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December 13, 2021

Client/Matter No. 22849-8

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

**Re: I/M/O 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 Number ET21101152**

Dear Secretary Camacho-Welch:

Please accept this letter submitted on behalf of Intersect Energy, LLC (“Intersect”) in response to the December 9, 2021 letter submitted by Atlantic City Electric Company (“ACE”) in this docket. ACE’s letter purports to respond to Intersect’s challenges to three provisions in ACE’s proposed RNM tariff.

At first blush, one could easily conclude that ACE’s comments were filed in the wrong docket. While ACE briefly responds to certain of the substantive arguments addressed in Intersect’s Comments, the majority of ACE’s reply is devoted to extraneous topics, such as Intersect’s proposal to develop solar condominium projects and certain business interactions between the companies. To state the obvious, these issues are not before the Board in this docket and are completely irrelevant to the only matter presently before the Board for consideration—e.g. the merits of ACE’s proposed RNM tariff. The extraneous issues raised by AEC serve only as a distraction and the Board should ignore them. The Board should focus instead on the provisions of the proposed tariff that are the subject of Intersect’s comments, which provisions do not appear to be supported by existing law or Board policies or procedures and would inhibit attainment of the State’s solar energy goals. We urge the Board to remove these provisions from the proposed tariff and to approve the remainder of the RNM tariff, which is not objectionable.

In its brief substantive arguments, ACE again argues that its proposed tariff is “substantially similar” to JCP&L’s approved RNM tariff (at p.5), implying that the Board should simply rubber stamp the ACE tariff. Significantly, ACE does not claim that the two tariffs are the same. In fact, they are not. The ACE tariff includes provisions that implicate significant policy and procedural concerns which, if approved by the Board, would provide authority to ACE to significantly delay the processing of developer interconnection applications and preclude certain categories of customers from pursuing RNM projects. ACE also continues to argue, without more, that these provisions are consistent with the Board’s RNM policies and the Governor’s Energy Master Plan. In fact, they are not, for the reasons previously articulated by Intersect. Nor would these provisions advance New Jersey’s clean energy goals as ACE claims (at pages 1 and 2). Instead, the provisions appear calculated to reduce the number of solar projects eligible for development in ACE’s service territory.

Intersect offers the following additional thoughts and clarifications in response to certain statements in ACE’s reply. Contrary to ACE’s suggestion, Intersect does not take issue with the Board’s RNM approval processes and fully recognizes ACE’s responsibility as a utility to adhere to the Board’s RNM decisions (at page 2). ACE’s arguments miss the point. What Intersect presented was not an approval-related issue, but a *timing* issue. We question the announced ACE policy to delay action on developer interconnection applications until after the Board approves the allocation of credits for projects, an approval that has no direct nexus to interconnection applications. We know of no policy adopted by the Board that prevents utilities, in the interest of facilitating timely project development, from processing an interconnection application simultaneously with the Board’s consideration of a project’s eligibility for subsidies or other relief.

As noted in our Comments, the timelines established by the Board for project completion and commercial operation are tight and can, and often are exceeded by projects that experience lengthy PJM or utility-related interconnection delays. Despite ACE’s protestations (at page 4), Centrica’s experiences with ACE are relevant in the sense that it sheds light on the types of delays being experienced by developers in their dealings with ACE and how the delays threaten project viability. The ACE provision that appears to require prior Board approval of a project could be cited to significantly delay interconnection reviews, resulting in developer and customer confusion and enhance the risk that projects will not be timely completed in accordance with Board deadlines. If there is another meaning to ACE’s “Board approval” language, let them explain it. ACE did not do so in its reply, so the meaning of the language remains unexplained. The Board should not consider this provision until its meaning and import are explained and its implications fully understood.

Similarly, Intersect previously noted that the added tariff provisions (i) requiring host and receiving customers to be served by BGS under the same rate schedule or supplied by the same third party supplier, and (ii) precluding customers included in previous aggregations for another qualified customer facility or who are currently net metered, do not appear to be authorized by current law or Board policy. ACE has not cited any authority to support these provisions, other

than attempting to distinguish the Board's recent Order regarding the Raritan Valley Community College RNM project, which clearly does not support ACE's position.

These proposed tariff provisions would have the effect of limiting the scope of eligible RNM customers and essentially punish customers that were early adopters of solar by preventing them from expanding their solar facilities. It should be evident that the cited language would prevent an existing behind the meter solar customer from offsetting the balance of its load through RNM. It is telling that ACE failed to cite any precedent or authority that it suggests support the inclusion of these provisions in the tariff.

If it is ACE's purpose to pave new ground in the development of the State's solar policies, ACE should do so in an appropriate manner, through a separate proceeding convened for that purpose, and not as part of a tariff filing, particularly one that is presented without provision for a public hearing. It is incumbent upon ACE to demonstrate to the Board's satisfaction that the challenged provisions are based on existing law and policy and would advance, rather than hinder, the State's solar policies and goals. Unless ACE accepts this responsibility and fully explains the meaning, import and intended effect of its proposed language, the Board should not approve the provisions for inclusion in the RNM tariff.

We urge the Board to ignore the extraneous and irrelevant arguments raised in ACE's reply and focus instead on the merits of ACE's proposed RNM tariff. While we urge the Board to reject the provisions that are the subject of Intersect's comments, we underscore that the remainder of the tariff is consistent with law and is not objectionable. We therefore encourage the Board to approve the remainder of the tariff expeditiously to permit long-delayed RNM projects to proceed in the ACE territory. ACE has already delayed for years the submission of its proposed RNM tariff to the Board. There should not be further delay.

One last thought. We welcome ACE's professed willingness to negotiate its tariff language and we encourage efforts devoted to that end. However, if ACE insists on retaining the challenged provisions, in whole or in part, we submit respectfully that it would be reasonable and appropriate for Board staff to require ACE to provide responsive answers to specific questions directed to the meaning and import of, and authority for these provisions. We suggest that ACE be required to respond to the following types of questions:

-- Is it ACE's current policy or procedure not to review, conduct interconnection studies or otherwise act upon developer interconnection applications for remote net metering projects, or solar projects generally, until the Board first approves the projects to receive solar subsidies? If so, on what authority does ACE rely to support ACE's policy or procedure? How long has the policy or procedure been in effect?

-- Explain the meaning, intent and anticipated effect of the provision in the proposed RNM tariff that states: "The BPU's approval or denial (of the Public Entity

Certification Agreement and Part 1 of the interconnection application) will guide the Company action”. Specifically, what “company action” does this sentence refer to?

-- Explain the meaning, intent and anticipated effect of the provision in the proposed RNM tariff that states: “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.”

-- Could the provision exclude certain existing solar customers from pursuing RNM projects in the ACE territory?

-- If so, on what authority does ACE rely to support the proposed provision?

-- Explain the meaning, intent and anticipated effect of the provision in the proposed RNM tariff that states: “None of the accounts can be included in a previous aggregation for another qualified customer facility or be a NEM customer”.

-- Could the provision exclude certain existing solar customers, including current net metered customers, from pursuing additional RNM projects in the ACE service territory?

-- If so, on what authority does ACE rely to support the proposed provision?

-- Has ACE approved any RNM interconnection applications to date?

Intersects appreciates the opportunity to present these reply comments and looks forward to further participation in this proceeding.

Respectfully submitted,



STEVEN S. GOLDENBERG, ESQ.

SSG/rad
cc: Distribution List

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