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**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE PROVISION OF ) ORDER ON MOTION TO INTERVENE  
BASIC GENERATION SERVICE AND THE )  
COMPLIANCE TARIFF FILING REFLECTING )  
CHANGES TO SCHEDULE 12 CHARGES IN )  
PJM OPEN ACCESS TRANSMISSION TARIFF- )  
SEPTEMBER 2018 JOINT FILING ) DOCKET NO. ER18091061

**Parties of Record:**

**Joseph A. Shea, Jr., Esq.**, on behalf of Public Service Electric and Gas Company  
**Phil Passanante, Esq.** on behalf of Atlantic City Electric Company  
**Gregory Eisenstark, Esq.** (Windels Marx Lane & Mittendorf, LLP) on behalf of Jersey Central Power & Light Company  
**John L. Carley, Esq.** on behalf of Rockland Electric Company  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:<sup>1</sup>

On September 26, 2018, Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company, ("PSE&G") and Rockland Electric Company ("Rockland") (collectively, the "EDCs") filed a joint petition ("September 2018 Petition") with the New Jersey Board of Public Utilities ("Board") requesting recovery of Federal Energy Regulatory Commission ("FERC") approved changes in transmission service related charges.

**BACKGROUND AND PROCEDURAL HISTORY**

The Transmission Enhancement Charges ("TECs") detailed in Schedule 12 of the PJM Open Access Transmission Tariff ("OATT") were implemented to compensate transmission owners for the annual transmission revenue requirements for "Required Transmission Enhancements" that are requested by PJM for reliability or economic purposes. TECs are recovered by PJM through an additional transmission charge in the transmission zones assigned cost responsibility for Required Transmission Enhancement projects.

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<sup>1</sup> Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

Through a series of Orders,<sup>2</sup> the Board authorized the EDCs to modify their Basic Generation Service ("BGS") Residential/Small Commercial Pricing ("BGS-RSCP")<sup>3</sup> and Commercial and Industrial Energy Pricing ("BGS-CIEP) rates to reflect the changes in their transmission charges resulting from the FERC-approved changes to the TECs resulting from changes in the PJM OATT.

On May 31, 2018, in Docket Nos. EL05-121-009, FERC issued an Order ("Seventh Circuit Order") approving a Contested Settlement ("Seventh Circuit Settlement") concerning the regional cost allocation methodology applicable to eleven (11) large transmission projects (500kV and above) approved between the years 2005 and 2013. The Seventh Circuit Settlement was submitted to FERC on June 15, 2016. The Board is identified in the Seventh Circuit Settlement as a "non-opposing" party. The Seventh Circuit Settlement was contested at FERC by the merchant transmission owners. Due to a number of procedural delays, and then the lengthy period of non-quorum at FERC, the Seventh Circuit Settlement remained pending for nearly two (2) full years. Despite the unanticipated and significant time lag, the time period effected by the Seventh Circuit Settlement began January 1, 2016.

In the Seventh Circuit Order, FERC found that the overall result of the Seventh Circuit Settlement was just and reasonable as applied to the contesting parties. Consistent with its decision, FERC directed PJM to make a compliance filing with revised tariff records within thirty (30) days of its order. PJM then sought, and was granted, an additional extension of time to carry out FERC's directive. PJM implemented the cost allocation changes in the OATT effective July 1, 2018 on a prospective basis. While FERC has ruled on this matter through the issuance of the Seventh Circuit Order, the cost reallocation is still subject to a pending rehearing request at FERC.

### **September 2018 Petition**

In the September 2018 Petition, the EDCs requested approval to implement the revised tariff rates with a rate effective date of October 1, 2018.

The EDCs also requested a waiver of the 30-day filing requirement that would otherwise apply to this type of submission, because BGS suppliers began paying the revised transmission charges for service effective July 1, 2018 pursuant to the Seventh Circuit Order.

Under the Supplier Master Agreement ("SMA"), specifically Section 15.9, the EDCs are permitted to recover increases in Firm Transmission Service charges from BGS customers subject to Board

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<sup>2</sup> In re the Provision of Basic Generation Service and Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff –February 2018 Joint Filing Related to JCP&L TECs, BPU Docket No. ER18020157 (July 25, 2018); In re the Provision of Basic Generation Service and Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff- February 2018 Joint Filing, BPU Docket No. ER1802158 (July 25, 2018); In re the Provision of Basic Generation Service and Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff – JCP&L, PSE&G, and Rockland June 20, 2018 Filing, BPU Docket No. ER18060656 (August 29, 2018); In re the Provision of Basic Generation Service and Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff – June 2018 AEP TEC Filing, BPU Docket No. ER18070758 (August 29, 2018); and In re the Petition of Atlantic City Electric Company for Approval to Implement FERC-Approved Changes to ACE's Retail Transmission (Formula Rate) Rate Pursuant to Paragraph 15.9 of the BGS-RSCP and BGS-CIEP Supplier Master Agreements and Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff (2018); BPU Docket No. ER18070711, (August 29, 2018).

<sup>3</sup> This was formerly known as the BGS – Fixed Price or BGS-FP.

approval. Thereafter, EDCs are required to remit payment of the increased charges to suppliers upon, among other things, the issuance of a "FERC Final Order" approving the Firm Transmission Service increase. In the September 2018 Petition, the EDCs noted that the Seventh Circuit Order rate adjustments are intended to implement adjustments to TECs, not Firm Transmission Rates, there will be not be a "FERC Final Order."

