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September 4, 2020

Via Electronic Mail

Ms. Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

**Re : In the Matter of the Provision of Basic Generation Service for
the Period Beginning June 1, 2021
BPU Docket No. ER20030190**

Dear Secretary Camacho-Welch:

Pursuant to the schedule set forth in the Board's Decision and Order dated March 27, 2020, the Division of Rate Counsel submits its initial comments in connection with the above-referenced matter.

Thank you for your attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND, DIRECTOR
DIVISION OF RATE COUNSEL

By: /s/ David Wand
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DW/dl
Enclosure
c: Electronic Mail Distribution List

**I/M/O the Provision of Basic Generation Service
(BGS) For the Period Beginning June 1, 2021
BPU Docket No. ER20030190**

Initial Comments of the Division of Rate Counsel

September 4, 2020

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 2021 BGS procedural schedule established by Board Order, dated March 27, 2020, in I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2021, BPU Docket No. ER20030190, (“2021 BGS Procedural Order”).

I. Summary of EDC Proposal

In a joint filing (“Joint Filing”), dated July 1, 2020, the New Jersey Electric Distribution Companies (the “EDCs”), specifically: Public Service Electric and Gas Company (“PSE&G”); Jersey Central Power and Light Company (“JCP&L”); Atlantic City Electric Company (“ACE”); and Rockland Electric Company (“RECO”), propose two significant changes to the BGS product with respect to transmission procurement.¹ First, the EDCs recommend that the Board approve the transfer of the obligation for transmission and transmission-related costs from the BGS Supplier to the EDCs in the proposed 2021 BGS Supplier Master Agreement (“SMA”). Second, the EDCs recommend that the existing SMA contracts, entered into for the 2018, 2019 and 2020 BGS Auctions, be amended so future transmission obligations are transferred from the

¹ Proposal for Basic Generation Service Requirements To Be Procured Effective June 1, 2021 (July 1, 2020) (“Joint Filing”).

winning BGS Supplier to the EDCs. Therefore, instead of the EDCs passing through the transmission costs from the BGS suppliers to their respective ratepayers as in past years, the EDCs will assume transmission payment obligations to PJM Interconnection, LLC (“PJM”) through a specific transmission charge on behalf of BGS customers and then directly charge those customers.

Along with the changes to the transmission portion of the BGS product, the EDCs have also altered certain parts of the proposed form of SMA for the 2021 BGS Auction. In adding transmission to the EDCs’ obligations under the SMA Section 2.2, the EDCs also removed a provision which used “environmental attributes,” including solar renewable energy certificates, gained by the EDCs through energy purchase agreements to be used to lessen the Renewable Portfolio Standard (“RPS”) obligation of BGS suppliers.² Specifically, previous SMAs provided:

to the extent that (a) the Company purchases Energy during the term of this Agreement from renewable energy resources that meet the eligibility requirements for satisfying the Energy Portfolio Standards;³ (b) the renewable energy attributes transfer to the Company under the terms of the Energy purchase arrangements; and (c) the Company is not utilizing the renewable energy attributes associated with such purchases to meet obligations as a Load Serving Entity within PJM, the Company shall apply such renewable energy attributes to help satisfy the BGS-RSCP Supplier’s Energy Portfolio Standards obligations⁴

Additionally, the EDCs request that the Board approve their plan to continue to add a Capacity Proxy Price in place of currently unknown PJM Base Residual Auction

² RCR-BGS-0019, Attachment RCR-BGS-0019-RSCP-SMA.pdf

³ “Energy Portfolio Standards” includes “those standards imposed by the BPU pursuant to N.J.S.A. 48:3-87(d) requiring that specified levels of electric power sold for the provision of Basic Generation Service shall be produced from renewable energy resources as set forth in the Renewable Energy Portfolio Standards, N.J.A.C. 14:8-2 et seq., as modified or superseded, or in such other regulations of the BPU as may be adopted or amended from time to time” Id. at 6.

