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VIA ELECTRONIC MAIL

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Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: In the Matter of the Letter Petition of Atlantic City Electric Company
Requesting Approval of Its Rider Remote Net Energy Metering (“RNM”) Tariff
Pursuant to N.J.A.C. 14:1-5.11 and N.J.A.C. 14:3-1.3
BPU Docket No. ET21101152

Dear Secretary Camacho-Welch:

Please accept this correspondence as the response of Atlantic City Electric Company (“ACE” or the “Company”) to the comments filed by Intersect Energy, LLC (“Intersect”) with the Board of Public Utilities (“BPU” or “Board”) in the above referenced docket. Simply stated, the Company seeks the necessary tariff approval to provide the remote net metering service to customers. Despite making a variety of allegations, which will be addressed further below, it appears Intersect takes issue with three sentences in the Company’s proposed Rider Remote Net Metering Tariff (“Rider RNM Tariff”). The Company has engaged in many prior discussions with Intersect regarding remote net metering and remains willing, as stated in the Letter Petition, to meet with the parties (and Intersect), respond to questions, and address concerns regarding the proposed Rider RNM Tariff. Ultimately, the Company seeks approval of the Rider RNM Tariff so that customers may begin to receive the service.

The Letter Petition is Proactive Action Consistent with Past Precedent

The Company believes that climate change and its social and environmental effects are among the most significant challenges facing the world today. Consistent therewith, the Company seeks to advance New Jersey’s clean energy goals. Remote net metering was authorized in New Jersey as part of the Clean Energy Act, signed into law by Governor Murphy. Although the Board

has issued Orders on remote net metering, regulations specific to the remote net metering service remain pending. However, the Company is aware that Intersect is interested in pursuing remote net metering in the ACE service territory, possibly through solar condominiums. The law also requires a BPU-approved tariff before a utility may provide a service to any customer. Without a BPU-approved Rider RNM Tariff, the Company cannot legally provide this service to Intersect or any other customer. The appropriate next step was to file a tariff. Accordingly, the Letter Petition represents a positive, proactive movement by the Company, in conformance with the law and in furtherance of Governor Murphy's clean energy goals.

Regarding the Letter Petition, Intersect makes certain procedural allegations that generally lack merit. As the Company indicated in its filing, the Letter Petition is consistent with cited past precedent. If the Board wishes to deviate from that precedent, it may direct the Company to re-file a formal, verified petition, and the Company will do so. The Company notes that the formality of the filing does not impact Intersect's ability to timely file a motion to intervene in the proceeding to establish party status under the BPU's regulations. ACE has had many discussions with Intersect and provided a courtesy copy of the filing when it was made. Failing to intervene in this proceeding is not a consequence of ACE's informal action, but a choice by Intersect and its counsel.¹ The Company did not seek any expedited review, but notes that re-filing as a formal, verified petition does not appear to advantage Intersect or other customers interested in receiving the remote net metering service. The Company's filing was consistent with prior precedent in net metering proceedings, which did not legally require public hearings. The Company maintains that the Letter Petition is sufficient and approval of the Rider RNM Tariff is appropriate.

The Company Submits to the Regulatory Process Established by the Board

The proposed Rider RNM Tariff plainly states that the Board's approval or denial of a Public Entity Certification Agreement and Part I Interconnection Application "will guide the Company's action." The Board established a regulatory approval process for remote net metering projects in 2018, by "Order Establishing Application and Approval Process" in Docket No. Q018070697. Although it is left out of Intersect's comments, that Order unambiguously states that "Staff will present the fully executed 'Public Entity Certification Agreement' and Interconnection Application (Part 1) to the Board with a recommendation for approval or denial." It is not a "procedural speed bump," as Intersect alleges at Page 3, to candidly acknowledge that the regulated electric public utility is guided by its regulator's approval or denial decisions.

