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August 6, 2014

VIA HAND DELIVERY

RJ 010
CASE MANAGEMENT

Ms. Kristi Izzo
Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350

Q014080885

Re: In the Matter of the Joint Petition of KDC Solar LLC and Six Flags
Entertainment Corporation Seeking Declaratory Judgment Pursuant to N.J.S.A.
52:14B-1, *et seq.*, or a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-
1.2(b)

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Partner
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Dear Ms. Izzo:

On behalf of KDC Solar LLC, I enclose an original and twelve (12) copies of a
Verified Petition in connection with this matter, together with a thumb drive
containing the enclosures. I also enclose a check payable to "Treasurer, State of
New Jersey" in the amount of \$25.00 to cover the filing fee.

Please stamp one copy "Filed" and return it to our waiting messenger.

We are serving a copy of the Petition on Jersey Central Power & Light Company,
via its registered agent for service of process, with a copy to its counsel, Gregory
Eisenstark, Esq. Jersey Central Power & Light Company is an interested party in
connection with this matter. We are also providing a copy to Stefanie A. Brand,
Esq., Director, Division of Rate Counsel. I enclose a Certification of Service.

BOSTON

Thank you for your attention and assistance.

HARTFORD

Very truly yours,

NEW YORK

Keith E. Lynott

*CMS
R. BOYLAN
DIAG
RPA
CLEAN ENERGY (5)
S Hunter*

NEWARK

Keith E. Lynott
Enclosures

PHILADELPHIA

cc: Jersey Central Power & Light Company (w/encl., via overnight mail)
Gregory Eisenstark, Esq. (w/encl., via overnight mail)
Stefanie A. Brand, Esq. (w/encl., via overnight mail)
Mr. Alan M. Epstein, Esq., President, KDC Solar LLC (w/encl., via
overnight mail)
Mr. Matthew E. Kamine, Vice President, KDC Solar LLC (w/encl., via
overnight mail)
Stephen J. Humes, Esq. (w/encl., via overnight mail)

STAMFORD

WASHINGTON DC

WILMINGTON

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES

In the Matter of the Joint Petition of	:	Docket No. <u>2014080885</u>
KDC Solar LLC and Six Flags	:	
Entertainment Corporation	:	
	:	August 6, 2014
Seeking a Declaratory Judgment	:	
Pursuant to N.J.S.A. 52:14B-1, et	:	
seq., or a Waiver Pursuant to the	:	
Waiver Rule, N.J.A.C. 14:1-1.2(b).	:	

Preliminary Statement

KDC Solar LLC, acting through one or more wholly-owned special purpose entities ("KDC Solar"), and Six Flags Entertainment Corporation ("Six Flags" or "Customer" collectively, "Petitioners"), propose to construct and operate an approximately 17 MW AC photovoltaic electric generating facility at Six Flags' Great Adventure & Safari theme park ("Great Adventure") in Jackson Township. The "net-metered" renewable energy facility would be located on the Great Adventure property and would be sized to meet the current annual energy usage of Great Adventure only.

For reasons related to the historical development of the Great Adventure property for the large theme park, the local utility, Jersey Central Power and Light Company ("JCP&L"), owns facilities (wires, switches, and transformers) that are downstream of the existing metering points on certain areas of the Great Adventure property itself and that distribute electric power throughout the theme park. This unusual circumstance, which departs from the vast majority of electric power delivery arrangements in New Jersey, necessitates the partial use by the proposed solar facility of wires and associated equipment owned by JCP&L in order to provide the renewable energy to the various attractions at Great Adventure. But at the same time, KDC Solar and Six Flags will, as described further below, own the wires and other equipment to be used to deliver the renewable energy from the proposed solar facility to the point of interconnection where the Customer's meter is located. In this Petition, KDC Solar and Six Flags seek a determination of the New Jersey Board of Public Utilities (the "Board" or "BPU"), that notwithstanding the anomalous circumstance presented by the physical electric configuration at Great Adventure, this important project may proceed as a "net-metered" renewable energy facility.

The determination requested herein is fully consonant with the law and consistent with New Jersey's clean energy policies and objectives. When the Board adopted N.J.A.C. 14:8-4.1(b)(2), pertaining to "net-metered" renewable energy facilities and requiring that "renewable energy [be] delivered from the generation facility to the property on which the energy is consumed through wires and/or other equipment installed, owned and operated by an entity other than the EDC," we believe that the Board did so clearly contemplating the electric power delivery configuration found at the vast majority of locations in New Jersey and not the unusual

circumstances presented by the configuration at Great Adventure. In the typical and normal arrangement, the Customer owns the wires and other equipment on its own property (“downstream of the meter”) and the requirement of N.J.A.C. 14:8-4.1(b)(2) ensures that equipment of the EDC is not used to connect a “net-metered” renewable energy facility to the Customer’s equipment.

As demonstrated in this Petition, that requirement *will still be met* in the specific circumstances here, as only wires and equipment owned by KDC Solar and Six Flags will be used to connect the proposed solar facility to the point of interconnection at a new, Customer-owned substation, thereby ensuring for all practical purposes that the renewable energy will be delivered “to the property on which the energy is consumed” on wires and other equipment not owned by the EDC. Accordingly, in the specific and unusual situation presented here, it is appropriate and lawful for the Board to determine that N.J.A.C. 14:8-4.1(b)(2) is satisfied by the proposed solar project and also that Six Flags qualifies as a “net metering customer”, because it “owns and/or operates electrical wires and/or equipment that is connected to the EDC’s electric distribution system through a meter used for net metering.”

Alternatively, the Board should exercise its authority to waive application of its own rules, as provided in N.J.A.C. 14:8-4.1, and waive the requirement of N.J.A.C. 14:8-4.1(b)(2) in the specific, limited circumstances described in this Petition. Even if the Board determines that the strict letter of N.J.A.C. 14:8-4.1(b)(2) is not satisfied by the project, the requisites established by the Board for a waiver of the requirement are clearly met.

The requested relief would facilitate construction and operation of a facility that would allow Six Flags to achieve its corporate goal of net zero use of fossil energy at Great Adventure (*i.e.*, a 100% renewable campus), a goal that is fully consistent with three of the overarching policy objectives set forth in the 2011 New Jersey Energy Master Plan (the “2011 EMP”). These goals are: (i) reducing the cost of energy for a major customer; (ii) promoting a diverse portfolio of new, clean, in-State generation; and (iii) achieving the renewable energy portfolio standard of 22.5% of energy from renewable sources by 2021.

Six Flags has a substantial presence in New Jersey as one of the State’s largest employers and as operator of a highly visible regional tourist attraction that has drawn millions of visitors to New Jersey for decades. Great Adventure generates significant state and local tax revenue. Six Flags is an important and responsible corporate citizen, as was again demonstrated when it allowed JCP&L to use the Great Adventure property as a staging ground during recovery efforts following Superstorm Sandy.