⁴ Id. at 13-14.

(“BRA”) prices for the 2022/2023 and 2023/24 delivery years, since those auctions have not yet occurred.⁵ If the results of PJM capacity market auctions are not known for the 2022/2023 and 2023/2024 delivery years by the time of the BGS Auction, the EDCs argue that BGS-RSCP suppliers may include risk premiums in their bids or choose not to participate in the BGS auction at all.⁶ For the 2022/2023 delivery year, the Capacity Proxy Price value would be derived using the same price approved by the Board for the 2020 BGS Auction proceeding.⁷ For 2023/2024 delivery year, the EDCs propose applying a 0.9 factor to the most recent incremental auction results.⁸ The EDCs further note the possibility that, depending on the outcome of the Board’s Resource Adequacy Alternatives Investigation⁹, the rate that BGS Suppliers pay for capacity may not be set by PJM.¹⁰

II. Summary of Rate Counsel Comments

At this time, Rate Counsel does not object to the EDCs’ proposed change to the BGS product in the 2021 Auction regarding transmission related costs. The amount of money collected from ratepayers, all things being equal, will not change.¹¹ Additionally, Rate Counsel believes the growing balance associated with collected, but not paid, transmission costs pursuant to the terms of previous BGS SMAs translates into additional risk for potential BGS Suppliers deciding whether to bid into the 2021 BGS Auction, which has the potential to hinder participation by certain bidders and may also cause

⁵ Joint Filing at 11.

⁶ Id.

⁷ Id. at 12.

⁸ Id.

⁹ I/M/O BPU Investigation of Resource Adequacy Alternatives, BPU Docket No. EO20030203, (March 27, 2020).

¹⁰ Joint Filing at 13.

¹¹ RCR-BGS-0004; RCR-BGS-0014

bidders to include higher risk premiums within their bids. As a result, there is the potential that “collect-don’t-pay” balances may affect the BGS Auction’s competitiveness and undermine its ability to obtain supply at competitive prices consistent with the market conditions.

However, Rate Counsel does object to amending existing SMA’s to apply this change to existing contracts where the bids have already been awarded. The same concerns regarding the impact on bidding behavior do not apply to those contracts as the bids have already been awarded.

To transfer transmission payment obligations from BGS suppliers, the EDCs’ propose transferring specific PJM billing line items from the BGS supplier to the EDC. For existing SMAs, PSE&G, ACE, and JCP&L would amend the SMA with BGS suppliers that won tranches in the 2018, 2019 and 2020 BGS-RSCP Auctions to remove transmission from the BGS product effective January 1, 2021 or 20 business days after the Board’s approval.¹² RECO proposes to amend the BGS SMAs won in the 2019 and 2020 BGS RCSP Auctions to remove transmission from the BGS product with a target date of June 1, 2021.

Regarding the removal of the environmental attribute transfer clause from the proposed form of SMA, Rate Counsel objects to its deletion. The EDCs have not provided any explanation for the deletion. Moreover, to the extent that the costs of meeting the RPS can be reduced, Rate Counsel would expect to see lower bid prices from BGS Suppliers due to the reduced cost of RPS compliance, which would in turn benefit BGS customers.

¹² Joint Filing at Page 21.

Additionally, the EDCs are seeking to continue adding a Capacity Proxy Price to the BGS-RSCP SMA to include currently unknown BRA auction prices for the 2022/2023 and 2023/24 delivery year since those auctions have not yet occurred. Rate Counsel believes this is consistent with the EDCs' treatment of unknown capacity prices in last year's BGS auction.

Finally, Rate Counsel provides its comments below regarding modifications to the BGS Auction to address resource adequacy issues raised within the Board investigation under BPU Docket EO20030203.¹³ Consistent with Rate Counsel's previous comments, the intent of the BGS Auction process is to provide electric generation supply services to customers who have not chosen a third party supplier with a price that is consistent competitive market conditions. Therefore, it is a limited and unsuitable mechanism for pursuing the State's clean energy agenda. Indeed, attempting to transform it into a vehicle for that purpose could undermine the important purpose the auction currently serves.

