State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

JON S. CORZINE
Governor

RONALD K. CHEN
Public Advocate

STEFANIE A. BRAND, ESQ.
Director

August 28, 2009

Via Hand Delivery and Electronic Mail
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, 2010
BPU Dkt. No. EO09050351

Dear Secretary Izzo:

Enclosed please find an original and ten (10) copies of the Department of the Public Advocate, Division of Rate Counsel's initial comments in the above matter. These comments will also be circulated electronically through the electronic list server used by the Board of Public Utilities in this docket. 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.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY

Stefanie A. Brand
Director, Division of Rate Counsel

By: *s/ Diane Schulze*
Diane Schulze, Esq.
Asst. Deputy Public Advocate

c: President Jeanne M. Fox, (via hand delivery)
Commissioner Frederick F. Butler, (via hand delivery)
Commissioner Joseph L. Fiordaliso, (via hand delivery)
Commissioner Nicholas V. Asselta, (via hand delivery)
Commissioner Elizabeth Randall, (via hand delivery)
Service List (via electronic list server)

I/M/O the Provision of Basic Generation Service ("BGS") for the Period Beginning June 1, 2010 BPU Docket ER09050351

Initial Comments of the Department of the Public Advocate, Division of Rate Counsel

August 28, 2009

INTRODUCTION AND SUMMARY OF COMMENTS

Pursuant to the schedule set forth in the Board's Order dated May 20, 2009, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") is pleased to provide these initial comments in response to the New Jersey Electric Distribution Companies' ("EDC") filings of July 1, 2009 and their responses to discovery requests.

Rate Counsel's comments are presented in three sections. In Section I, Rate Counsel focuses on two specific issues. (a) the evolving marketplace for electricity service and (b) securing in-state capacity resources with EDC or Portfolio Manager long-term contracting. In Section II, Rate Counsel addresses the questions set forth in Staff's email, dated August 14, 2009. Finally, in Section III, Rate Counsel provides an update on the status of recent procurement practices/activity in other states. This update shows that other states have continued to implement short term procurement practices for BGS type supply with alternative contracting mechanisms.

SECTION I

a. Recognition of Evolving Marketplace for Electricity Service

Again this year, the joint EDC filing fails to offer any substantive alternative or complement to the 3-year, all-requirement product secured in the current BGS-FP auction. While statewide policy has evolved considerably on renewable resource goals and policies to support their use, the procurement process for BGS-FP supply has remained essentially static. Rate Counsel submits that New Jersey requires a more flexible, forward-looking approach that recognizes the importance of establishing procurement vehicles in addition to the limited procurement option currently exercised each winter with the BGS-FP auction.

Rate Counsel has consistently taken the position that New Jersey BGS-FP ratepayers would benefit from the establishment of a Portfolio Manager approach to BGS-FP supply procurement. As noted in our earlier comments, the creation of a statewide Portfolio Manager could expand BGS-FP service to include, if economically attractive, a wider range of resource options than is currently available. A logical response to the continually evolving energy markets is the creation of a Portfolio Manager with the ability to investigate potential ratepayer cost savings available through these evolving markets and the flexibility to secure resources outside the BGS auction process. For example, a Portfolio Manager procurement approach might be more conducive to capturing the benefit of the current lower wholesale energy rates in PJM than the BGS auction approach.[1] Alternative approaches to supply procurement for New Jersey electric customers are not without precedent. Notably, one New Jersey EDC -

[1] *See*, Rebecca Smith, *Electricity Prices Plummet*, Wall Street Journal, August 12, 2009, at A1.

