to complete the interconnection work, reveal a project timeline that could well exceed two years. If this timeline were permitted to begin to run only <u>after</u> Board approval of the project, there would be little likelihood that this (or any) project could be completed and operational within the 12, 18 or 24 month timelines allotted by the Board for such projects. Centrica's experience clearly underscores the necessity for the Board and EDC approval processes to be undertaken in parallel with each other, as opposed to ACE's proposal to simply do nothing and "abide the event". The fact that the Board does not provide generic time extensions as a matter of policy, even where developers are not the cause of and cannot control the delays, should underscore the difficulties that would result in developing and financing public entity RNM projects. If the Board wishes to facilitate accomplishment of its aggressive solar goals, it cannot authorize utility practices like these, which are clearly calculated to frustrate the development of public entity solar projects that are apparently viewed as an imposition on ACE's administrative and engineering resources.

In light of Staff's prior rejection of the same "ghost project" rationale that underlies the current tariff proposal, the absence of countervailing policy or legal reasons to justify ACE's proposed approach, and its clear potential to undermine the development of otherwise worthy RNM projects, Intersect respectfully requests the Board to remove from ACE's proposed RNM Tariff all language that could be interpreted to authorize ACE's "Board approval first/utility action later" approach to RNM projects. The Board may also wish to clarify, in this docket or elsewhere, that the respective Board and EDC approval processes should be undertaken simultaneously in order to facilitate, rather than impede, the development of solar projects, including public entity RNM projects, in furtherance of the clearly stated goals of the Governor's Energy Master Plan.

II. <u>Proposed Limitations on Customers Eligible to Participate in RNM Projects</u>

Further unauthorized language included in ACE's proposed RNM Tariff would limit the types and classes of customers deemed eligible to participate in RNM projects. ACE seeks authorization to include the following additional language in the proposed RNM Rider:

> ...Host customer and receiving customers must be served by Basic Generation Service ("BGS") under the same eligible rate schedule or be supplied by the same (third party) energy supplier. None of the accounts can be included in a previous aggregation for another qualified customer facility or be a NEM customer. (See, Exhibit A to ACE's RNM Tariff Application, at page 1).

As was the case with the proposed "ghost project" limitation, the above language does not appear in, and is not authorized by, the Clean Energy Act, the Board's net metering regulations or the RNM or SuSi Orders. Indeed, the approach advocated by ACE is contrary to the policy adopted by the Board in its August 18, 2021 Order authorizing the Raritan Valley Community College remote net metering project. In Raritan Valley, the college/host customer receives service pursuant to a residential tariff, while the receiving customer receives service under a commercial tariff. JCP&L did not object to this arrangement. The Board approved the arrangement, as set forth in Vanguard Energy Partners' application, finding and clarifying "that the RNM Order does not require that the host customer and the receiving customer be in the same rate class". (Raritan Valley Order, at p. 4).

Given the Board's clear policy statement that host and receiving customers need <u>not</u> be in the same rate class, and the absence of any authority for ACE's further proposed requirements regarding similar BGS service and common energy supplier, the proposed ACE tariff language must be rejected. Moreover, as the evident purpose of the language is to limit the universe of customers eligible to participate in RNM projects, it is contrary to State policies intended to encourage such projects.

The same can be said for the remainder of the cited language, which presumably would be utilized by ACE to deny customers already participating in solar projects the right to participate in RNM projects. It is Intersect's understanding that no statute, rule or Board order authorizes the type of restriction sought by ACE. It is therefore noteworthy that ACE's application does not specifically address these restrictions or acknowledge that the Board's authorization of the proposed tariff language would create new policy. Rather, ACE merely tries to slip this significant shift in regulatory policy by the Board through use of an informal letter petition that seeks to avoid public hearing and stakeholder input. The Board should not tolerate this kind of under-the-radar approach to policy-making. Unlike JCP&L, this is certainly not an instance in which the proposed tariff faithfully recites the existing law and policy. Quite to the contrary, ACE's additional language is not only <u>contrary</u> to existing law and policy but takes the RNM rules in a direction that is calculated to limit customer participation in these projects, as contrasted with the Board's consistent approach to encourage such participation.

Thus, for example, if ACE's proposed tariff were to be adopted and become law it would preclude a college or other governmental entity that has previously developed a rooftop net-metered solar system or participated in an aggregation that that provides only 25% of the governmental entity's electric load from taking advantage of a RNM opportunity that would provide the remaining portion of its load. There is simply no reason or rational basis for such a limitation other than ACE's apparent desire to limit the field of customers eligible to pursue RNM projects. Certainly, if the State is to achieve its 100% renewable energy goal by 2050 the Board cannot lend its imprimatur to such unnecessary and unjustified restrictions on solar participation, particularly by public entities seeking to leverage the solar opportunity to generate revenues from otherwise unproductive lands, reduce energy costs and foster economic development and job creation.

III. Conclusion

For the foregoing reasons, Intersect respectfully requests the Board to strike the language of the proposed ACE RNM Tariff that have been the subject of these comments, together with any other language that is deemed inconsistent with the remote net metering processes and guidelines authorized by the Board in the RNM and SuSi Orders. To the extent that the Board deems it appropriate to do so, the Board could utilize this docket or, alternatively, the grid modernization stakeholder proceeding to clarify the remote net metering processes that have been authorized to date, including the parallel review of project applications and interconnection agreements and customer eligibility standards in order to assure timely approvals of a wide array of projects and maximum customer participation. If the Board is to achieve its aggressive solar goals, it is necessary to eliminate all potential barriers that could frustrate our collective efforts.

Respectfully submitted,

Steven S. Goldenberg

cc: Distribution List

Docs #5417975-v1

In the Matter of the Petition of Atlantic City Electric Company Requesting Approval of Its Rider Remote Net Energy Metering ("RNEM") Tariff Pursuant to N.J.A.C. 14:1-5.11 and N.J.A.C. 14:3-1.3
BPU Docket No. ______________

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