The solar project described in this Petition is yet another example of Six Flags’ efforts, as a member of the Jackson Township business community, both to advance State and local clean energy objectives and to assist JCP&L in the management of the local electric power distribution system. Not only will the proposed project result in substantial generation of electric power via a renewable resource, but as part of its plan for the proposed solar facility, KDC Solar, on behalf of Six Flags, will construct a new, Customer-owned substation (an investment of approximately \$3 million) and Six Flags will transfer the majority of its load from JCP&L’s existing substation to the new substation.

The proposed solar facility will interconnect at the new substation. This will ensure that the renewable energy will be delivered from the solar facility to the point of interconnection with

the Customer's facilities via wires and other equipment that are not owned by JCP&L. In these circumstances, the Board should determine that the renewable energy will be delivered from the solar facility to "the property in which the energy is consumed" via equipment or wires not owned by the utility for purposes of N.J.A.C. 14:8-4.1(b)(2), notwithstanding the fact that the renewable energy will then be distributed downstream of the meter throughout the Great Adventure property via wires and equipment that, in the unusual and historical configuration of this particular site, happen to be owned by the utility.

For the reasons described in detail below, the Petitioners request that the Board approve the proposed interconnection, either by issuing a declaratory ruling that the requirement of N.J.A.C. 14:8-4.1(b)(2) is satisfied and that Six Flags qualifies as a "net metering customer" or by granting the waiver request. In either event, the Petitioners seek an order declaring that Six Flags is entitled to receive and enter into an interconnection agreement with JCP&L for this project.

The Petitioners respectfully request expedited review of this Petition and a prompt decision from the Board. Expedited relief is essential to enable the various parties to plan accordingly and to ensure the delivery of the manifold benefits of the proposed solar facility. Pursuant to federal tax law, the project will be eligible for certain solar tax credits or other tax benefits, but only if the project is placed in service and is commercially operating by 2016. Due to the complexities involved in fully engineering, permitting and constructing this project, KDC Solar must commence construction by early 2015 in order to achieve this timetable.

In support of this Petition, the Petitioners state the following:

The Parties and the Proposed Solar Facility

1. KDC Solar is a leading commercial solar project developer, owner and operator, headquartered in Bedminster, New Jersey. KDC Solar has designed and installed, and owns and operates, numerous solar projects throughout New Jersey. KDC Solar currently has 44.3 MW of solar projects in operation, 6.4 MW in construction and 120 MW in development.
2. Great Adventure is a theme park in Jackson, New Jersey, owned by Six Flags. Six Flags has a business objective, which is fully in accordance with New Jersey's own robust renewable energy goals, to make Great Adventure the first net zero fossil energy use theme park in the world. Six Flags' objective will contribute significantly to the State's renewable portfolio and other energy objectives established by the 2011 EMP.
3. Six Flags has engaged KDC Solar to build a 17 MW (approximately) AC photovoltaic electric generating facility (the "Project"). The Project will be located on the Great Adventure property and will be sized to service the electric power needs of Great Adventure only.¹ The "Great Adventure property" consists of multiple tax parcels assembled as a single campus that share a common boundary as reflected on Exhibit A.

¹ KDC Solar proposes to net-meter the load served by the four (4) existing meters fed by circuits 67298, 67299 and 67301. These meters serve the theme park and the water park and will be reconfigured as a single 34.5 KV Customer-owned interconnection point. Unrelated to the Project, there will remain several other service lines pursuant to which JCP&L will continue to provide distribution services to other areas of the Great Adventure property.

The proposed solar facility will be located on parcels that are owned by Six Flags and that are either contiguous to the large tax parcel containing the Great Adventure load and/or on that latter parcel.

4. The design and engineering for the Project have not yet been completed and, therefore, KDC Solar's engineers have not yet determined exactly which Six Flags-owned parcels will be selected for the solar facility in the final design. However, the Project *will be* located entirely on parcels comprising the Great Adventure campus that are either contiguous to the large parcel containing the load or on that latter parcel itself. *See* Exhibit A. Thus, all or a significant portion of the Project will be located on two or three Six Flags-owned parcels each of which is contiguous to the parcel containing the load. It is also possible that a portion of the Project may be placed on the large Great Adventure parcel containing the load. There are no intervening public thoroughfares separating the property on which the solar facility is to be located and the property on which the energy is to be consumed.
5. To the Petitioners' knowledge, the only easement to be traversed in connection with the delivery of electricity from the Project to Great Adventure consists of an access easement owned by Jackson Township near the proposed new substation (discussed below). The generator offtake conductors will cross this easement in order to deliver the solar generation to the new substation.
6. The preliminary site concept plan attached as Exhibit A to this Petition shows the proposed location of the solar facility on the Great Adventure property (as presently contemplated). Also shown on Exhibit A are the tax lots designated by Jackson Township for the Great Adventure parcels. In order to assure both the Board and JCP&L that the "contiguity" requirement will be met, KDC Solar shall, upon approval by the local zoning authorities of a final site plan, submit the final site plan to the Board for verification of the specific location.²
7. KDC Solar engineers have investigated the Great Adventure property and have proposed various interconnection designs to JCP&L in a collaborative process in which JCP&L contributed technical feedback. KDC Solar has discussed with JCP&L the current planned interconnection shown on Exhibit A. However, KDC Solar understands that JCP&L desires to have Board confirmation of the plan for the solar facility before accepting the interconnection application for the Project.
8. Twenty years ago, in 1994, JCP&L and Six Flags entered into a two-page "Application and Agreement for Electric Service" (the "Agreement") under which JCP&L "would retain ownership and inspection/maintenance responsibilities for the distribution facilities presently dedicated to Great Adventure's entertainment complex. . . ." *See* Exhibit B, "Jersey Central Power & Light Company - Application and Agreement for Electric

² Exhibit A is an aerial map of the Great Adventure property showing that the Great Adventure property consists of a single campus on multiple tax lots and that the proposed solar facility placed anywhere on this campus would satisfy the requirement of N.J.A.C. 14:8-4.1(a) that the facility must be located on the property on which the energy is consumed or on "contiguous" property. The Exhibit shows a preliminary site concept, as presently contemplated by KDC Solar and Six Flags, with the solar facility located on parcels immediately next to (i.e. "contiguous to") the load parcel.

Service” - “Attachment ‘A’”. The Agreement specifies facilities charges from the islanded electric circuits on the Great Adventure property *solely for distributing electric power on the Great Adventure property itself*. The dedicated JCP&L wires on Great Adventure’s property are completely independent from the JCP&L distribution system serving other customers. In return, Six Flags pays JCP&L certain monthly facilities charges.

