

**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**

August 18, 2006

The Division of Rate Counsel (“Rate Counsel”) respectfully submits these comments pursuant to the procedural schedule set forth in the Board of Public Utilities’ (“Board” or “BPU”) July 10, 2006 Order which established August 18, 2006 as the filing date for Initial Comments on all proposals. Rate Counsel has previously filed initial and final comments in this docket on the procedural process as directed in the Board’s March 24, 2006 Order. Rate Counsel has also filed initial and reply comments on the BGS Supplier Master Agreement. The following comments are not a repetition of those previously filed comments but instead are meant to clarify and in some cases supplement Rate Counsel’s position set forth in those earlier filings. The within comments address following features of the Proposal:

- Source of Supply Information
- Transmission Increase Pass Through
- Long Term Portfolio Approach

Source of Supply Information

Rate Counsel has previously filed comments requesting that the Board direct BGS suppliers to provide information on underlying supply contracts to the BPU, and to those who are privy to detailed auction information. In the July Order, the Board determined that it would not at this time require the disclosure of Suppliers' sources of supply. July Order at p. 5. In making this determination, the Board recognized the issue of the competitiveness of the BGS auctions as the reason for requesting source of supply information and determined that it would continue to further explore the details of the information that is required to assess the competitiveness of the BGS markets. *Id.* Rate Counsel respectfully submits that assuring the competitiveness of the BGS auction was not the sole driver behind its earlier position and takes this opportunity to clarify that position. In addition to market power concerns, Rate Counsel's interest in the source of electricity provided through the BGS auction was triggered by concerns regarding the safety and reliability of the source of electric supply procured through the BGS auction. These concerns were highlighted by the record all time peak loads recently experienced by the PJM Interconnection serving New Jersey. Thus, Rate Counsel respectfully asks the Board to focus at this juncture on a related aspect of the question of competitiveness of the auction, that is, the aspect of system reliability.

Prior to deregulation, the New Jersey Board had access to source of supply information on a routine basis. Generation owners filed the FERC Form 1 reports every year, setting out the capacity of their plants as well as historical output and outage information. State regulators could rely on this material to develop an understanding of

their state's capacity and energy situation, and could follow it over time. Now, once a supplier has been granted permission to use market-based rates, the supplier is no longer required to make regular detailed reports to the FERC, at least not on generation performance. Thus, the reliability risks associated with generation are magnified by the decreased transparency in the procurement process.

Without adequate information regarding the source of supply in New Jersey, the Board is hindered in its obligation to protect the State's ratepayers from the increasing risks associated with the restructured generation market. For example, before deregulation of the State's electric utilities and the divestiture of generation assets, New Jersey residents were assured "native load" protection. Now, with the possibility that electric supply in New Jersey will be provided from states that have not unbundled generation, the New Jersey BGS load may be second in the queue, after the native load in the home state of the generator. When an unexpected event challenges the stability of that supply, New Jersey customers could experience higher prices and uncertain supply. This risk grows with the concentration of supply and with the development of larger transmission lines carrying power over longer distances. The Board needs more information about the source of BGS supply in order to better protect New Jersey ratepayers from the uncertainties of electric generation.

The Board should have some information regarding the sources of the electricity supplied through the BGS auctions, the diversity of those sources, and any risk associated with those various sources. To that end, Rate Counsel recommends that the Board direct the BGS suppliers to provide specific information about the sources of their share of BGS supply, including specific information for each generation plant from which BGS supply

was procured. Such information could include for example, the nameplate rating, the capacity factor, the equivalent forced outage rate, the availability factor and the plant's total energy output. Such information would provide the Board with some of the information necessary to more effectively monitor the procurement process and to protect New Jersey ratepayers.

In addition, to the extent it is available, information about each intermediary contractual party which had any contractual right to the output of a generation plant prior to bidding should also be provided. Such information would include the name and location of each intermediary party; from whom that party obtained the right to the output; to whom, other than BGS customers, the output was provided; and the length of time the intermediary had rights to the output. If a supplier provides BGS service as a slice of system, or from a pool, it would be sufficient to provide the required data for the plants in the pool, without attempting an allocation to the BGS contract of the output of any specific plant.

In response to supplier claims that information regarding the source of supply is not known at the time of bidding and that the disclosure of such information would be a competitive disadvantage to the BGS supplier, Rate Counsel proposes that the Board require this information regarding sources of supply on an after-the-fact basis. While suppliers may not know all of this information before the start of the February BGS auction, the contract path of the electricity from the generator to the BGS customer should be traceable after the winning bidders begin to fulfill their contractual obligations. Accordingly, Rate Counsel recommends that the Board direct winning BGS bidders to provide certain source of supply information for the first six months of their BGS

contract, and for each six month period thereafter, until the termination of their BGS contract, no later than three months after the end of the six month period in question.¹ This “after-the-fact” reporting requirement addresses suppliers express concerns about confidentiality and knowledge while, at the same time, protecting ratepayers by opening the process to additional scrutiny. The Board should also direct BGS winners to retain information regarding the generator(s), and any intermediary parties, from whom they ultimately obtained any of the supply used to meet their obligations under the BGS, for a period of three years² following the termination of each BGS contract, to the extent such information is available to them using reasonable diligence.

