

**I/M/O the Provision of Basic Generation Service (“BGS”) for
The Period Beginning June 1, 2007
BPU Docket No. EO06020119
Comments of the Division of Rate Counsel**

July 14, 2006

The Division of Rate Counsel (“Rate Counsel”) is filing these comments pursuant to the Board of Public Utilities’ (“Board” or “BPU”) July 10, 2006 Order directing interested parties to file proposals for modifications to the BGS Auction and pursuant to an email sent by Kenneth Welch on June 29, 2006 requesting comments on a proposed change in transmission costs treatment in BGS rates.

1. Transmission Rates.

In an email dated June 29, 2006, Board Staff requested comments from all interested parties on “requiring the electric distribution companies (“EDCs”) to be responsible for transmission charges associated with BGS, instead of just treating them as a pass-through to customers.” This directive was clarified on June 30, 2006 as follows:

Staff requests that in your July 10, 2006 BGS Filings, you comment on requiring the electric distribution companies (“EDCs”) to be responsible for collecting and paying increases in Firm Transmission Charges (as that term is defined in the Basic Generation Service FP-Supplier Master Agreement (“SMA”)) during the term of the SMA, rather than holding BGS-FP Suppliers responsible for paying such increases and reimbursing BGS-FP Suppliers for the increases to the extent permitted by section 15.9 of the SMA.

Rate Counsel has previously proposed to the Board that BGS-FP Suppliers should include the costs associated with electric transmission in their offer to provide BGS-FP

service and that there should be no provision in the BGS-FP Supplier Master Agreement for pass through of transmission rate increases. Rate Counsel believes that this treatment of transmission costs best serves the interest of New Jersey ratepayers.

The BGS-FP Auction, as currently designed, is for a full requirements product, that is, bidders in the auction compete to provide a product that includes all the components necessary to provide BGS-FP service. Presumably, the auction was designed in this way in the belief that a full requirements product was the best way to foster a competitive market with the associated competitive rates while at the same time providing low cost, fixed price energy for those ratepayers who did not or could not switch to a competitive supplier. Rate Counsel believes that the full requirements product is still the best way to achieve those goals and that transmission costs should be included in that product.

To pass the management of transmission rate increases to the EDCs will only result in higher costs for New Jersey ratepayers. Under Staff's proposal, rather than having BGS bidders compete to provide a full requirements product in the BGS Auction, the four EDCs would be responsible for the transmission rate increases. The EDCs would now be responsible for obtaining and monitoring transmission rate information and passing transmission rate increases through to BGS customers. If the Board allows the EDCs to pass transmission rate increases directly onto ratepayers, there will be little incentive on the part of the EDCs to control these costs. Moreover, since restructuring, much of the EDC support staff responsible for this function has presumably been re-assigned. The administrative costs, both "ramping-up" costs and on-going costs, associated with this function, after Board review, would also be passed on to New Jersey

ratepayers. In effect, the Board would be partially re-regulating what had been a competitively priced product.

Secondly, third party suppliers would now be competing against a different product, that is, a product that does not include the risk associated with transmission rate increases. BGS suppliers would be given an unfair advantage over third party suppliers who must include in their price transmission costs and the risks associated with the provision of transmission service. Thus, the Staff's proposal in this instance would not foster energy competition in the state.

Thirdly, if the Staff's proposal was made in reaction to escalating transmission costs, Rate Counsel would like to reiterate its earlier proposal that the Board should eliminate the direct pass through of transmission rate increases to BGS-FP customers. Such an action by the Board would encourage BGS suppliers to actively participate in proceedings at FERC when transmission rates are reviewed. As the payers of such rates, and as the entities with day to day knowledge of transmission operations, suppliers are in a better position to have the necessary information to refute requests for increases by transmission owners.

In conclusion, it is Rate Counsel's position that Staff's proposal to return the management of transmission costs and risks to the EDCs hampers competition and will not benefit New Jersey ratepayers. As noted in earlier filed comments, low cost and price stability are best achieved through the elimination of the direct pass through of transmission rate increases. The elimination of pass through fosters competition and encourages careful scrutiny of an owner's request for a transmission rate increase. Rate

Counsel respectfully requests that the Board consider this proposal as an alternative to returning to the EDCs management and control over transmission rate increases.

2. Portfolio

In the Board's July 10, 2006 Order, the Board indicated a willingness to consider the length of the BGS-FP contract and the makeup of the supply to be procured.

The key issue is whether there should be a BGS portfolio which includes other resources, for example, demand response and long-term contracts (i.e., 10 to 25 year or even "Life of Plant" Contracts, etc.), in addition to contracts procured through the auction. Rate Counsel notes that this approach is now being considered in other jurisdictions and recommends that such a portfolio approach be considered for New Jersey's energy needs. Each resource included in the portfolio should be subject to a separate procurement process which allows its characteristics to be fully taken into account.

It is important to note that with the portfolio, the auction would work exactly as it does now. However, the size and/or number of tranches sold at auction would be based on load net of the contribution from the other resources in the portfolio. The procurement of resources other than those obtained via the BGS auction would need to be timed so that the residential load would be clear at the time of the auction. More generally, the "positioning" of the auction within a BGS portfolio would need to be carefully considered.

In considering the proposed BGS Portfolio, Rate Counsel asks the Board to take into account the fact that, Comverge, a commercial provider of DSM, has provided

comments suggesting that Demand Response be part of “New Jersey’s overall energy portfolio.” Comverge explains that demand response programs “can reduce suppliers’ peak resource needs and thus have a positive impact for all consumers.” (Comverge Comments, May 4, 2006) Similarly, PV NOW, a national solar industry group, noted the advantage in using solar energy, with its low variable costs and zero fuel costs, as a volatility hedge. PV NOW recommended a solar tranche fulfilled by solar energy and “secured under ten year contract by suppliers.” (PV NOW Comments, May 4, 2006)

Accordingly, it is Rate Counsel’s recommendation that the Board endorse the BGS Portfolio as a reasonable approach for obtaining BGS-FP supply in the future, and subject the portfolio concept to further study and analysis over the next 6 months by a working group. Based upon input from the working group, and its members, the Board could decide how best to proceed.

3. Supply Sources – Access to Information

In its July 10, 2006 Decision and Order, the Board determined that it would not, at this time, require the disclosure of Suppliers’ sources of supply. Decision and Order at p. 5. Rather, the Board determined that it would continue to explore the details of the information that is required to assess the competitiveness of the BGS markets. *Id.*

Rate Counsel proposes that the Board direct the interested parties, with facilitation by the Staff, to meet collaboratively to discuss the question of what information could assist in understanding the extent to which the BGS market is competitive, and to what extent it meets the statutory requirement of supplier diversity. In this way, the parties could undertake informal discovery, subject to a protective order, and attempt to narrow

the differences that are now presented to the Board in the respective filings on this topic. This process could assist the Board when it revisits the issue later in this or other proceedings, Decision and Order at 5. At the minimum, it would help all parties understand the details of the issues raised for and against the requested disclosure.

Rate Counsel understands that some of the suppliers may find such a discussion in the presence of their competitors a risk to their competitive position, and thus recommends that the Board direct the suppliers to meet separately with Rate Counsel and Staff to the extent necessary to facilitate a free flow of information in an effort to resolve the issues surrounding the disclosure of supplier sources. Again, such meetings should be protected from public disclosure by a confidentiality agreement, given the suppliers' concerns regarding the material that needs to be discussed in order to have a clear picture of these issues.