III. Discussion

a. Proposed Elimination of Transmission Rates from BGS Bids

Previously, the BGS product was a full-requirements product which included transmission. It was assumed that BGS suppliers are sophisticated market participants with an understanding of the timing of transmission related costs and projects.

Under the current SMA, the EDCs collect increases in firm transmission related charges when directed to by the Federal Energy Regulatory Commission ("FERC") in an initial Order. The EDCs do not pay these increased amounts to BGS Suppliers, however,

¹³ BPU Investigation of Resource Adequacy Alternatives, supra, n.9.

until a final FERC Order has been issued. Rate Counsel is aware that the balance of these collected, but not paid, amounts varies across EDCs. In response to RCR-BGS-0006, the EDCs provided a breakdown of current amounts as shown below:¹⁴

Table 1 Transmission-Related Amounts Held by EDCs (From 2017 through May 31, 2020)

EDC	Amount Held
PSE&G	\$120,245,541
JCP&L	\$1,371,162
ACE	\$454,379
RECO	\$3,896,704
Total	\$125,967,786

The EDCs claim that the amount withheld may deter potential bidders from participating or may result in bidders adding risk premiums to their bids that would increase prices for consumers.¹⁵ While the EDCs are not able to quantify the risk premium that might be associated with the delay in payments, the growing balance of payments held by the EDCs indicates that significant sums of money are collected from ratepayers but are not reaching the BGS Suppliers, especially those serving the PSE&G zone.

The proposed language in the 2021 BGS-RSCP SMA attempts to remedy this issue by defining the BGS-RSCP product in a similar manner to the default generation service products available in Delaware, Maryland, and the District of Columbia.¹⁶ With this proposed change in responsibility, transmission related costs that were collected by the EDCs from ratepayers and paid to suppliers, would instead be paid to PJM directly.¹⁷ In Discovery Response RCR-BGS-0004, the EDCs claim that they do not anticipate an

¹⁴ RCR-BGS-0006.

¹⁵ RCR-BGS-0008.

¹⁶ RCR-BGS-0011.

¹⁷ RCR-BGS-0004.

increase in administrative costs as a result of the EDCs assuming transmission service obligations, which was previously the burden of the BGS Suppliers.

Rate Counsel does not oppose the requested change, but ultimately, whether this change will address the “collected but not paid” issue or lead to increased administrative costs remains to be seen. Despite their claim, the EDCs’ Joint Filing and subsequent discovery responses do not contain sufficient information to support their assertions. Since the EDCs have not provided any assurance that ratepayers will not see incremental increases in administrative costs, Rate Counsel recommends that the Board order the EDCs to submit the administrative costs charged to ratepayers for review by Board Staff and Rate Counsel in their next BGS reconciliation filing. Without an examination of the EDCs’ administrative costs and the associated clause mechanism, the EDCs’ claim that no incremental costs will be incurred cannot be substantiated.

b. Proposed Elimination of Transmission from Existing BGS Contracts

For existing agreements, PSE&G, ACE, and JCP&L propose amending their current SMA agreements with BGS suppliers serving tranches from the 2018, 2019 and 2020 BGS-RSCP and the 2020 BGS-CIEP Auctions by removing transmission from the BGS product effective January 1, 2021, or 20 business days after the Board’s approval.¹⁸ This change will require the removal of SMA Section 15.9 in those contracts. Section 15.9 allows for EDCs to collect transmission rate increases, following a filing with BPU. However, the collected amounts are tracked but not paid to the BGS suppliers until a “Final FERC Order” has been issued.

