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Director

September 6, 2017

Via Hand Delivery

Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton NJ 08625-0350

Re: I/M/O the Provision of Basic Generation Service
(BGS) For the Period Beginning June 1, 2018
BPU Docket No. ER17040335

Dear Secretary Asbury:

Enclosed for filing please find an original and ten copies of the Division of Rate Counsel's Initial Comments for the 2018 Basic Generation Service ("BGS") proceeding. These comments are being submitted pursuant to the Board of Public Utilities' April 21, 2017 Decision and Order in this matter. These comments will also be sent to the email list server used by the Board for these BGS filings.

We have also enclosed one additional copy of the materials transmitted. Please stamp and date the copy as "filed" and return to our courier. Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: Brian O Lipman
Brian O. Lipman
Litigation Manager

c: Service List (via electronic e-mail distribution list)

**I/M/O the Provision of Basic Generation Service
(BGS) For the Period Beginning June 1, 2018
BPU Docket No. ER17040335**

Initial Comments of the Division of Rate Counsel

September 6, 2017

I. Introduction

The Division of Rate Counsel (“Rate Counsel”) is pleased to provide these comments to the Board of Public Utilities (the “Board” or “BPU”) pursuant to the 2018 BGS procedural schedule established by Board Order dated April 21, 2017 in *I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2018* (“2018 BGS Procedural Order”). In their individual and joint filings, the Electric Distribution Companies (the “EDCs”) have proposed two significant changes to the BGS procurement process. First, the EDCs recommend that the Board modify the Supplier Master Agreements to allow for payment to BGS suppliers for PJM-cost reallocations prior to receiving a Final FERC Order.¹ Second, the EDCs have proposed to modify decrement formulas for the BGS-CIEP Auction “to complement the higher load cap that was implemented in the 2016 Auction.”² At this time, Rate Counsel asks the Board to reject the EDCs’ proposals to pay suppliers for changes in transmission costs prior to a Final FERC Order and to change the decrement formula.

¹ Joint Filing, IV.C.3, Page 15.

² Joint Filing, VII, Page 26.

II. Discussion

a. Proposed Modification to the Supplier Master Agreement

Section 15.9 of the BGS Supplier Master Agreements currently provides that if, during the term of the Supplier Master Agreement, a filing is made with the Federal Energy Regulatory Commission (“FERC”) to increase or decrease rates for Firm Transmission Service, the EDC will notify the BGS supplier of the filing and will seek approval from the Board to increase or decrease rates charged to BGS customers by the amount of the proposed rate adjustment. Upon receipt of Board approval, the EDC shall begin collecting the new transmission rate from BGS customers prior to a Final FERC Order.

Section 15.9(a)(iv) of the current Supplier Master Agreement further provides that, in the event of a transmission rate increase, the Company shall track the amounts collected from customers under the modified rate, and shall retain the collected amounts for the benefit of BGS suppliers. Upon receipt of a Final FERC Order approving the rate increase, the auction price shall be deemed to be increased by the approved amount and the EDCs will pay to each BGS supplier, that supplier’s allocated share of the increased amount collected from customers and retained for the benefit of the suppliers.

If the entire amount requested is not approved by FERC, only the approved amount shall be included in the BGS auction price and only the approved amount of the proposed increased collected from customers and retained for the benefit of the BGS suppliers will be paid to the suppliers. Excess amounts collected by the EDCs will be credited back to BGS customers.

In this filing, the EDCs have proposed to modify the terms of Section 15.9 to allow pass through of any change “that effectively increases or decreases transmission costs for BGS” suppliers and to allow the EDCs to pay to BGS suppliers PJM approved changes in transmission costs prior to the issuance of a Final FERC Order.