The EDCs have requested that the Board approve the EDCs' collection of the reallocations due to the Seventh Circuit Order, and authorize the EDCs to remit the cost increases collected due to the cost reallocations to BGS suppliers, with any differences between the payments to BGS suppliers and charges to customers flowing through each EDC's BGS Reconciliation Charge. The EDCs argue that prompt payment to suppliers of PJM initiated cost reallocations is important to the continued success of the BGS auction process which benefits customers. According to the September 2018 Petition, payment to the suppliers for the charges related to the Seventh Circuit Order will help ensure that BGS suppliers, when establishing their bid prices, can rely upon the provision of the SM that permits BGS suppliers to be made whole for increased PJM charges.

### **Motion to Intervene**

By motion dated October 9, 2018, Exelon Generation, LLC ("ExGen"), the owner of approximately 33,300 megawatts of generation, including nuclear, fossil, hydroelectric, solar, landfill gas, and wind generation assets, moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16.

ExGen markets wholesale energy and capacity products to municipal, cooperative, and investor-owned utilities, retail suppliers, retail energy aggregators, merchant participants, power markets, and major commodity trading houses. As stated in the motion, ExGen has, individually or through its subsidiaries, participated in the competitive BGS auction procurement processes and is a BGS supplier in New Jersey and as such is subject to the TECs in Schedule 12 of the PJM OATT. (Motion at 2.)

ExGen asserts that it has substantial interest in this matter and will be significantly affected by its outcome. ExGen further asserts that its interest is sufficiently different from that of any other part so as to add measurably and constructively to the scope of the case and that interest cannot be represented by another party. (Id. at 2 to 3.)

In addition to the motion to intervene, ExGen also moved for the admission pro hac vice of Jeanne J. Dworetzky, Esq. and Florence K.S. Davis, Esq. The motions included sworn affidavits by Ms. Dworetzky and Ms. Davis.

### **DISCUSSION AND FINDING**

The standard for who may seek intervention in an administrative proceeding is provided in, N.J.A.C. 1:1-16.1(a). This rule limits intervention to any person or entity "who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case." (emphasis added). A "contested case" is defined at N.J.A.C. 1:1-2.1 as follows:

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of

their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

A contested case does not only refer to whether sufficient adversity exists between parties. Camden County v. Board of Trustees of PERS, 97 N.J.A.R (TYP) 105 at 22-23. "Administrative agencies have the discretion to decide whether a case is to be classified as 'contested.'" In re Pub. Service Elec. and Gas Co.'s Rate Unbundling, Stranded Costs and Restructuring Filings, 330 N.J. Super. 65, 106 (App. Div. 2000), aff'd 167 N.J. 165, 172 (2002), cert. denied, 534 U.S. 813, 122 S. Ct. 37, 151 L. Ed. 2d 11 (2001). To determine whether a contested case exists, the agency must address the following three questions: "(1) is a hearing required by statute or constitutional provision; (2) will the hearing adjudicate rights, duties, obligations, privileges, benefits or other legal relations; and (3) are specific parties involved rather than large segments of the public?" Div. of State Police v. Maguire, 368 N.J. Super. 564, 573 (App. Div. 2004) (emphasis added).

Here, the Board is only reviewing a request to implement revised tariffs sheets incorporating changes to the OATT pursuant to a FERC order. In doing so, the Board is verifying that the tariffs were correctly revised and that the petitioners comply with their obligations under the relevant SMAs. There is no statutory or constitutional requirement for the Board to provide an adjudicatory hearing prior to making a determination regarding the revised tariffs. Moreover, the Board is not tasked with making any findings of facts regarding a party's rights, duties, or obligations in this proceeding. Under the SMA, specifically Section 15.9, the EDCs are permitted to recover increases in Firm Transmission Service charges from BGS customers subject to Board approval. Thereafter, EDCs are required to remit payment of the increased charges to suppliers upon, among other things, the issuance of a "FERC Final Order" approving the Firm Transmission Service increase.<sup>4</sup>

Lastly, ExGen has not cited any authority or supporting documentation as to why an evidentiary hearing is required in regard to this petition or why this matter should be treated as a contested case.

After careful consideration of the submissions, the Board **HEREBY FINDS** that this matter is an uncontested case. Accordingly, the Board **HEREBY DENIES** ExGen's motion for intervention.

Given the Board's denial of ExGen's motion for intervention, ExGen's motion for the admission, pro hac vice, of Jeanne J. Dworetzky, Esq. and Florence K.S. Davis, Esq. is now moot. Therefore the Board **HEREBY DENIES** the motion for pro hac vice admission.

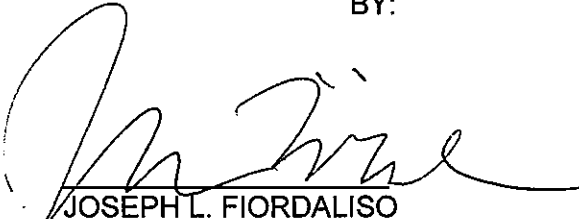
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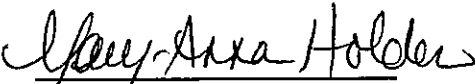
<sup>4</sup> Any proposed changes to the SMA have been, and continue to be, reviewed in the annual BGS proceeding. The current BGS proceeding was initiated by the Board on April 21, 2018 in Docket No. ER18040356. ExGen indicated in its motion that they are participants in the annual BGS auction procurement processes, where it has the opportunity to comment on the process.

The effective date of this Order is November 8, 2018.


DATED: 10/29/18


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COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.

In the Matter of the Provision of Basic Generation Service and Compliance Tariff Filing Reflecting  
 Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff –September 2018  
 Joint Filing

BPU Docket No. ER18091061

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