



State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE
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JON S. CORZINE
Governor

SEEMA M. SINGH, Esq.
*Ratepayer Advocate
and Director*

June 23, 2006

Via Hand Delivery

Honorable Kristi Izzo
Board of Public Utilities
Two Gateway Center
Newark, NJ 07101

Re: I/M/O the Provision of Basic Generation Service for
The Period Beginning June 1, 2007
BPU Dkt. No. EO06020119

Dear Secretary Izzo:

Enclosed for filing please find an original and ten copies of the Division of the Ratepayer Advocate's Comments to the Supplier Master Agreement ("SMA") in the above-referenced matter.

Also, as requested in the e-mail sent on June 9, 2006 from Mr. Yochum, these comments will be circulated electronically through the electric list server used by the Board for these types of communications.

We are enclosing one additional copy of the materials transmitted. Please stamp and date the copy as "filed" and return it to our courier. Thank you for your consideration and assistance.

Sincerely yours,

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

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BMU/lg

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Comments from the Division of the Ratepayer Advocate Concerning the BGS Supplier Master Agreement

June 22, 2006

The within comments from the Division of the Ratepayer Advocate reflect, among other things, our comments that were previously filed on April 6, 2006 and May 5, 2006. We are including, where appropriate, red-lined sections of the Supplier Master Agreement. Rather than repeating our previous comments at length here, the Ratepayer Advocate will only briefly refer to each of the relevant sections of our comments.

Pass-Through of Transmission Rate Changes and Tax Changes

Currently the BGS-FP Supplier Master Agreement (SMA) permits pass-through of changes in taxes and in transmission rates. The current and additional proposed pass-throughs are not consistent with the purpose of the BGS-FP auction -- obtaining service for small customers at a **fixed price**. Pass-through is also inconsistent with what should be among the goals for BGS-FP service -- least cost supply and price stability. The likelihood of least cost supply is enhanced without pass-through because suppliers are better motivated to make the effort required to win cases before the FERC where suppliers can oppose transmission rate increases. They are also in a better position to have information that would be useful to support a position opposed to such rate increases.

Price stability will also be enhanced without pass-through because the rates for BGS-FP service cannot fluctuate due to pass-through as they can now. Finally, the Ratepayer Advocate notes that allowing pass-through negatively affects suppliers who wish to compete to serve BGS-FP customers at a truly fixed price against which customers might compare their offerings. Since the pass-through means that BGS-FP service is essentially not a fixed-price service, these suppliers cannot offer a direct comparison of their fixed-price alternatives to the BGS-FP supply prices.

Reflecting this position in the SMA would require deletion of the entire section 15.9 "Changes in Transmission Rates for Firm Transmission Service." It would also require deletion of the last paragraph of section 15.8 "Taxes", which is shown below:

~~If new taxes are imposed on Energy, Capacity, Firm Transmission Service or Ancillary Services after the date of this Agreement, within forty five (45) days of the final adoption of any such new taxes, the Company will notify the BGS-FP Suppliers that such new tax has been adopted, will seek approval from the Board to collect the new taxes from BGS-FP Customers, and will provide the BGS-FP Suppliers with a copy of the Company's petition seeking such approval from the Board. Upon receipt of Board~~

~~approval of the collection of the new taxes from BGS-FP Customers, the BGS-FP Supplier will be excused from liability for payment of those new taxes.~~

In keeping with the above discussion, the Ratepayer Advocate would oppose any addition of language to the SMA that would enlarge the list of items for which Suppliers could change rates during the term of the contract to pass through changes in their costs.

Transparency of Supply

It is the Ratepayer Advocate's position that information on underlying supply contracts should be available to the BPU and to those who are privy to detailed auction information. This information is essential in order to ensure the competitiveness of the auction, and also to maintain public faith in the results of the auction. The information should include the source, cost, quantity, and terms and conditions for the supplies used to provide BGS service. The information should be communicated as soon as the information becomes available, and updated whenever it changes. At a minimum, the SMA would be amended to require accurate and complete disclosure of the supply arrangements for BGS-FP suppliers and to provide appropriate consequences if such disclosure does not occur.