The EDCs recommend that Section 15.9 no longer be limited to instances where a filing has been made to modify the rate for Firm Transmission Service, but would now include instances where “PJM implements a transmission cost allocation or other change that effectively increases or decreases costs for BGS” suppliers.³ In addition, the EDCs have proposed that, with Board approval, rather than accumulate the proposed increase due to changes in transmission charges for the benefit of the BGS suppliers, the EDCs can pay BGS suppliers prior to the issuance of a Final FERC Order. New Section 15.9(e) provides that if the Company pays BGS Suppliers and if the amounts paid are greater than the amounts due as the result of a Final FERC Order, the BGS Suppliers shall repay the Company the difference.

Rate Counsel objects to the proposed modifications to the Supplier Master Agreement. While the Board has in the past allowed increased BGS supplier costs, for both transmission and capacity costs, the pass through of these increases has been decided by the Board on a case by case basis with input from this office. This new process allows an EDC, at its own discretion, to apply to the Board for approval to pay BGS suppliers rate increases not yet adjudicated by FERC. In essence, the EDCs are asking that the Board approve transmission rate increases before FERC rules on them.

³ Supplier Master Agreement, Section 15.9.

The new provision eliminates the procedural protection afforded ratepayers by the issuance of a Final FERC Order so that BGS suppliers can get their money faster.

This modification is especially troublesome when the issue of over-payment is considered. The EDCs claim that ratepayers are protected by the requirement that BGS suppliers return over payments. Rate Counsel believes that the current provision that no payments are made until a Final FERC Order has been issued is the best protection for ratepayers. Under the current Supplier Master Agreement, it is only FERC approved amounts that are paid to BGS suppliers. Under the proposed modification, proposed increases can be collected from ratepayers and paid to BGS suppliers without Final FERC approval. If FERC eventually approves a lower or no increase, the EDCs are then in the position of having to recover the over-payments from BGS suppliers. While this may be relatively easy with regards to current BGS suppliers, collecting the over-payment from entities no longer involved in the BGS process may be more difficult. Certainly, it may happen that entities that received over-payments are no longer BGS suppliers and in fact, may no longer be in business. There may be disputes about the amount owed by the suppliers leading to increased BGS administration costs and perhaps even a negotiated settlement without BPU review or approval. Any such outcome is to the detriment of BGS ratepayers.

An additional complication is the use of the BGS reconciliation charge as the means to return over-collections to ratepayers. In the past, the BGS reconciliation charge has been extremely volatile resulting in quarterly or even monthly changes in the BGS rate. Including transmission over-collections to the BGS reconciliation clause will only make the problem worse.

Accordingly, Rate Counsel recommends that the Board maintain the safeguard currently embedded in Section 15.9 of the Supplier Master Agreement and reject the EDCs proposal to accelerate payment of unapproved transmission rate increases to BGS suppliers.

b. CIEP Decrement Formula

Rate Counsel has concerns regarding the EDC's proposed changes to the decrement formula in the BGS-CIEP Auction rules. The EDCs claim that the proposed changes in the decrement formula complement the higher load cap approved in the 2016 auction.

Rate Counsel understands that the CIEP decrement formula is the BGS auction's methodology for determining the percentage decrease in price for each subsequent round in the auction based on amount of excess supply. The formulas allow for a larger decrease in subsequent prices when there is more excess supply. In previous auctions, the decrement formula followed a linear but capped formula. In this year's filings, the EDCs have proposed a stepwise function that they claim complements the higher load caps.

The EDCs have not provided sufficient reasons for this change, nor have they provided a quantification of the proposed change or if there is any actual benefit to the ratepayers. Without more information as to the impact of this proposed change to the auction participants and to ratepayers we respectfully request that Board reject this proposed change at this time.

III. Conclusion

Rate Counsel respectfully requests that the Board reject at this time the EDCs' proposal to pay suppliers for changes in transmission costs prior to a Final FERC Order and to change the BGS Auction decrement formula. Rate Counsel thanks the Board for this opportunity to provide Initial Comments and looks forward to working with all parties throughout this BGS proceeding.