RECO – already procures supply for two of its service territories through an RFP approach.[2] Also, current EDC programs for solar and demand response resources are but two examples of the forms of procurement expansion that is required to ensure the most cost-effective supply purchase for BGS-FP customers.

b. Securing In-State Capacity Resources for In-State Load Using Long Term Contracting via the EDCs or a Portfolio Manager Approach

Long-term contracting for capacity resources by the EDCs or a Portfolio Manager on behalf of EDC load could help put downward pressure on capacity prices in New Jersey. As noted in our July 1, 2009 filing, the May 2009 results of the PJM Reliability Pricing Model ("RPM") auction for capacity resources resulted in a particularly high clearing price in the Northern PSE&G zone of Northern New Jersey. This resulted in a large part from the significant loss of northern New Jersey capacity supply resources participating in the auction. The loss of this capacity supply raised capacity prices for all supply in New Jersey. This crucial capacity price effect must be considered when assessing the effectiveness of relying solely on BGS-FP suppliers and PJM's capacity market when securing capacity resources for BGS-FP customers. As seen in other states, directly contracting for energy and/or capacity resources can be done as a complement to other procurement mechanisms for standard offer service, and can serve to reduce exposure to high eastern PJM capacity market prices.

[2] See RECO Company Specific Addendum, response to RCR-30, 31

Section II

This section addresses the two questions posed in Staff's August 14, 2009 e-mail.

Question 1

Q1. Currently the statewide load cap is set at roughly 37% of the tranche target. What are the potential benefits or drawbacks with raising the statewide load cap to roughly 45% of the tranche target? In addition, would raising the statewide load cap also result in the need to raise the EDC specific load caps?

Rate Counsel's Response to Question 1

A1. The potential benefits of raising the statewide load cap to roughly 45% of the tranche target are uncertain. Historically, auction bidders' price-quantity patterns (i.e., the supply curves of each bidder) are not transparent, being known only to the auction manager. Going forward, it is difficult to discern what these may look like until the auction is underway. While there is the potential for larger players in the market to provide incremental resources (beyond the current cap) at prices lower than the highest priced block offered by smaller-sized competitors, at a high level it would seem that the presence of a relatively liquid wholesale market could minimize that possibility. However, price-quantity offer patterns known only to the auction manager may reveal otherwise.

The potential drawbacks include lessening the degree of competition available to serve BGS supply. Unless the auction manager can illustrate how loosening the cap may lead to lower prices, based on previous auction bidding data or some expectation of future auction bidding patterns, we see no reasonable rationale for increasing the statewide load cap at this time. If the Board did raise the statewide load caps,

maintaining the EDC-specific load caps would likely serve as an additional check on anti-competitive pressures – those BGS suppliers providing more supply statewide would have to distribute their supply offers among the four utilities.

Question 2

Q2. Under N.J.S.A. 48:3-87(d) and N.J.A.C. 14:8-2, BGS providers and third party suppliers are required to comply with the Renewable Energy Portfolio Standards. Historically, the Supplier Master Agreement ["SMA"] has required each BGS-FP supplier and each BGS-CIEP supplier to satisfy the Renewable Energy Portfolio Standards with respect to its Supplier Responsibility Share. What are the potential benefits and drawbacks of eliminating this requirement from the Supplier Master Agreement, either with respect to all of the Renewable Energy Portfolio Standards (Solar, Class I, and Class II) or with respect to one or two of those standards?

Rate Counsel's Response to Question 2

A2. Removing the requirement presumably implies placing the requirement on EDCs. Rate Counsel's response is predicated on this presumption. The potential benefit of removing the RPS requirement from the SMA is that BGS auction prices would likely go down, and net costs to consumers in meeting RPS obligations could be lower if EDCs are able to secure better purchasing efficiencies than BGS suppliers for SRECS, Class I RECs and class II RECs. Given that current BGS supply obligations are only for 3 years, and renewable supply lends itself to longer-term contracts given the lack of any future fuel price risk, it is reasonable to assume that increased purchasing efficiencies could be

obtained. Removal of the RPS obligation from BGS suppliers in the SMA means that BGS suppliers no longer need to serve as the "middlemen" for products (e.g., SRECs) that are generally produced by others. EDCs currently are heavily involved in solar programs that lead to SREC generation to meet the solar RPS requirements. EDCs are potentially the best counter party for long-term contracts to support development of, for example, offshore wind resources. Therefore, it is reasonable to consider moving the requirement out of the SMA and onto EDCs in order to meet RPS goals at the lowest cost to ratepayers.

