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August 27, 2010

**VIA FEDERAL EXPRESS and
ELECTRONIC MAIL**
kristi.izzo@bpu.state.nj.us

Kristi Izzo
Secretary of the Board
State of New Jersey
Board of Public Utilities
Two Gateway Center
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RE: In the Matter of the Petition of Atlantic City Electric Company for a Declaratory Order with Respect to the Definition of “Solar Renewable Energy Certificate” Pursuant to the Provisions of N.J.S.A. 48:3-51
BPU Docket No. _____

Dear Secretary Izzo:

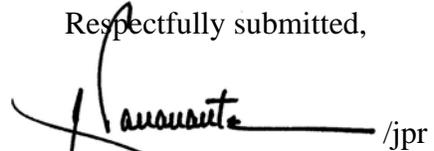
On behalf of Atlantic City Electric Company, enclosed herewith for filing are an original and eleven (11) copies of a Verified Petition seeking a declaratory ruling with respect to the definition of “Solar Renewable Energy Certificate” pursuant to the provisions of N.J.S.A. 48:3-51. Any assistance you can provide in the expedited processing of this filing would be greatly appreciated.

Kindly docket this filing and return one (1) “filed” copy of same in the enclosed postage-prepaid, self-addressed envelope.

Kristi Izzo
August 27, 2010
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Thank you for your consideration and courtesies. Feel free to contact me with any questions or if I can be of further assistance.

Respectfully submitted,

 /jpr
Philip J. Passanante
An Attorney at Law of the
State of New Jersey

Enclosures

cc: Service List
Honorable Lee A. Solomon, President
Honorable Jeanne M. Fox, Commissioner
Honorable Joseph L. Fiordaliso, Commissioner
Honorable Nicholas Asselta, Commissioner
Honorable Elizabeth Randall, Commissioner
Rhea Brekke, BPU
Andrea Sarmentero-Garzon, BPU
Rosalie Romeo, BPU

**IN THE MATTER OF THE PETITION OF
ATLANTIC CITY ELECTRIC COMPANY
FOR A DECLARATORY ORDER WITH
RESPECT TO THE DEFINITION OF
“SOLAR RENEWABLE ENERGY
CERTIFICATE” PURSUANT TO THE
PROVISIONS OF N.J.S.A. 48:3-51**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

BPU Docket No. _____

VERIFIED PETITION

ATLANTIC CITY ELECTRIC COMPANY (hereinafter referred to as “Petitioner,” “ACE” or the “Company”), a public utility corporation of the State of New Jersey (the “State”), respectfully requests that the Board of Public Utilities (herein, the “BPU” or the “Board”) issue a Declaratory Order¹ that solar renewable energy projects that interconnect with the Company’s 69 Kilovolt (“kV”) system or lower voltage lines are eligible to receive Solar Renewable Energy Certificates (“SRECs”), as same is defined in N.J.S.A. 48:3-51. In support thereof, Petitioner states as follows:

1. The Company is engaged in the purchase, transmission, distribution and sale of electric energy to residential, commercial and industrial customers. ACE’s service territory comprises eight (8) counties located in southern New Jersey and includes approximately 547,000 customers.

Background of Solar Development in ACE’s Service Territory

2. Since the adoption of the State’s first Energy Master Plan (“EMP”) in 1991 and the EMP’s goal for the promotion and development of renewable energy in the State, the Company has been, and remains, fully supportive of achieving the objectives of the EMP, including those associated with the development of solar energy in the State. The development of solar energy generation is one area where the State is continually at the forefront. To a large degree, the attractiveness for solar developers to locate and install solar projects in New Jersey is

¹ N.J.S.A. 52:14B-8 authorizes any State agency “in its discretion [to] make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency”.

directly tied to the current and projected prices for SRECs. SREC prices are primarily driven by the Solar Alternative Compliance Payments, which ranged per Megawatt (“MW”) in price from \$711 in 2009 to a projected price of \$594 in 2016. These prices can be contrasted to SREC prices in other states, such as in Delaware, for example, which has a current SREC spot market price of \$275 per MW.