Striking the language as Intersect requests likely causes greater confusion and litigation than leaving it unchanged. For one, striking the language from the proposed Rider RNM Tariff does not eliminate the approval process established by the Board. Second, striking the language does not change the Company's obligation to abide by the Board's decisions of approval or denial.²

¹ Although Intersect has failed to formally establish party status in this proceeding, the Company will include them informally and has engaged with them in many discussions before and since filing the Letter Petition.

² Pursuant to *N.J.S.A. 48:2-13*, the Board has general jurisdiction and control over the Company. The Board's fundamental jurisdictional legislation has been construed broadly by the courts and has not been abrogated by the remote net metering provisions of the Clean Energy Act.

On the other hand, striking the language from the proposed Rider RNM Tariff likely injects the potential for confusion on that point. It is possible that public entity customers, who may be less familiar with the BPU's regulatory process, would not understand that the BPU's approval or denial process is binding on the Company. Developers may even leverage that confusion to their advantage over the public entity customer. Therefore, ACE recommends retaining the proposed language to avoid confusion for public entity customers.

Intersect May Not Qualify for Remote Net Metering

Despite claims that its comments were filed “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) [“CCIA”],” Intersect has not provided the Company with the necessary Board-approved Public Entity Certification Agreement for a remote net metering project. The Company has engaged in frequent conversations with both Intersect and CCIA, but neither has identified an existing public entity load to serve as a host customer or any public entity receiving customers. The Company is very willing to work with the CCIA on economic development projects, within the scope of the law.

Unfortunately, it appears that Intersect may wish to pursue a risky approach to remote net metering that is not in conformance with the law. Notably, Intersect has engaged in several conversations with the Company about its solar condominium approach to remote net metering. Board Staff recently defined the concept of a solar condominium in a Staff Letter Memorandum, dated November 4, 2021 (the “Staff Letter”). Staff explains that solar condominiums involve a solar developer constructing a solar array on a property without significant on-site load and then subdividing ownership of the solar array into separate condominiums to be sold to various third-party owners, resulting in each purchasing entity owning a portion of the larger solar array, purportedly with fee simple ownership. Staff acknowledges that the developer “may sell ownership of portions of the solar array to public entities . . . with the intent of qualifying such facilities for New Jersey’s Remote Net Metering program.” Upon review of the factual circumstances and applicable laws, Staff arrived at the opinion “that this proposed business model does not appear to be premised on a valid interpretation of New Jersey’s laws and regulations.”

Staff was specifically “asked whether a solar condominium facility could qualify for Remote Net Metering.” In response, Staff succinctly stated: “Staff does not believe that it could.” The rationale for that conclusion stems from the law itself. The Clean Energy Act provides that “[a] public entity certified to act as a host customer may allocate credits to other public entities within the same electric public utility service territory[.]” *N.J.S.A. 48:3-87.12*. The Clean Energy Act requires the public entity to “host” its solar electric generation facility behind an existing meter currently serving the public entity’s load. Because it appears that the solar condominium construct does not entail a public entity putting solar behind an existing meter where the public entity takes retail electricity service, Staff posited that “allowing net metering in these circumstances would subvert the statutory and regulatory requirements.” Thus, “Staff caution[ed] potential investors in solar condominiums that there are significant regulatory risks involved in the development of solar condominiums” and even indicated that “Staff may recommend that the Board take enforcement action against solar condominium projects.”

These strong words of caution are well taken by the Company, which seeks to offer the remote net metering service in compliance with New Jersey law. Mindful that the Staff Letter is not formally binding on the Board, the Staff position is still instructive. Particularly, the Company notes the Staff focus on and concern for the risk to public entities over risk to solar developers. Intersect is a solar developer interested in remote net metering that has promoted the solar condominium concept to the Company. Intersect has not produced a Public Entity Certification Agreement, despite its admission to working with the CCIA. Whereas Intersect contends that “as late as September 1, 2021, ACE continued to assure Intersect of ACE’s willingness to pursue the interconnection,” the Company can likewise point to communications from late 2020 and early 2021 informing Intersect of the need to have a public entity for remote net metering. Any discussion of delays associated with the Intersect remote net metering interconnection requests must include the discussion of Intersect’s own failure to follow the public entity application and approval process established by the Board.