9. JCP&L services the Great Adventure property from a substation from which JCP&L also serves load to approximately three thousand other customers. JCP&L, KDC Solar and Great Adventure have had ongoing discussions regarding the preliminary plans and electrical interconnection of the proposed Project and KDC Solar has agreed to build a new, Customer-owned substation on the Great Adventure property, at a cost of approximately \$3 million. *See* Estimated Run to “New” Substation Diagram, attached as Exhibit C, which shows the approximate location of the contemplated substation at the end of the interconnection run.
10. The new substation will remove most of Great Adventure’s load from JCP&L’s current substation. However, the Great Adventure load will remain on the existing 34.5 KV sub-transmission line currently supplying JCP&L’s Great Adventure substation. By investing in a new substation, KDC Solar will be able to achieve an efficient electrical interconnection design that allows for one 34.5 kV level interconnection.
11. The interconnection of the solar facility to the meter at the new substation will also ensure that electric power is delivered from the solar facility to the point of interconnection via wires and/or other equipment that are not owned by JCP&L. The Project will be connected on premises of the Customer “behind-the-meter” to the new dedicated substation. The equipment and wires to be used to distribute the electric power from the solar generation facility to the substation will be owned and maintained by KDC Solar and the substation will be owned by Six Flags or KDC Solar and maintained by KDC Solar. *See* Exhibit C.
12. The Six Flags’ substation will then distribute power downstream of the interconnection point to the various attractions on the Great Adventure property through wires, switches and transformers that are, as provided in the unusual Agreement between Six Flags and JCP&L, owned by JCP&L. However, JCP&L’s wires and associated equipment on the Great Adventure property carry and serve only Great Adventure's load. No other JCP&L customer load will be served through those wires.

Legal Analysis

- A. **The Board Should Issue a Declaratory Ruling that the Requirement of N.J.A.C. 14:8-4.1(b)(2) Is Satisfied By the Project And That the Project Qualifies for Net-Metering Under a Plain and Rational Reading of the Board’s Definition of “A Net Metering Customer.”**
13. Under N.J.S.A. 52:14B-8, “any interested person” may seek “a declaratory ruling with respect to the applicability...of any statute or rule enforced or administered by [the] agency.” Here, the Board has promulgated “net-metering” rules at N.J.A.C. 14:8-4.1 *et seq.*, and is empowered to issue declaratory rulings pertaining to such rules.
14. The Project will be located on the Great Adventure property, either on landlocked, “contiguous” parcels that are immediately adjacent to the main parcel containing the Great Adventure load and/or on the latter parcel itself. The Project will deliver electric power from the proposed solar facility to the new substation to be located on Great Adventure property through wires and equipment to be owned either by KDC Solar or Six Flags. Given these circumstances, KDC Solar and Six Flags respectfully petition the Board for a declaratory ruling that (i) the provisions of N.J.A.C. 14:18-4.1(b)(2) are satisfied by the Project, despite the anomalous circumstance that JCP&L owns the wires and other equipment on Great Adventure property downstream of the point of interconnection and meter; and (ii) Six Flags qualifies as a “net metering customer” pursuant to N.J.A.C. 14:8-4.2. Upon a ruling that the Project is eligible for net-metering, KDC Solar will be able to deliver long-term, discounted, solar-generated electricity in a “behind-the-meter” configuration to its only intended end use customer, Six Flags.
15. N.J.A.C. 14:8-4.1(b)(2) provides that the renewable energy generated by a Class I renewable facility must be “delivered *from the generating facility to the property on which the energy is consumed* through wires and/or other equipment owned and operated by an entity other than the EDC.” (emphasis added). When the Board adopted this provision, Petitioners are confident that the Board did not consider the highly unusual circumstance present here in which a utility owns wires and associated equipment on the property of the Customer for the purpose of distributing electric power on and around the Customer’s property. This arrangement – reflected in the Agreement – departs from the configuration in virtually all other cases, in that the customer almost always owns the wires and equipment located on its own property.
16. N.J.A.C. 14:8-4.1(b)(2) is part of a provision, N.J.A.C. 14:8-4.1, that the Board adopted in 2013 and intended to clarify the criteria to be applied in determining whether class I renewable energy shall be deemed to be generated on the “customer’s side of the meter.” The first subsection of this provision, subsection (a), deals with the location of the renewable energy generation facility and requires that it must be located either on the customer’s premises or on property that is “contiguous” to the property on which the power is to be consumed. As noted above, the “contiguity” requirement will be satisfied for this Project in that the renewable energy facilities will be installed either on properties that are located geographically “next to” the property containing Great Adventure’s load, or partially on such “contiguous” parcels and partially on the property containing the load. In either event, moreover, there are no intervening public rights of way or

thoroughfares that must be traversed to deliver energy from the Project to the “property on which the energy is consumed.”³

17. The third subsection, subsection (c), requires that the renewable energy facility must serve only one “net metering customer.” The Project plainly satisfies this criterion as well in that the Project will serve the electric power requirements of Six Flags Great Adventure only.
18. The second subsection of N.J.A.C. 14:8-4.1(b), subsection (b)(2), is also satisfied by the Project as configured. The renewable energy will be delivered from the proposed solar facility “to the property on which the energy is consumed” on wires and/or equipment not owned by the utility. This is so because, notwithstanding the unusual configuration and ownership scenario on the Great Adventure property, downstream of the new, Customer-owned substation, KDC Solar nonetheless will deliver electric power from the solar facility to the point of interconnection located “on the property on which the energy is consumed” – the new substation – using wires and equipment that will be owned by KDC Solar (the wires and the substation). At no point in the transmission of electric power from the renewable energy facility to the point of interconnection “on the property on which the energy is consumed” will any wires or equipment of JCP&L be used. Moreover, because the Project will be located on or adjacent to the property containing the Great Adventure load, without any crossing of an intervening thoroughfare or public right of way, there will be no use of the EDC’s distribution system in a public right of way to deliver the energy from the net-metered facility to the load.
19. The only difference between the circumstances here and virtually every other configuration involving a “net-metered” solar facility is that, for reasons related to the unusual history and development of the Great Adventure theme park where each attraction was separately metered as opposed to the customer’s entire property, JCP&L owns the wires and associated equipment downstream of the point of interconnection that will distribute the electric power to the various attractions on the property.⁴ Not only is this circumstance plainly one that was not contemplated by the Board when it adopted N.J.A.C. 14:8-4.1(b), but it is a distinction without a difference, inasmuch as the fundamental policy objectives underpinning the requirement of N.J.A.C. 14:8-4.1(b)(2) will nonetheless be satisfied by the arrangements proposed here. KDC Solar and Great Adventure, and not the EDC, will have sole responsibility for maintaining the wires and other equipment used to deliver energy to the point of interconnection and no wires or equipment of the EDC will be used in a way that would permit service to more than one “net metering customer.” In particular, the islanded circuits owned by JCP&L on Great Adventure property are downstream of the interconnection point between the solar

³ The Project will thus satisfy the “contiguity” requirement of N.J.A.C. 14:8-4.1(b)(1). As a result, KDC Solar does not seek any relief in this Petition as to this requirement. As described above and as demonstrated by Exhibit A, the renewable energy facility will be located either (i) on one or more Six Flags-owned properties that are located geographically next to, and therefore “contiguous” to, the property on which the energy is to be consumed; or (ii) in part on such a “contiguous” parcel and in part on the property on which the energy is to be consumed. As indicated above, only the generation offtake conductor, which consists of the 34.5 kV run from the solar facility to the new substation, will need to cross a small easement on the property on which the energy is to be consumed. See also, the representation made in Paragraph 6 above.