The potential drawbacks of eliminating the requirement are minimal in the longer-term. While short-term transition issues will likely present some challenges to EDCs, as BGS suppliers have been responsible for this attribute of power for some time now, the EDCs have sufficient resources and a sophisticated understanding of the regional market, and will be able to successfully transition to a somewhat new paradigm for renewable energy purchasing.

Section III

Standard Offer/BGS-Like Procurement in Other States: Update on Recent Activity

In this section, Rate Counsel presents an update of the status of procurement for "standard offer" or BGS-like procurement in several Northeastern and PJM states. These findings continue to illustrate that other states have complemented short-term procurement practices for small customers with long-term contracting mechanisms, particularly, but not solely, for renewable resources.

Connecticut utilities have issued RFPs for longer-term contracts of three to twenty years for standard offer service (SOS) supply. Two-year contracts for SOS supply have recently been procured by Illinois utilities, and three, 12, and 24-month contracts have been approved in Maryland. In addition, new legislation that requires procurement of long-term contracts with renewable energy source suppliers has been passed in Rhode Island and is awaiting governor approval in Illinois. Delaware now has both onshore (170 MW total) and offshore (200 MW total) long term wind contracts in place between developers and utilities.

Rhode Island

In June 2009, Governor Carcieri of Rhode Island signed legislation requiring National Grid to enter into long-term contracts with an offshore wind project and other renewable energy projects.[3] The legislation requires that each year, starting in July of 2010, the electric distribution company (EDC) solicits proposals for capacity, energy,

[3] State of Rhode Island, H5002, available at http://www.rilin.state.ri.us/BillText09/HouseText09/H5002.pdf.

and attributes from "newly developed" renewable energy projects.[4] The contracts must be 10 to 15 years in duration, or longer, if the Public Utility Commission (PUC) approves. The procurement process will be designed by the EDC and approved by the PUC.

The EDC must have a long-term contract within four years of the first solicitation, and contracts must be approved by the PUC. The minimum long-term contract capacity for the contract is 90 MW, 3 MW of which must be from solar or photovoltaic projects located within the state of Rhode Island. The legislation outlines a four-year phased schedule wherein an additional 25 percent of the minimum long-term contract capacity is to be met each year between 2010 and 2013.

In addition, by August 15, 2009, the EDC must solicit proposals for one newly developed renewable energy resource project of 10 MW of less. The EDC must file a contract with the PUC by October 15, 2009, and the PUC must rule on it by December 31, 2009. These proposals must include provisions for a transmission cable between the town of New Shoreham, RI and the mainland of the state. The EDC may chose to own, operate, or otherwise participate in the transmission cable project, and has the option to decline to participate as well.

In September of 2008, the Governor announced the certification of Deepwater Wind as the state's offshore wind project developer.[5] Under the new legislation, this

[4] A "newly developed" renewable energy resources are defined as "electrical generation units that use exclusively an eligible renewable energy resource, and that have neither begun operation, nor have the developers of the units implemented investment or lending agreements necessary to finance the construction of the unit; provided, however, that any projects using eligible renewable energy resources and located within the state of Rhode Island which obtain project financing on or after January 1, 2009, shall qualify as newly developed renewable energy resources…" (*Ibid*).

[5] State of Rhode Island Office of the Governor, "Carcieri Names Deepwater Wind as Developer for Rhode Island's Off-Shore Wind Farm," Press Release, September 25, 2008, available at http://www.ri.gov/GOVERNOR/view.php?id=7202.

certification allows Deepwater Wind (or any other "utility scale" offshore wind project certified by the Administration) to file an application for approval with the PUC. If the PUC approves the application, the EDC will be required to enter into a contract of at least 10 years with the wind developer. This contract will not be counted toward the EDC's minimum long-term contract capacity requirement of 90 MW described above.