Moreover, the Company respectfully contends that Intersect’s broader accusations of interconnection delays are intended to draw attention away from the general lack of legal support for its position. The Petition of Centrica Business Solutions, Inc. (“Centrica”) has no relevance to the Rider RNM Tariff. Any further Company response to Centrica will be filed in the appropriate docket. References to the Solar Successor proceeding and the Grid Modernization proceeding are also inappropriate herein. Rather than unnecessarily burdening the record in this proceeding, Intersect has the ability to file comments in those dockets regarding its allegations. The Company will not further countenance Intersect’s inflammatory claims of ACE refusing to address solar projects.

The act of filing the Rider RNM Tariff, without a directive from the BPU and in the absence of anticipated regulations regarding the service, unambiguously indicates the Company’s willingness to provide the remote net metering service to customers in its service territory. Litigating Intersect’s scattershot allegations in this docket will only delay the Company’s ability to provide that service to customers; disadvantaging the South Jersey public entities that may have a valid interest in pursuing remote net metering. Should the BPU wish to further explore Intersect’s allegations, or its solar condominium business model, the Company respectfully requests that the Board establish a separate contested case proceeding for the purpose of litigating those claims.

The Rider RNM Tariff is Reasonable

The Company also reasonably proposes language in the Rider RNM Tariff that would have the public entity host customer and receiving customer supplied both by either Basic Generation Service (“BGS”) or the same third-party supplier (“TPS”). Intersect mistakenly jumps to the conclusion that this language is “unauthorized.” Intersect cites the August 18, 2021 Order authorizing the Raritan Valley Community College remote net metering project, which included a BPU clarification that, in an instance where the host customer receives service pursuant to a residential tariff while the receiving customer is served on a commercial tariff, the host and receiving customers need not be in the same rate class. The Board generally adopted the Staff-recommended clarification. The Company will abide by this Order, but that does not undermine

the proposed language. Residential and commercial customer classes may seek either BGS service or TPS service. The Company's proposed language does not speak to rate classes, like residential and commercial.³ Therefore, the Company does not believe it necessary to strike the language from the proposed Rider RNM Tariff.

Intersect further objects to proposed language limiting the remote net metering service for projects that are already receiving net metering or aggregated net metering service. The Company believes this proposed language is consistent with the Board's policy of opening up new programs, like community solar, to customers that may not have access to solar through other, existing programs or rules. The Company also believes that the language is consistent with related aspects of the Board's 2018 Order Establishing Application and Approval Process, as well as the BPU-approved Public Entity Certification Agreement. The proposed language is not, as Intersect claims, an effort by the Company to generally limit access to remote net metering. If the Board wishes the Company to revise the proposed language, the Company is willing to discuss alternative reasonable language.

Conclusion

The Company seeks approval of the proposed Rider RNM Tariff so that customers may begin to receive the service. The Company has engaged in many prior discussions with Intersect regarding remote net metering and the solar condominium business model. The comments reveal that Intersect takes issue with only three sentences in the Company's proposed Rider RNM Tariff. Although the Company believes it filed a reasonable Rider RNM Tariff that is substantially similar to a tariff previously approved by the Board, the Company remains willing, as stated in the Letter Petition, to meet with the parties (and Intersect); to respond to questions; and to address concerns regarding the proposed Rider RNM Tariff.

Thank you for your consideration of this matter.

Respectfully submitted,



Cynthia L.M. Holland
An Attorney at Law of the
State of New Jersey

cc: Service List

³ Intersect appears to acknowledge that the two are not the same, because they call it "similar" at Page 6.

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. ET21101152

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