⁴ To illustrate the difference diagrammatically, KDC Solar submits the attached Exhibit D to show the typical net-metered solar project configuration compared to the arrangement proposed for Six Flags Great Adventure.

facility and “the property on which the energy is to be consumed.” And, in all events, all of the wires and equipment involved in transmitting the electric power, including the wires and equipment owned by JCP&L, will be used to serve Great Adventure’s load only.

20. The Board should also conclude that this proposed Project on Great Adventure property meets the definition of a “net-metering customer.” Pursuant to N.J.A.C. 14:8-4.2, the definition of a “net-metering customer” is as follows:

“Net-metering customer” means a customer that *owns and/or operates electrical wires and/or equipment that is connected to the EDC’s electric distribution system through a meter used for net metering*. The net-metering customer may or may not be the same entity as the net-metering generator, and may or may not be located on the same property as the net-metering generator.

(emphasis added).⁵

21. As noted, the Project will produce renewable energy that will be connected electrically to the dedicated Great Adventure substation through equipment and wires owned by KDC Solar. The solar facility will deliver generation through a meter used for “net-metering” to the new, Customer-owned substation, which will then deliver energy through the islanded circuits of wires owned by JCP&L on Great Adventure property, but serving only one end-use, the Great Adventure complex.
22. The Board’s net-metering rules do not specifically contemplate this highly unusual scenario, but the Petitioners respectfully submit that allowing the proposed interconnection of this Project as a net-metering installation is entirely consistent with the intent and purpose of such rules. Here, the renewable energy generation facility will be located within the legal boundaries of Six Flags’ property and either KDC Solar or Great Adventure will own all the infrastructure through which the renewable energy will be delivered to the “net metering customer” at such customer’s dedicated substation. *See generally* 45 N.J. Reg. 942(a); N.J.A.C. 14:8-4.1(b) 1. In these circumstances, this Project at Great Adventure should be considered a Project of a “net metering customer.” Either KDC Solar or Great Adventure “owns and/or operates electrical wires and /or equipment that is connected to the EDC’s electric distribution system through a meter used for net metering.”
23. It would be an unreasonable and strained reading of the “net-metering” rules to equate JCP&L’s ownership of islanded wires on Six Flags’ property to the circumstances intended to be addressed and prevented by the Board’s rules – use of a broader-scale electric distribution system by a “net-metering” generator to service multiple customers.

⁵ “Net-metering generator” means an entity that owns and/or operates a renewable energy generation facility, the electricity from which is delivered to a net-metering customer. The net-metering generator may or may not be the same entity as the net-metering customer; and may or may not be located on the same property as the net-metering customer. N.J.A.C. 14:8-4.2.

Accordingly, “net-metered” projects must be installed on customer premises (or contiguous premises), must interconnect behind-the-meter, must have capacity that equates with the demand of a single customer and must provide service only to that customer. Despite the unusual electric configuration at Great Adventure, the Project satisfies *all of* these elements of the Board’s “net-metering” rules.

24. Further, the Petitioners submit that JCP&L’s islanded circuits on Great Adventure’s property exist to service the convenience of JCP&L and Great Adventure as, over the years, Six Flags added more attractions at Great Adventure and otherwise expanded its campus and JCP&L sought to continue to efficiently satisfy its mandate of providing safe, adequate and proper service. These interests, in the highly unusual setting that is Great Adventure, led to the anomaly of islanded circuits owned by JCP&L, but serving only Great Adventure. In the circumstances here, the JCP&L-owned wires on Six Flags’ property do not qualify as electric distribution infrastructure used to deliver service to other ratepayers.
25. Six Flags qualifies as a “net-metering customer” under a plain and commonsense reading of the Board’s definition in the specific and limited circumstances described in this Petition. Accordingly, the Board should issue a declaratory ruling determining that the Project is eligible for “net-metering” and authorizing Six Flags to enter into an interconnection agreement with JCP&L.

B. The Board Can and Should Waive the Requirement of N.J.A.C. 14:8-4.1(b)(2) Relating to Ownership of Electrical Wires and Equipment

26. N.J.A.C. 14:1-1.2(b)(1) provides, in pertinent part, that the Board “*shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public....*” (emphasis added). Under this provision, the Board has broad authority to relax, or permit deviations from, the strict letter of its rules so that it may effectively carry out its statutory functions. Accordingly, the Board may grant a waiver of all or portions of a rule for good cause shown, if strict compliance with the rule would, among other things, adversely affect the public interest. N.J.A.C. 14:1-1.2.
27. The Board has determined that N.J.A.C. 14:1-1.2(b)(1) establishes a two-part test regarding requests to waive a particular rule promulgated by the Board: first, the Board must consider whether a petitioner’s request for such a waiver is in accordance with the general purpose and intent of the rule at issue; and second, it must determine whether strict compliance with the rule would adversely affect ratepayers, the utility or the public interest. *See In the Matter of the Clean Energy Program Authorization of Rebates Exceeding \$300,000 and Request for an Extension of Time to Complete Project - Bayshore Regional Sewerage Authority*, Docket No. EG12020162V (Mar. 12, 2012).
28. The Project proposed by the Petitioners meets each of these elements, warranting a waiver of strict adherence to N.J.A.C. 14:8-4.1(b)(2) in the limited circumstances presented here. Accordingly, the Petitioners submit that, if the Board were to determine that the requirement of N.J.A.C. 14:8.1(b)(2) is not met by the Project, the Board can and

should waive the requirement.