3. The high level of SREC payments in the State has caused small and large solar energy projects to be proposed in New Jersey. The smaller projects are typically developed as part of the State’s Net Energy Metering (“NEM”) program, which is available, subject to certain size limitations based upon the customer’s annual usage, to current retail customers of the State’s electric distribution companies (“EDC”). Larger solar projects (i.e., usually 5 MWs and greater) apply through the PJM Wholesale Generation Interconnection process (the “PJM interconnection process”).

4. Pursuant to Federal Energy Regulatory Commission Order Nos. 2003 and 2006, Petitioner is mandated to provide “open access” to its delivery facilities, both transmission and distribution, to generators of electricity proposing to sell power into the PJM wholesale energy markets, irrespective of the mode of generation. In order to participate in the PJM marketplace, a large solar wholesale generator seeking to connect to ACE’s “distribution system” (presumably, for the purpose of obtaining SRECs) must comply with the PJM interconnection process. The Company is required to abide by that process as well.

5. The PJM interconnection process is comprised of a three stage evaluation, conducted jointly by PJM and ACE, of the capacity of the Company’s facilities to interconnect the proposed project at the specified location requested by the applicant. This process must be completed before the proposed project can be connected to the Petitioner’s energy delivery facilities. In total, the evaluation process can take up to a year or longer to be completed.

Depending upon system conditions that exist at the time of the application, the applicant may be required to pay for any incremental facilities that are necessary to provide the requested service. While the evaluation process is active and underway, subsequent applicants (either PJM-initiated or NEM) that also require evaluation (i.e., those above 250 kW), and are requesting interconnection at the same point of interconnection as the prior applicant, must be evaluated *as if the prior applicant's interconnection request will be granted*. The net effect of this mandatory process is that ACE is obligated to “commit” or reserve certain of its energy delivery facilities for projects under evaluation for the duration of the evaluation process, irrespective of whether the project will ultimately be developed.

6. Petitioner currently has 64 large solar projects requesting interconnection to its distribution system under evaluation. These projects represent nearly 950 MWs of solar development. That is nearly double the total number of solar generated MWs installed in the entire United States in 2009. ACE is responsible for approximately 13 percent of the electric distribution load in the State, but, for the reasons noted herein, it has 68 percent of the solar projects/MWs proposed for the State as a whole.

7. Because of the requirement that, during the evaluation process, ACE must presume that these projects will ultimately be developed, approximately 25 percent of its system is currently deemed to be “closed” to all other alternative energy projects. This situation will only accelerate (i.e. worsen) over time, as more large scale solar projects apply through the PJM interconnection process for access to ACE's distribution system in order to qualify for New Jersey SRECs. Without the ability for ACE to attach larger solar projects to the Company's 69 kV and lower voltage lines, ACE's distribution system will be unable to accommodate all the requests for interconnection, especially those from NEM customers seeking to participate in

State-sponsored solar generation projects, as the percentage of its “closed” distribution system continues to grow.

8. Petitioner’s service territory is primarily rural in character and is comprised of many farms and other open spaces. Due to this rural nature, two factors have evolved that now compete against each other as they pertain to solar energy development in ACE’s service territory. First, because of the availability of and access to large parcels of open land, solar developers wishing to install larger solar projects in New Jersey, in order to gain the economic benefit of the State’s SREC prices, have identified ACE’s service territory as an ideal place to locate their projects. As noted earlier, these larger projects typically follow the PJM interconnection process. Second, the rural characteristic of ACE’s service territory, unlike more densely populated EDC territories, requires less distribution and transmission assets to provide service to ACE’s retail customers. Petitioner’s 12 kV distribution system, which it employs throughout most of its service territory, cannot accommodate larger solar projects as can the higher voltage distribution lines utilized by other EDCs in the State. It should be noted that ACE’s 69 kV lines -- no matter how they might be classified before any State or Federal agency -- do not directly interconnect with the facilities of any out-of-State electric distribution or transmission lines.

Argument in Support of Requested Declaratory Order

9. Pursuant to N.J.S.A. 48:3-51, an SREC is “a certificate issued by the [B]oard or its designee, representing one megawatt hour (MWh) of solar energy that is generated by a facility connected to the distribution system in this State ...” (Underlining added.) N.J.S.A. 48:3-51 does not, however, define what constitutes the “distribution system in the State”. Individual EDCs identify their energy delivery facilities as either “transmission” or “distribution”. Such designations are not necessarily uniform among the State’s EDCs, and each

EDC's specific designation reflects the unique characteristics of its individual service territory (i.e., rural, suburban or urban) and what is required for that EDC to deliver energy to its customers. In ACE's case, its "transmission" facilities are mainly comprised of 69 kV lines, with some 138 kV and 230 kV lines as well. The Company maintains an ownership interest in various 500 kV lines, while its "distribution" lines are typically 12,470 Volts.