Illinois

In September 2008, the Illinois Power Agency (IPA) filed its first procurement plan, using competitive RFPs, for standard wholesale energy products with the Illinois Commerce Commission (ICC). This procurement plan called for reliance on relatively short-term contracting periods of up to three years and a single annual procurement.[6] Contracts of up to 40 years in duration are allowed under Illinois law.[7]

Procurement began in the spring of 2009 for energy, capacity, and RECs, and contracts were approved by the Commission in May. All contracts are for two years- June 2009 through May 2011. The procurement resulted in average winning prices that were substantially lower than the average winning prices in 2008. The bid monitor commented that the lower prices and the increased number of winners are evidence of the competiveness of the RFPs.[8]

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[6] State of Illinois, Illinois Commerce Commission, Docket No. 08-0519, available at http://www.icc.illinois.gov/docket/casedetails.aspx?no=08-0519.

[7] The Illinois Public Utilities Act, §16-111.5, available at http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1277&ChapAct=220%26nbsp%3BILCS%26nbsp%3B5%2F&ChapterID=23&ChapterName=UTILITIES&ActName=Public+Utilities+Act.

[8] Boston Pacific Company, Inc. Comments on the 2009 Procurement Process Pursuant to Section 16-111.5(o) of the Public Utilities Act, June 1, 2009, available at http://www.icc.illinois.gov/electricity/procurementprocess2009.aspx.

In June 2009, Bill SB2150 passed the Illinois General Assembly and is now awaiting Governor approval.[9] This legislation creates a Renewable Energy Resources Fund to be administered by the IPA and used to procure renewable energy resources. The legislation calls for procurement to take place at least once a year, and, whenever possible, to result in long-term contracts. [10] The bill also amends the Illinois procurement code process in a number of ways, including that all contracts must be awarded by competitive sealed bidding.

SB2150 also includes requirements for a clean coal portfolio standard. Under the bill, an application for designation as an "alternative retail electric supplier" must include a proposal for an agreement with a clean coal facility that meets specified criteria. The ICC can revoke the certification of any alternative energy supplier if it fails to execute such an agreement.[11]

Delaware

Delmarva Power & Light (DPL) has long-term contracts in place for both offshore and onshore wind generation. These wind power contracts complement DPL's short-term auction purchases, however, the Delaware Public Service Commission (PSC) is currently considering a directive for DPL to enter into a long-term contract with a clean fossil plant. Delmarva Power's current Integrated Resource Plan calls for commencement of a transition to a "managed portfolio" plan to complement the use of

[9] Illinois General Assembly, SB2150, available at http://www.ilga.gov/legislation/billstatus.asp?DocNum=2150&GAID=10&GA=96&DocTypeID=SB&LegID=45077&SessionID=76.
[10] Illinois General Assembly, SB2150, §1-56, Illinois Power Agency Renewable Energy Resources Fund.
[11] Illinois General Assembly, SB2150, §1-75(d), Clean Coal Portfolio Standard.

"full requirements service" currently purchased for short-term time frames using a reverse auction process similar to New Jersey's.

Connecticut

Electric utilities in Connecticut are required to submit plans to the Department of Public Utility Control (DPUC) for procuring supply for standard offer service in a portfolio of contracts with overlapping, fixed terms.[12]

On May 18, 2009, United Illuminating (UI) issued an RFP for SOS supply contracts that are greater than three and less than 20 years in duration.[13] The RFP is an open invitation to negotiate, and there are no formal deadlines for interested parties to meet. UI also issued an RFP for renewable energy credits (RECs) under four to ten year contracts. UI expects to complete the RFP process by the end of summer 2009.[14]

The contract terms for both energy and RECs should commence in January 2011. UI's pursuit of long-term contracts is responsive to DPUC decisions issued in 2008 that concluded that long-term contracts may be used to supply SOS service and that contracts under 15 years may be used, but are not required, to procure RECs.[15] UI currently intends to achieve a "reasonable level" of supply diversity rather than procure a full 20 percent

[12] Connecticut General Assembly, Chapter 238 Department of Public Utility Control: Telegraph, Telephone, Illuminating, Power, and Water Companies, §16-244c, Standard Offer, available at http://search.cga.state.ct.us/dtSearch_lpa.html.

