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October 16, 2017

**VIA FEDERAL EXPRESS and
ELECTRONIC MAIL**
EVStakeholder.Group@bpu.nj.gov

Irene Kim Asbury, Esquire
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: New Jersey Electric Vehicle (“EV”) Infrastructure Stakeholder Group

In the Matter of the Regulatory Assistance Project Electric Vehicle Infrastructure
Report – “Getting From Here to There: Regulatory Considerations for
Transportation Electrification”
BPU Docket No. EO17070748

Dear Secretary Asbury:

On behalf of Atlantic City Electric Company (“ACE”), following for your review, consideration and posting are ACE’s responses to the two questions posed by Staff in the Notice announcing the kickoff meeting of the New Jersey EV Infrastructure Stakeholder Group. We look forward to reading the comments posted by interested parties on the Board’s website in the very near future.

An original and ten copies of this correspondence and its attachment will follow by overnight courier. Kindly return one date and time-stamped “filed” copy to the undersigned in the self-addressed, postage-prepaid envelope provided.

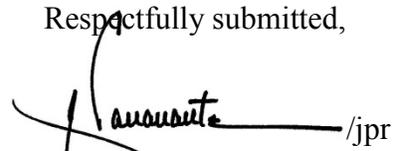
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Thank you for your cooperation and courtesies. Feel free to contact me with any questions or if I can be of further assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Passanante", followed by a horizontal line and the initials "/jpr".

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

Enclosure

cc: Michael Winka, BPU (Electronic Mail)
Michael Hornsby, BPU (Electronic Mail)

The Staff of the New Jersey Board of Public Utilities (“Staff”) is seeking comments to two questions. Atlantic City Electric Company’s (“ACE” or the “Company”) responses to those questions appear below.

1. “Do EVs fall under the definition of demand side management and energy efficiency as set forth at N.J.S.A. 48:3-51 and/or N.J.S.A. 48:3-98.1.d?”

For purposes of this response, ACE has assumed that Staff’s inquiry is really whether or not EV (Electric Vehicle) charging practices and programs designed to ensure efficiencies in EV charging by consumers, as well as management of the use of electricity among EV users on the grid, fall within the statutory definitions cited above. Education and outreach programs that educate EV owners about potential cost saving and energy efficiency measures related to their EV ownership would be consistent with the definition of energy efficiency pursuant to N.J.S.A. 48:3-98.1(d).¹ Such education and outreach programs could also be targeted to non-EV owners with the goal of providing information to New Jersey consumers on the efficiency benefits of using electric as an alternative fuel for vehicles. In addition to education and outreach programs, economic incentives offered to EV users that encourage efficiency would also be consistent with the statutory definition of energy efficiency. One such example would be the offering of a lower rate for off peak charging, which would encourage EV charging during off peak hours, with the goal of reducing and conserving energy. Education and outreach programs, as well as incentives, are tools that would be deployed for the purpose of “conserving energy or making the use of electricity [...] more efficient by New Jersey customers.”

Similarly, as to Demand Side Management (“DSM”)², there are technologies that could be deployed as part of the development of the EV infrastructure in New Jersey that have a DSM component. For example, in order to manage the amount of energy used to charge the EV, a demand signal can be sent to the smart charging stations (if the customer opted into such a program) during a specific period of time so the charging station will respond by reducing the energy delivered to the vehicle usually from a Level 2 to a Level 1. While this Demand Response action will increase the total time needed for the vehicle to fully charge, it will also reduce peak demand. Technologies and programs like these, directly tied to the use of EVs, would fall within the definition of DSM pursuant to N.J.S.A. 48:3-51.

Alternatively, if the question above is intended to address whether an EV itself meets the statutory definitions, a different conclusion could be reached. It appears unlikely that an EV was intended to be included in the definition of DSM or energy efficiency. DSM is the modification of consumer demand for electricity on the distribution grid through various methods. Unlike EV charging

¹ N.J.S.A. 48:3-98.1(d) provides, in relevant part, “[e]nergy efficiency and conservation program means any regulated program, including customer and community education and outreach, approved by the board pursuant to this section for the purpose of conserving energy or making the use of electricity or natural gas more efficient by New Jersey consumers, whether residential, commercial, industrial or governmental agencies.”

² N.J.S.A. 48:3-51 provides, in relevant part, “Demand Side Management means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State.”

time of use programs aimed at delivering customer savings and distribution grid efficiencies, ACE would not consider an EV itself to be a DSM tool as the EV does not manage the customer's demand for electricity. Similarly, an EV would not appear to meet the criteria for an "[e]nergy efficiency and conservation program" as defined in N.J.S.A. 48:3-98.1(d), because an EV does not "conserv[e] energy or mak[e] the use of electricity [] more efficient by New Jersey consumers." Rather, a primary factor behind EV usage is not decreased demand for electricity, but rather decreased reliance on fossil fuels and reduction of greenhouse gas emissions from driving standard fuel-based vehicles.

2. "Should owners and operators of EVSE that provide electric vehicle charging service be regulated as electric utilities? Are operators of EVSE reselling electricity or providing a charging service?"

ACE's position is that EVSE (Electric Vehicle Service Equipment) owners and operators (collectively referred to as Electric Vehicle Charging Providers ["EVCPs"]) should not be regulated as public utilities in New Jersey. Rather, EVCPs are simply providing a service; specifically, a charging service. This service uses specialized equipment and allows the customer to do one thing, charge an EV's battery. The primary purpose of the transaction is the purchase of this charging service; the customer's use of electricity is an element of this service-related transaction. If EVCPs are not regulated, then presumably they will be able to decide whether a time-based fee, a flat fee, a kWh-based fee or some other fee is most appropriate for the charges related to electricity usage at the EV charging station.

In order to exclude EVCPs from the New Jersey Board of Public Utilities' (the "Board") jurisdiction, the Board should issue an order or adopt regulations finding that EVCPs do not fall within the definition of a utility company, similar to the approach taken by the New York Public Service Commission ("NYPSC"). The NYPSC found that EVCPs do not fall within the definition of an "electric corporation" or "electric plant" under the Public Service Law because "charging stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light[] heat or power." *See I/M/O Electric Vehicle Policies*, NYPSC Docket No. 13-E-0199, Declaratory Ruling on Jurisdiction Over Publicly Available Electric Vehicle Charging Stations, at 2-3 (November 22, 2013).

Lastly, while the question above does not address the scenario of public utilities owning and operating EVSE, ACE encourages the Board to consider this issue and to adopt a regulatory construct that is fair to both utilities and non-utilities, that encourages competition, and that facilitates the continued development of the EV market in New Jersey. Clearly, there is an important role for public utilities to play to reliably and responsibly meet their customers' diverse needs, to manage the impact of charging infrastructure on the electric distribution system, and to help incent the market for EV ownership and EV infrastructure development, including EVSE charging infrastructure. The Board should develop policies governing the roles and responsibilities of electric utilities and EVCPs that consider various business models, grid reliability and load management, and consumer choice and protections, among others. ACE welcomes the opportunity to actively participate in this process going forward.