10. N.J.S.A. 48:3-51 speaks in terms of a solar project being connected to the "distribution system in the State" for purposes of the solar project's eligibility for SREC payments. This has led to an interpretation by some that, in order to qualify for SRECs, a solar generator must be connected to the "distribution system" of the individual EDC. The statute, however, does not refer to the distribution system of the *utility*, but rather refers to the "distribution system in the *State*". ACE respectfully submits that the definitional language of N.J.S.A. 48:3-51 was not intended to be as limiting as it is currently being interpreted, such that only solar generators interconnecting with the "distribution" lines of an electric utility qualify for SREC payments. The Company believes the legislative intent and practical purpose of the law should be more broadly interpreted to (i) provide SREC payments to all solar generators who develop their solar facilities in the State and can directly interconnect to the electric delivery network operating within the State, and (ii) preclude solar generated MWs from outside New Jersey, which are not directly connected to the State's internal electric delivery network, from qualifying for SREC payments.

11. It is important to note that N.J.S.A. 48:3-51 does define what is meant by the "transmission and distribution system" in the State in a single, combined definition of these two terms. The statute defines "transmission and distribution system" as "any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility ... within this State." (Underlining added.) Relying upon this combined

definition of the “transmission and distribution system” for the legislative meaning of the otherwise undefined phrase “distribution system in this State” for purpose of determining SREC payment eligibility, would, in Petitioner’s judgment, (i) be within the Board’s discretion to do as the administrator of the SREC program; (ii) be more closely aligned with what ACE believes to be the legislative intent underlying the development of the State’s solar generation portfolio; and (iii) allow for in-state solar generation facilities to interconnect with a wider range of delivery assets, while still being eligible for SREC payments.

12. The Board is clearly empowered to render such an interpretation of the definitions contained in N.J.S.A. 48:3-51, which statute the Board has been entrusted by the Legislature to enforce. In *Merin v. Maglaki*, 126 N.J. 430, 436-37 (1992), citing *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313, 327 (1984), the New Jersey Supreme Court stated that it gives “substantial deference to the interpretation of the agency charged with enforcing an act. The agency’s interpretation will prevail provided it is not plainly unreasonable”. There is nothing “plainly unreasonable” with regard to the interpretation of the definitions as proposed by the Company in this Petition. To the contrary, the suggested interpretation is wholly consistent with the legislative intent of the Electric Discount and Energy Competition Act, as amended, N.J.S.A. 48:3-49 *et seq.*, and in particular, the SREC program’s applicable definitions, as well as the EMP’s goals and objectives.

13. The Company is aware that a concern has been raised that, if New Jersey solar generators are able to interconnect to an EDC’s transmission level assets and be eligible for SREC payments, out-of-state solar generators who can connect to transmission assets that tie to transmission facilities in the State could argue that they should equally be able to qualify for New Jersey SRECs, and that failure to do so would be discriminatory under the Commerce Clause of the United States Constitution. By limiting its request to allowing only those New

Jersey solar generation projects that *directly* interconnect with the Company's 69 kV and lower voltage lines to be eligible for SRECs, Petitioner believes that the likelihood of a constitutional challenge would be eliminated. As stated at the outset, none of ACE's 69 kV or lower voltage lines directly interconnect with any delivery assets from, or located in, any other state. Should the Board grant the relief being sought through this Petition -- i.e., that a solar generation facility that can directly interconnect with the Company's 69 kV and lower voltage lines be deemed eligible for SREC payments -- no out-of-State solar generator, by virtue of its physical inability to connect to ACE's 69 kV or lower voltage lines, can allege discriminatory treatment vis-à-vis similarly situated in-State solar developers, who are physically capable of interconnecting with ACE's 69 kV or lower voltage lines.