¹⁸ EDCs. Proposal for Basic Generation Service Requirements to be Procured Effective June 1, 2021. July 1, 2020. Page 21

PSE&G claims that waiting until June 1, 2021 to amend existing SMAs would result in a growing balance in the collected but not paid amounts.¹⁹ Although ACE and JCP&L echo PSE&G's proposal,²⁰ RECO proposes using June 1, 2021 as the date on which all SMAs currently in effect would be changed. RECO also claims that the required changes in the SMAs and initiation of rates can or should be completed on an expedited manner as suggested by the other EDCs.²¹

Rate Counsel opposes going back and amending the current SMAs. Although Rate Counsel is concerned about the growing amount of transmission charges being held, the EDCs' proposals to reach back and alter existing Agreements do not provide any discernable benefit to ratepayers.

In discovery, the EDCs acknowledge that bidders have most likely included unquantifiable risk premiums into their bids to cover "financing costs incurred because of the mismatch between PJM payable and potential utility payments."²² The EDCs' assumption of transmission charge obligations would provide a benefit by removing the basis for a risk premium in the future, but applying the change to existing contracts would not remove any such premiums from the existing contract prices. No one is suggesting that refunds be provided as a result of the change to existing contracts, and we acknowledge that attempting to calculate any refunds would be very difficult. However, any impact on bidding behavior for these prior years has already occurred and would not be remedied by this change. Thus, choosing to amend existing contracts – after specifically rejecting the removal of Section 15.9 from the form of SMA in the prior 2020

¹⁹ RCR-BGS-0039

²⁰ RCR-BGS-28 for ACE, and RCR-BGS-57 for JCP&L.

²¹ RCR-BGS-0044.

²² RCR-BGS-0004.

BGS proceeding²³ –provides no additional benefit and could create uncertainty for future potential bidders if they perceive the SMA as a document that could easily be amended retroactively. For these reasons, Rate Counsel opposes applying this change by altering existing SMA's.²⁴

c. Elimination of renewable energy attributes transfer provision

In adding terms regarding the EDCs' assumption of the transmission portion of the BGS product, the EDCs removed terms regarding an obligation to use any renewable energy attributes gained from the purchase of renewable energy to lessen the RPS obligation of the BGS suppliers.²⁵ The EDCs do not explain the basis for the deletion of the language formerly found in SMA Section 2.2(b)(iv). The change, however, would serve to drive up the cost of BGS service as BGS suppliers would need to procure additional renewable energy attributes previously supplied by the EDC. This change is not required to allow the EDCs to assume the transmission portion of the BGS product. Without further explanation justifying the proposed change, Rate Counsel recommends that the Board reject the proposed deletion.²⁶

d. Resource Adequacy

In the EDCs' proposal for adding Capacity Proxy Price, the EDCs note the uncertainty surrounding the Board's Resource Adequacy Investigation. On March 27,

²³ I/M/O the Provision of Basic Generation Service (BGS) For the Period Beginning June 1, 2021, Docket No. ER19040428 at Page 15 (noting that Section 15.9 strikes an appropriate balance between protecting ratepayers and the Concerns of BGS suppliers)

²⁴ Moreover, as directed by the Board in its November 2019 Order approving the 2020 BGS Auction process; Rate Counsel, Staff, the EDCs, and members of the BGS supplier community have been in discussions regarding options to address the lag between the collection of transmission charges from ratepayers and payment to the EDCs. This process should be permitted to conclude before the Board decides whether transmission should be removed from existing agreements with BGS suppliers.

²⁵ RCR-BGS-0019, Attachment RCR-BGS-0019-RSCP-SMA.pdf, at pages 13-14.

²⁶ Rate Counsel does not object to the new terms currently placed in Section 2.2(b)(iv) regarding the EDCs' assumption of Firm Transmission Service obligations.