In conclusion, a key objective of the development of an after-the-fact supply history is to protect New Jersey ratepayers by ensuring a reliable source of power at reasonable prices. It is only with such source of supply information that ratepayers can be truly confident regarding the reliability of an economic BGS supply.

¹ Thus, for example, for a 3-year BGS contract entered into June 1, 2007, the first report would be due March 1, 2008, and cover the six months June 1, 2007 through November 28, 2007. The next report would be due September 1, 2008 for the period December 1, 2007 through May 31, 2008, and so forth.

² Under 18 CFR 35.37(d), FERC requires those with market-based authority to retain information for 5 years.

Transmission Increase Pass Through

Rate Counsel renews its request that the Board eliminate the provision now allowing BGS suppliers to pass through FERC-approved changes in transmission rates. Rate Counsel does not here repeat all its previous observations and arguments concerning this issue, but respectfully requests the Board look at Rate Counsel's previous comments for further detail. Rate Counsel will merely stress here that allowing suppliers to pass through changes in FERC-approved costs transfers the risk to consumers (who are less able to manage the risk), removes the incentive for suppliers to press FERC to minimize such rate increases, and puts independent competitive suppliers at a disadvantage in retail competitive markets in New Jersey.

Rate Counsel would, however, like to take this opportunity to reiterate its concern regarding the number and amount of rate increases that are being "passed through" to New Jersey ratepayers with few procedural protections and minimal scrutiny. For example, last year, two transmission rate increases were approved by the Board for direct pass-through of transmission charges to BGS customers.³ The Board's Order, in those proceedings, acknowledging concerns with the current process, stated that the review and approval mechanism established in the 2005 auction would be reconsidered in this 2006 BGS proceeding. Staff was directed to review the pass through issue and to "provide the

³ *I/M/O the Petition of Atlantic City Electric Company, Jersey Central Power & Light Company and Public Service Electric & Gas Company for Authorization to Increase the Transmission Related Charges to BGS-FP & BGS-CIEP Customers*, BPU Dkt. No. ER05040368, Decision and Order, June 22, 2005; *I/M/O the Petition of Atlantic City Electric Company, d/b/a Conectiv Power Delivery, Jersey Central Power & Light Company and Rockland Electric Company for Authorization to Increase the Transmission Related Charges to BGS-FP Customers*, BPU Dkt. No. ER05010025, Decision and Order, April 11, 2005.

Board with alternatives for its consideration on a prospective basis.”⁴ Rate Counsel respectfully submits that more scrutiny is needed to ensure that these rate increases reflect the lowest possible rates necessary for the provision of safe, adequate and proper service. Transmission rate increase requests should be subject to public notice, evidentiary hearings, and should not be implemented absent a Board finding that the requested transmission rate increases were just and reasonable.

Accordingly, Rate Counsel respectfully requests that the Board reconsider the direct pass through of transmission rate increases to BGS-FP customers. Direct pass throughs of Transmission rate increases provide none of the consumer protections statutorily granted to New Jersey ratepayers.⁵ Further, as noted in Rate Counsel’s 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 charges fosters competition and encourages careful scrutiny of an owner’s request for a transmission rate increase. Rate Counsel respectfully requests that the Board consider Rate Counsel’s proposal as an effective means to achieve low cost and price stability for BGS-FP customers while at the same time maintaining the traditional consumer protections promised in EDECA.

⁴ *I/M/O the Petition of Atlantic City Electric Company, Jersey Central Power & Light Company and Public Service Electric & Gas Company for Authorization to Increase the Transmission Related Charges to BGS-FP & BGS-CIEP Customers*, BPU Dkt. No. ER05040368, Decision and Order, p. 6, June 22, 2005

⁵ *N.J.S.A. 48:3-50* directing the Board to “maintain adequate regulatory oversight [and] to assure that consumer protection safeguards inherent to traditional public utility regulation are maintained.”

Long Term Portfolio Approach

In its July Order, the Board did not decide the issue regarding the length of BGS contracts but deferred consideration of this issue for this later phase of its 2007 Auction proceeding. Rate Counsel repeats and restates its earlier recommendations that the Board consider expanding the type of resources considered for provision of BGS supply to include longer-term contracts and arrangements. The need to create reliable sourcing over the long-term has emerged as a key issue in competitive markets. Having a BGS component that sought out longer term opportunities would be very helpful in developing the emerging longer-term wholesale market, while at the same time providing a ballast of some longer-term procurement to stabilize prices and reliability for BGS customers. 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 known at the time of the auction.

Accordingly, Rate Counsel respectfully recommends that the Board endorse Rate Counsel's BGS Portfolio proposal 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.