29. As noted above, the underlying rule at issue requires the renewable energy from a net-metered solar facility to be “delivered from the generation facility to the property on which the energy is consumed through wires and/or other equipment installed, owned, and operated by an entity other than the EDC.” *See* N.J.A.C. 14:8-4.1(b)(2).
30. To determine the general purpose and intent of any of its rules, the Board looks to the policy underlying the rule in question. Here, the stated purpose of the quoted text from N.J.A.C. 14:8-4.1(b)(2), relating to ownership of “wires and/or other equipment” is to “place[] an affirmative responsibility on that entity to comply with all applicable safety requirements set out in the Board’s rules.” *See* 44 N.J.R. 2043(a) (Aug. 6, 2012). Additionally, the rule ensures that the renewable energy facility will serve only one customer, because the rule limits the extent to which building multiple dedicated units to serve multiple unique customers would be economically desirable. *See* 45 N.J.R. 942(a).
31. The first element of the Board’s waiver test is met because the Project meets the Board’s stated purpose for N.J.A.C. 14:8-4.1(b)(2) - to ensure the safe delivery of renewable energy to the end user. *See generally* 44 N.J.R. 2043(a). KDC Solar, as the owner of the solar facility and Great Adventure, as the only end-user, will have the sole responsibility for ensuring compliance with all of JCP&L’s interconnection requirements and all other safety and reliability requirements. More specifically, KDC Solar will be responsible for safely operating and maintaining the solar facility, the wires that will deliver energy from the solar facility to the point of interconnection at the new substation and the substation itself.
32. Under the Agreement, JCP&L retained “ownership and inspection/maintenance responsibilities” for the islanded circuits of wires presently dedicated to Great Adventure’s entertainment complex. “Inspection and maintenance will consist of the same inspection and other routine and/or emergency maintenance procedures that are presently performed by Jersey Central.” *See* Agreement, Exhibit B. However, through KDC Solar’s investment in a new substation, which will become the point of interconnection for the Project, JCP&L will not have any responsibility for inspecting and maintaining the new substation or the interconnection facilities. (Pursuant to the Agreement, JCP&L will still have the responsibility for maintaining the islanded circuit of wires on the premises of the Customer.)
33. The Project would also not in any way undermine the second underlying purpose of the requirement of N.J.S.A. 14:8-4.1(b)(2) relating to ownership of the “wires and/or other equipment” - ensuring that a “net-metered” solar facility only serves the electric power demand of a single customer. Because the JCP&L-owned wires at issue form islanded circuits that only serve the Great Adventure property, the use of these wires for distributing electricity from the solar facility downstream of the point of interconnection cannot and will not result in service to any other customer.
34. The second component of the waiver test considers whether full compliance with the rules would adversely affect the ratepayers of a utility, the ability of a utility to continue to render safe, adequate and proper service to its customers or the interest of the general public. KDC Solar’s proposed Project is entirely consistent with, and indeed advances,

major policy goals of the 2011 EMP. The Project will: (i) drive down the cost of energy for Great Adventure, producing substantial annual energy savings for the life of the Project; (ii) promote a diverse portfolio of new, clean in-State generation; and (iii) support New Jersey's achievement of its renewable portfolio standard.

35. Great Adventure estimates that the Project will offset virtually all of the existing power needed to operate the theme park. KDC Solar's ability to monetize the renewable energy credits created on the basis of this energy will enable KDC Solar to provide economical clean energy to Six Flags at Great Adventure that, in turn, generates substantial annual savings compared to conventional fossil generation. Such energy savings for one of New Jersey's largest employers would serve an important public interest and create a powerful economic development tool that will enable Six Flags to continue to invest in its Great Adventure facilities and employ more New Jersey residents at its theme park.
36. The Great Adventure entertainment complex uses considerable energy to power its rides and other attractions. The ability to use renewable energy at the theme park would result in a significant increase in renewable energy usage, assisting the State in achieving its renewable portfolio standard objectives and would reduce pollution and greenhouse gases created from the use of conventional fossil generation to service a large energy consumer.
37. Under the circumstances described above, it is entirely appropriate for the Board to grant the waiver of the strict letter of N.J.A.C. 14:B-4.1(b)(2), because such waiver would further the public interest by reducing pollution and facilitating achievement of the State's renewable portfolio standard and other energy objectives, and by ensuring the continued economic vitality of Great Adventure.
38. In contrast, if the Board requires KDC Solar and Six Flags to comply with the strict letter of N.J.A.C. 14:8-4.1(b)(2), then the Project would likely not be constructed. This would adversely affect Six Flags, all other ratepayers, the utility and the public interest. The major policy goals of the 2011 EMP would not be advanced. The public interest would be harmed because one of New Jersey's largest employers and a major electric customer would be required to pay more for electric energy than would otherwise be necessary, thereby removing the economic development incentives created by the Project.


Conclusion

For all of the reasons set forth herein, the Petitioners respectfully request expedited review and approval of this Petition and urge the Board to issue a ruling granting a declaratory judgment confirming, solely in relation to the specific circumstances of this Project, that N.J.A.C. 14:8-4.1(b)(2) is satisfied by the Project and that Six Flags will be considered a "net metering customer" under the proposed configuration. Alternatively, the Petitioners request that the Board grant a waiver, in the limited and unusual circumstances described herein, of the Board's requirement under N.J.A.C. 14:8-4.1(b)(2) that the wires and equipment delivering renewable energy to the property on which the energy is consumed must be owned and operated by an entity other than the electric distribution company. Finally, the Board should determine that Six Flags is entitled to enter an interconnection agreement with JCP&L.

WHEREFORE, the Petitioners respectfully request that the Board of Public Utilities issue a declaratory judgment confirming that the requirement of N.J.A.C. 14:8-4.1(b)(2) is satisfied and that Six Flags will be considered a "net metering customer" and will be entitled to receive behind-the-meter treatment for electricity supplied by the Project under the proposed configuration described in the Petition. Alternatively, the Petitioners request that the Board grant the requested waiver as to N.J.A.C. 14:8-4.1(b)(2) in the specific and limited circumstances presented here. In either event, the Petitioners request that the Board determine that Six Flags is entitled to receive and enter into an interconnection agreement with JCP&L.

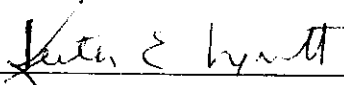
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vice admission to be submitted)
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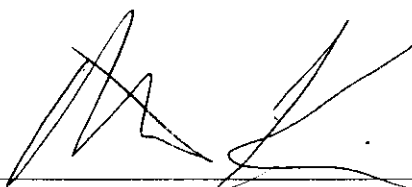
VERIFICATION OF KDC SOLAR LLC

Matthew E. Kamine, of full age, hereby certifies:

1. I am the Senior Vice President of Development and Engineering of Petitioner KDC Solar LLC ("KDC Solar"). I submit this Verification in connection with KDC Solar's and Six Flags Entertainment Corporation's Petition captioned "In the Matter of the Joint Petition of KDC Solar LLC and Six Flags Entertainment Corporation, Seeking a Declaratory Judgment Pursuant to N.J.S.A. 52:14B-1, *et seq.* or a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b)" (the "Petition"). I make this Verification in my capacity as Senior Vice President of Development and Engineering of KDC Solar and based upon my familiarity with KDC Solar's planned project to build, own and operate a photovoltaic electric generating facility to support Six Flags' Great Adventure entertainment complex located in Jackson, New Jersey, as described in the Petition.

2. I have read the Petition and the factual statements set forth therein are true and correct to the best of my knowledge, information and belief.

3. 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.