To ensure the confidentiality of such information, the Ratepayer Advocate proposes moving section 6.13 "Confidentiality" and making it a new section 2.6 "Access to Information: Confidentiality" under the General Terms and Conditions with the following changes:

2.6 Access to Information: Confidentiality

Information supplied by a BGS-FP Supplier in connection with ~~the~~ its creditworthiness, its sources of supply and the auction process shall be deemed confidential and not subject to public disclosure other than to the Company in evaluating the Supplier's creditworthiness, and to the BPU and the Division of the Ratepayer Advocate for the purposes of ensuring the competitiveness and fairness of the auction, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The BGS-FP Supplier will be given prompt notice of any request by ~~a third~~ any party to obtain confidential information ~~related to the BGS-FP Supplier's creditworthiness.~~

Also, as to section 2.2 (a)(ii) “Obligations of BGS-FP Supplier”, the Ratepayer Advocate proposes the changes below. The proposed changes allow access by the BPU and the Ratepayer Advocate to information concerning the supplier’s transactions within PJM, which information PJM maintains as confidential. The Ratepayer Advocate contemplates that the supplier would provide whatever release is necessary in order to allow access to this information by the BPU and the Ratepayer Advocate.

- (ii) to cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of BGS-FP Supply, before the BPU, FERC or any other regulatory body asserting jurisdiction, including, but not limited to, meeting the reporting requirements of the BPU’s Environmental Information Disclosure Standards, N.J.A.C. 14:4-4.1 et seq., and Renewable Energy Portfolio Standards, N.J.A.C. 14:4-8.1 et seq., providing such confidential information as is requested by the BPU and the Ratepayer Advocate pursuant to the protections set out in Section 2.6, and permitting access by the BPU and the Ratepayer Advocate to information concerning the Supplier and its transactions within PJM that is maintained by PJM as confidential;

The Ratepayer Advocate also proposes a change to the definition of “Applicable Legal Authorities.” The proposed change would include orders of regulatory agencies and courts as set out below:

Applicable Legal Authorities – generally, those federal and New Jersey statutes and administrative rules and regulations that govern the electric utility industry in New Jersey, and orders of federal and state regulatory agencies and courts.

This proposed change would make it clear that the parties to the SMA have to abide by, not just statutes and regulations, but also orders of regulatory agencies and the courts.

The Ratepayer Advocate proposes that failure to provide information to the Board or the Ratepayer Advocate pursuant to the SMA should be considered an Event of Default. Language incorporating this provision should be inserted in subsection xiv of Section 5.1, as follows:

- (xiv) fails to satisfy any other material obligation under this Agreement not listed above, including, but not limited to, failure to provide information as required to the Board

and the Ratepayer Advocate pursuant to the terms of Section 2.6 above;

Effective Period for the SMA

The third Whereas clause on the first page of the SMA should be changed to reflect that this SMA only covers contracts for the winning bidders of the February 2007 BGS auction and future BGS auctions that are effective for the section of load and the term of years that the BPU specifies will be subject to the descending clock auction in its future order on those auctions.

For instance, the December 8, 2005 BPU order (page 3) in Docket No. EO05040317 concerning the February 2006 auctions stated the following:

One auction would be to procure service for a one-year period beginning June 1, 2006, for the approximately 1900 larger commercial and industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service ("BGS-CIEP Auction"). . . .

The second auction would be to procure one-third of the service requirements for all other customers of all four EDCs, for a three-year period beginning June 1, 2006, through a fixed-price auction ("BGS-FP Auction") for approximately 5,300 MW of load to be served through 54 full requirements tranches of approximately 100 MW each.

The BPU approved the auctions described in the above two paragraphs in its order (pages 6 and 7). Some similar language should be included in this Whereas clause for the SMA related to the February 2007 auctions and future BGS auctions.