14. The Company believes that the goal of the State to "encourage the development of New Jersey based renewable energy generation" through the development of regulatory policies, as enunciated in the State's EMP², will be enhanced by the Board's determination in this matter that solar generation projects, whether arising under State-sponsored programs or through the PJM interconnection process, can be interconnected to Petitioner's 69 kV and lower voltage lines, and that such solar generation projects can be eligible for SREC payments.

15. Communications and correspondence regarding this matter should be sent to Petitioner and its counsel at the following address:

Philip J. Passanante, Esquire
Assistant General Counsel
Atlantic City Electric Company - 89KS42
800 King Street, 5th Floor
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and

² New Jersey Energy Master Plan at page 69.

Nicholas W. Mattia, Jr., Esquire
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1825 Eye Street, NW
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with copies to the following representatives of the Company:

Wayne W. Barndt
Manager, Regulatory Strategy and Policy
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and

Roger E. Pedersen
Manager, New Jersey Regulatory Affairs, External Issues and Compliance
Atlantic City Electric Company
5100 Harding Highway
Mays Landing, New Jersey 08330

Conclusion

16. It is beyond question that the Board is within its statutory authority to interpret the laws of the State that it is responsible for enforcing. Accordingly, this request for a Declaratory Order adopting the proposed interpretation with regard to the eligibility of certain solar generation projects interconnected at the Company's 69 kV and lower voltage lines to be eligible to receive SRECs, is reasonable and within the statutory authority granted to the Board by the Legislature.

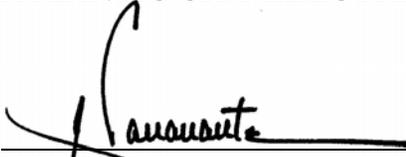
WHEREFORE, the Petitioner, **ATLANTIC CITY ELECTRIC COMPANY**, respectfully requests that the Board of Public Utilities:

- A. issue a Declaratory Order determining that solar generation projects connected to the Company's 69 kV and lower voltage lines are eligible, subject to all other State requirements being met, for receipt of SREC payments; and

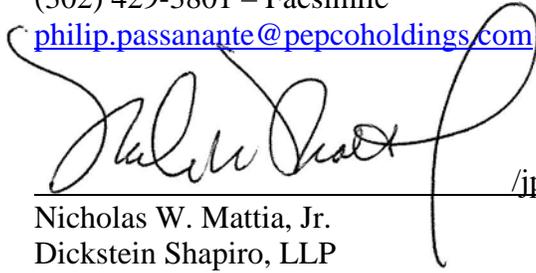
B. grant such other or further relief as the Board may deem just and reasonable.

Respectfully submitted,
on behalf of
ATLANTIC CITY ELECTRIC COMPANY

Dated: August 27, 2010

 /jpr

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**IN THE MATTER OF THE PETITION OF
ATLANTIC CITY ELECTRIC COMPANY
FOR A DECLARATORY ORDER WITH
RESPECT TO THE DEFINITION OF
“SOLAR RENEWABLE ENERGY
CERTIFICATE” PURSUANT TO THE
PROVISIONS OF N.J.S.A. 48:3-51**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

CERTIFICATION OF SERVICE

PHILIP J. PASSANANTE, of full age, certifies as follows:

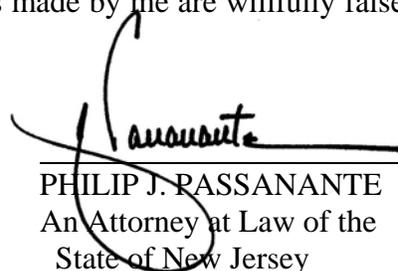
1. I am an attorney at law of the State of New Jersey and am Assistant General Counsel to Atlantic City Electric Company, the Petitioner in the within matter, with which I am familiar.

2. I hereby certify that, on August 27, 2010, I caused an original and eleven (11) copies of the within Verified Petition to be sent via Federal Express to Kristi Izzo, Secretary of the Board, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

3. I further certify that, on August 27, 2010, consistent with the Service List attached to the Verified Petition, I caused complete copies of the within filing to be sent via Federal Express to Staff of the Board of Public Utilities and representatives from the Division of Law and the Division of Rate Counsel.

4. I further and finally certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 27, 2010

 /jpr
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I/M/O the Petition of Atlantic City Electric Company for a Declaratory Order with Respect
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to the Provisions of N.J.S.A. 48:3-51
BPU Docket No. _____

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