Matthew E. Kamine

Dated: August 5, 2014

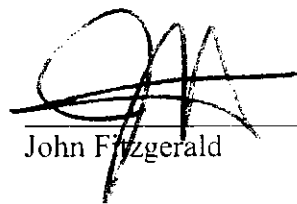
VERIFICATION OF SIX FLAGS ENTERTAINMENT CORPORATION

John Fitzgerald, of full age, hereby certifies:

1. I am the President of Great Adventure & Safari for Six Flags Entertainment Corporation ("Six Flags"). I submit this Verification in connection with the Joint Petition of KDC Solar LLC and Six Flags captioned "In the Matter of the Joint Petition of KDC Solar LLC and Six Flags Corporation, Seeking a Declaratory Judgment Pursuant to N.J.S.A. 52:14B-1, *et seq.* or a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b)" (the "Petition"). I make this Verification in my capacity as President of Great Adventure & Safari and based upon my familiarity with KDC Solar's planned project to build, own and operate a photovoltaic electric generating facility to support Six Flags' Great Adventure entertainment complex located in Jackson, New Jersey, as described in the Petition.

2. I have read the Petition and the factual statements set forth therein are true and correct to the best of my knowledge, information and belief.

3. 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.

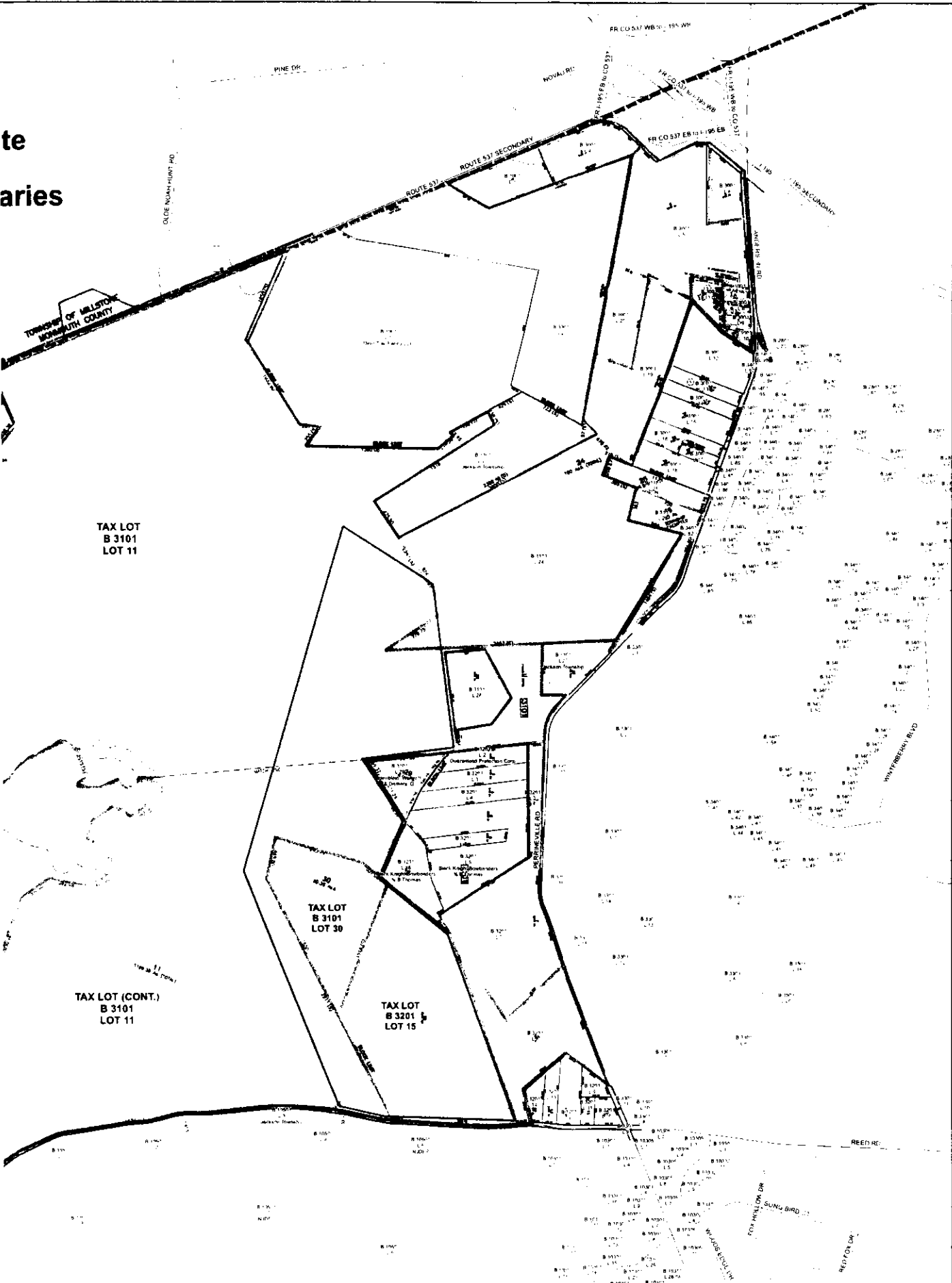


John Fitzgerald

Dated: August 04, 2014

Exhibit A

te
aries



TAX LOT
B 3101
LOT 11

TAX LOT (CONT.)
B 3101
LOT 11

TAX LOT
B 3101
LOT 30

TAX LOT
B 3201
LOT 15






JULY 25, 2014

TAX DATA REFERENCE MAP

JACKSON TOWNSHIP OCEAN COUNTY NEW JERSEY

Legend

-  Proposed Solar Facility Site
-  Six Flags Property Boundaries
-  Tax Lots

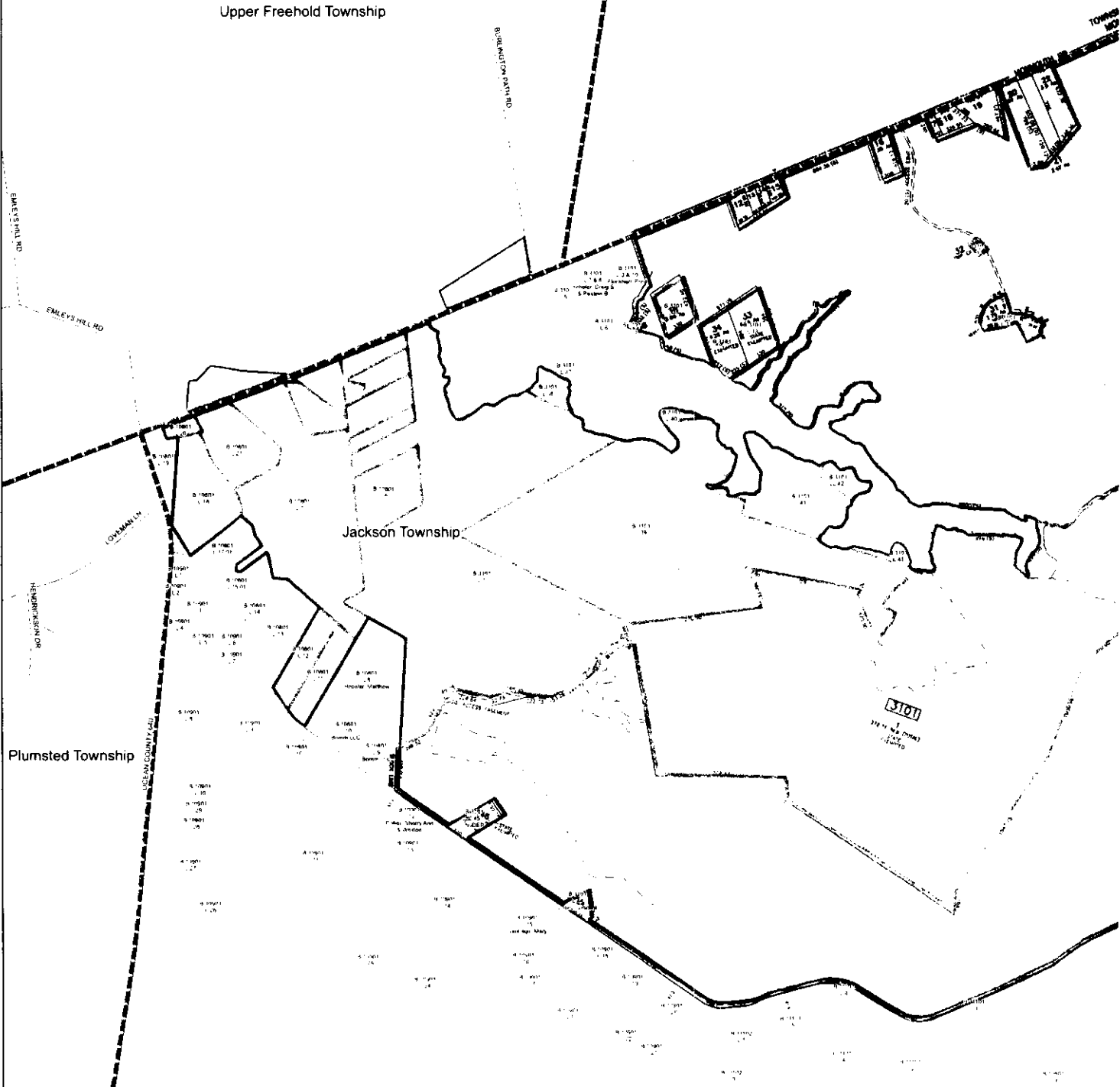
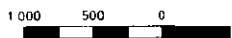


Exhibit A

THIS MAP CONTAINS DATA FROM THE NJDEP AND USE AN COUNTY GIS DATABASES.
 THIS SECONDARY PRODUCT HAS NOT BEEN VERIFIED BY NJDEP AND IS NOT STATE OR COUNTY AUTHORIZED.
 TAX MAP DATA TAKEN FROM TAXMAPS.COM



HQI AS1 Survey 185104/PROJ CTG/Proposals/Private/012/1001117P_Na F. Ags Aerial Map with Lots Label Revised.mxd

Exhibit B



Jersey Central Power & Light Company
501 Grand Avenue
Asbury Park, New Jersey 07712

To: [unclear]

May 12, 1994

*file
JCP&L - Central
file
[unclear]*

Mr. Ray Williams
Great Adventure
Route 537, P.O. Box 120
Jackson, NJ 08527

Dear Ray:

Enclosed is a fully executed "Electric Service Agreement" for your files. As you know, this rate became effective @ 1:00 PM on 4/28/94.

Should you have any questions, please do not hesitate to call.

P.S. - Thanks for the VIP invite! I look forward to seeing you on the 20th.

Sincerely,

Frank DelVecchio/ps

Frank L. DelVecchio, P.E.
Major Account Executive

djb

1CT1894, FL 323

Exhibit B

JERSEY CENTRAL POWER & LIGHT COMPANY

APPLICATION AND AGREEMENT FOR ELECTRIC SERVICE



Electric Service, presently available under Jersey Central Power & Light Company's TARIFF FOR ELECTRIC SERVICE (and as may be subsequently amended by approval of the N.J. Board of Regulatory Commissioners), is hereby applied for as follows:

CUSTOMER NAME: ^{Sig. change} Great Adventure
SERVICE ADDRESS: Route 537, Jackson Twp.
MAILING ADDRESS: P.O. Box 120, Jackson, NJ 08527
ACCOUNT NUMBER: 796592020013 PREMISE ID#:
SERVICE CLASSIFICATION: GS []; GST []; GP [X]; GT []; GTX []
LOAD REQUIREMENTS: 7000kVA
CONTRACT DEMAND: N/A (Preset minimum billing demand when special facilities or conditions warrant)
SERVICE REQUIREMENTS: PHASE [3]; WIRE [4]; VOLTAGE 12.470V
TERM OF CONTRACT: 1 YEAR [X]; 5 YEARS []; [] YEARS;
[X] and thereafter until terminated by either party upon 90 Day advance notice.
EFFECTIVE DATE: April 28, 1994, (or as soon thereafter as Electric Service is first made available)

CUSTOMER CERTIFICATION AND AGREEMENT:

It is understood that this application, when accepted by the Company, together with Jersey Central Power & Light Company's TARIFF FOR ELECTRIC SERVICE and any written modification, shall constitute the entire Agreement between the parties with respect to the electric service to be supplied for the duration of the term of contract. It is also understood that the Company may terminate this agreement upon any change of customer or upon any increase in the load requirements beyond that specified above. It is further understood that the Company shall not be bound by the terms of this agreement or any modification hereto which is found to be contrary to the terms contained in the Company's TARIFF FOR ELECTRIC SERVICE.

Special Conditions:

SERVICE TO BE PROVIDED IN ACCORDANCE WITH ATTACHMENT "A"

Submitted for Customer by: Ray Williams, President
AUTHORIZED PERSON AND TITLE (PLEASE PRINT)
Ray Williams
SIGNATURE OF ABOVE

4-20-94
DATE

JERSEY CENTRAL POWER & LIGHT COMPANY - ACCEPTANCE:

Received by: [Signature] Date 4/27/94 Telephone: 908-562-4747
Company Representative
Reviewed by: [Signature] Date 4/27/94
Manager, Rate Technical Functions
Reviewed by: [Signature] Date 4/27/94
Marketing Program Manager

Customer has also applied for modification of this agreement under the following Special Provision or Rider:

**SIX FLAGS
GREAT ADVENTURE
PROVISIONS FOR GP SERVICE**

Under this agreement, Jersey Central Power & Light would retain ownership and inspection/maintenance responsibilities for the distribution facilities presently dedicated to Great Adventure's entertainment complex situated along Route 537 in Jackson Township, which would be billed at the primary (GP) rate and would pay an additional monthly facility charge of \$17,970. Billing for street lighting would continue at the current rate and in accordance with the prevailing tariff with a fixed monthly credit of 15,668 kWhs applied to the metered off-peak energy. This credit will be adjusted to reflect future changes in the number and size of street lights provided. (As of April 1, 1994, there are 144-250W and 5-400W high pressure sodium street lights at the park.)