2020, the Board initiated Docket EO20030203 to investigate the issue of resource adequacy needs in light of the state's long-term clean energy and environmental objectives.²⁷ As part of its Order initiating the proceeding, the Board provided stakeholders with a number of questions regarding resource adequacy. Seven of the listed questions pertained to modifications to the BGS construct to facilitate resource adequacy procurement aligned with the state's clean energy objectives.²⁸

Rate Counsel's initial and reply comments in that proceeding are available on the Board's website for the proceeding.²⁹ To summarize, Rate Counsel strongly believes that the BGS auction was not intended to explicitly transform the state energy mix. The intent of the BGS auction process is to provide residential and small commercial customers, who do not choose to shop for electricity, with energy and capacity at competitive market prices. It was intended to provide a stable source of default service and protect against price volatility. As stated earlier, BGS suppliers are sophisticated market participants and a robust market should help ensure price stability for BGS customers.

Rate Counsel appreciates the Board's efforts to ensure Resource Adequacy and achieve the state's clean energy goals. However, Rate Counsel believes that the BGS auction process should not be a primary mechanism for achieving those goals, particularly if using it in that manner could undermine its original purpose.

²⁷ See <https://www.nj.gov/bpu/pdf/boardorders/2020/20200325/3-27-20-2H.pdf>

²⁸ See <https://www.nj.gov/bpu/pdf/publicnotice/2H%20-%20Capacity%20Proceeding%20Written%20Comments%20public%20notice%203.27.20.pdf>

²⁹ See <https://www.nj.gov/bpu/about/divisions/ferc/resourceadequacy.html>

e. Delay in PJM Base Residual Auction

As noted in our comments last year, FERC ordered that PJM not hold the capacity auction scheduled to begin on August 14, 2019.³⁰ The auction would have procured capacity for the 2022/23 Delivery Year. On September 27, 2019, PJM announced that it would suspend all auction activities and deadlines for the 2022/23 and 2023/24 Delivery Years.³¹ The auction for the 2023/2024 Delivery Year would normally have been held in May 2020. Rate Counsel understands that PJM has discussed proposed auction schedules that could result in auction prices being available in December 2020 for the 2022/23 Delivery Year and March 2021 for the 2023/24 Delivery Year.³² However, those dates are contingent on a timely determination from FERC.

In this proceeding, the EDCs are seeking to extend the Capacity Proxy Price to include currently unknown BRA auction prices for the 2022/2023 and 2023/24 delivery year since those auctions have not yet occurred. Due to the extended uncertainty at the federal level regarding the PJM capacity market, Rate Counsel believes that the EDC's proposed methodology for setting of the Capacity Proxy Price for each of the delivery years is reasonable under the unprecedented regulatory uncertainty facing BGS suppliers.

³⁰ Calpine Corporation, et al. v. PJM Interconnection LLC, 168 F.E.R.C. ¶ 61,051 (2019).

³¹ See <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2023-2024/2023-2024-pjm-message-regarding-suspension-of-rpm-base-residual-auction-activities-and-deadlines-until-further-notice.ashx?la=en>

³² See <https://www.pjm.com/-/media/committees-groups/committees/mic/2020/20200312-special-capacity-mopr/20200312-item-02-proposed-auction-schedule.ashx>

III. Conclusion

Based on the foregoing, Rate Counsel respectfully requests that the Board accept, at this time, the EDCs' proposal to remove transmission-related costs from the BGS product for any future BGS SMAs. However, Rate Counsel objects to amending any existing SMAs that were entered into in 2018, 2019 and 2020. The sanctity of an agreement entered into by the parties should be preserved. Moreover, in incorporating the EDCs' transmission obligation into the 2021 form of SMA, Rate Counsel recommends that the Board reject the EDC proposal to delete language which transferred renewable energy attributes to BGS suppliers.

Rate Counsel agrees with the EDCs proposal to include a proxy capacity prices for the capacity auctions that have yet to occur. However, Rate Counsel advises against BGS modifications in the Board's Resource Adequacy proceeding.

Rate Counsel thanks the Board for this opportunity to provide Initial Comments and looks forward to working with all parties throughout this BGS proceeding.