Existing facilities would be replaced, as necessary, with similar capacity facilities at Jersey Central's expense. Any additional/replacement facilities necessitated by an increase in Great Adventure's kVA load requirements, however, will result in a recalculation and possible revision of the above monthly charges. Inspection and maintenance will consist of the same inspection and other routine and/or emergency maintenance procedures that are presently performed by Jersey Central.

Jersey Central's existing metering will be removed and replaced with a single metering system located at the origin of the dedicated distribution system, *at the sole cost of Jersey Central.*

The above terms of agreement will be effective for an initial 12-month period, which can be extended monthly on a mutually agreeable basis. The above stated facility charge will remain in effect as long as the facilities are required to provide service to Great Adventure.

This agreement will take effect on the first day of the current billing cycle following execution by both Jersey Central and Great Adventure.

Exhibit C

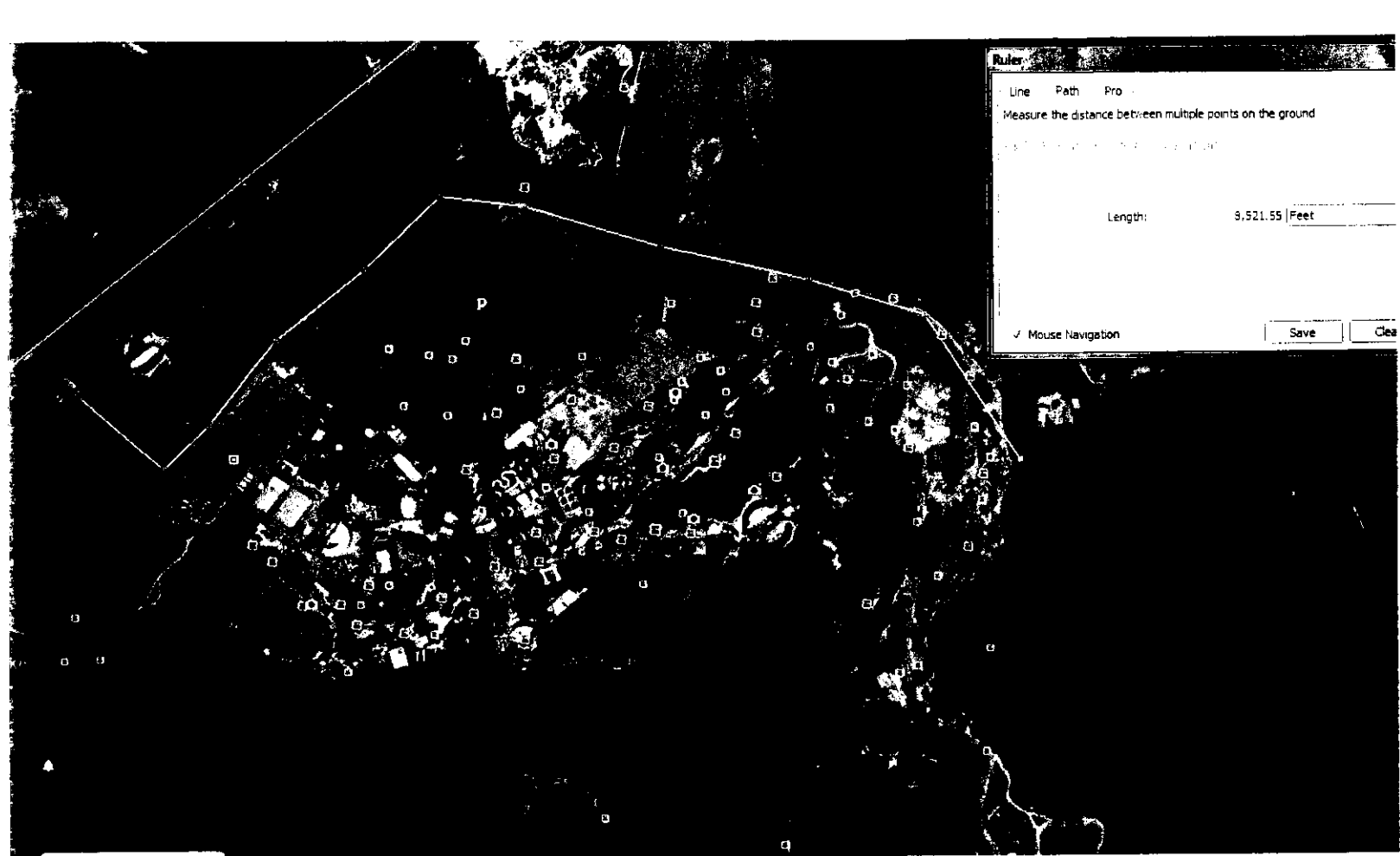


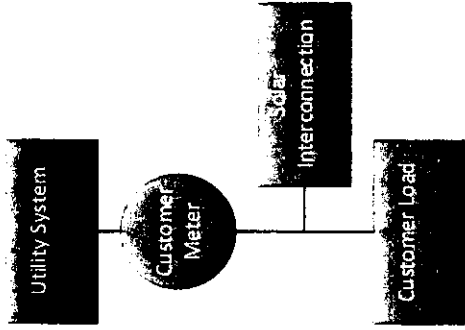
Exhibit C

Exhibit D

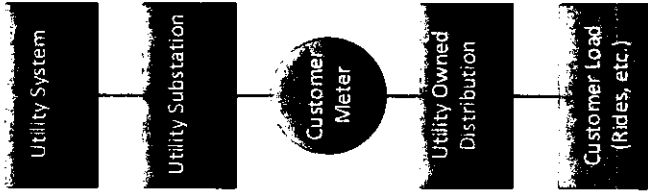
Exhibit D -

To Joint Petition of KDC Solar LLC and Six Flags Entertainment Corporation

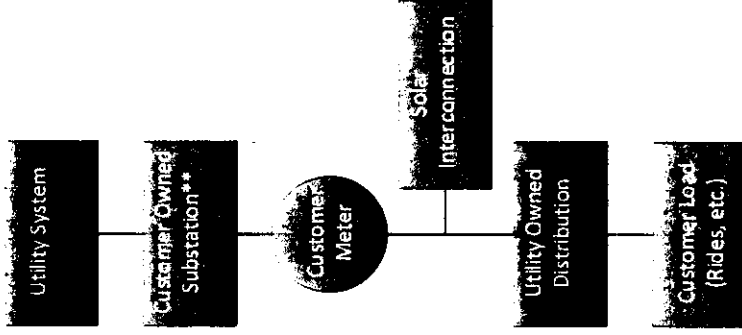
Typical Net-Metering



Current Six Flags



KDC Solar Proposal



** KDC Solar Constructs A New Customer Owned Substation