[13] The United Illuminating Company, Request for Proposals and Invitation to Negotiate, Phase I, May 18, 2009, available at http://www.uinet.com/uinet/connect/UINet/Power+Procurement/RFP+for+Long+Term+Contracts/.

[14] The United Illuminating Company, RFP for Long-Term Contracts, Questions and Answers, updated July 22,2009, available at http://www.uinet.com/uinet/connect/UINet/Power+Procurement/RFP+for+Long+Term+Contracts/.

[15] State of Connecticut Department of Public Utility Control Decision, Docket Nos. 07-06-58 and 06-01-08RE (long-term contracts), April 2, 2008, available at http://www.uinet.com/uinet/resources/file/ebd75c054d7fe8e/060108RE01-040208.pdf; DPUC Decision, Docket No. 07-06-61 (RECs), July 30, 2008, available at http://www.uinet.com/uinet/resources/file/ebd760054da2d45/Decision%20in%20Docket%20070661.pdf.

from a single counterparty, as allowed by the DPUC. [16] The minimum transaction size that UI will consider is 10 megawatts.[17]

Connecticut Light & Power (CL&P) also issued an RFP for Standard Service (SS) and Last Resort Service (LRS) supply in March of 2009. The SOS bid winners will provide a fixed, specified percentage of CL&P's SOS load between July 1, 2009 and December 12, 2012. The winning LRS bidder will supply a fixed, specified percentage of CL&P's LRS requirements under a thirteen-month term from July 1, 2009 to July 30, 2010. The solicitation resulted in procurement of 11.4 percent of CL&P's residential SS load, 61.8 percent of business SS load, 83.8 percent of business LRS load, and 45.8 percent of total territory load. This energy is provided by 28 suppliers. [18]

In 2007, the DPUC issued a decision on the state's need for 500 MW of peaking generation to be obtained through long-term, cost of service regulation.[19] On June 25, 2008, the DPUC selected three peaking generation projects for a total of 678 MW, including a 200-MW peaking power plant proposal made by a joint venture of UI and NRG, a merchant generator.[20]

In addition to the 678 MW of new peaking generation purchased, the DPUC also paid grant money for distributed generation projects, and in July 2009, approved 24MW

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[16] The United Illuminating Company, RFP for Long-Term Contracts, Questions and Answers, updated July 22,2009.
[17] *Ibid*.
[18] The Connecticut Light & Power Company, Compliance Filing for Docket No. 06-10-22, May 30, 2009, available at http://www.cl-p.com/datafeed/wholesale.aspx.
[19] CT DPUC, Docket 07-08-24, available at http://www.ctenergyinfo.com/dpuc_peaking_generation.htm.
[20] CT DPUC, Docket No. 08-01-01, available at http://www.dpuc.state.ct.us/dockhist.nsf/Web+Main+View/Search+Electric?OpenView&StartKey=08-01-01.

of natural gas and renewable distributed generation.[21] The utilities' 2009 Integrated Resource Plan (IRP), which governs the procurement process, did not support any additional new generation procurement.[22] Modeling for the 2010 IRP is underway and will determine if additional generating resources will need to be purchased.

Maryland

In April and June of 2009, the Maryland utilities completed SOS supply procurement for bilateral contracts through an RFP process, and the contracts were approved by the Public Service Commission. All contracts were for 3, 12, and 24-month terms.

Pursuant to Section 7-510(c)(4)(ii)(5) of the Maryland Public Utilities Code, the public utilities have made the results of the April 2009 publically available on their web sites[23]:

- Delmarva procured 25 percent of its residential load from two suppliers and 100 percent of its type II non-residential load from one supplier;
- PEPCO procured 25 percent of its residential load from four suppliers and 100 percent of its type II non-residential load from three suppliers;
- BGE procured 25 percent of its residential load from four suppliers, 25 percent of its type I non-residential load from one supplier, and 100 percent of its type II non-residential load from four suppliers;

[21] *See* CT DPUC, "DPUC:DG," http://www.ct.gov/dpuc/cwp/view.asp?a=3356&q=419794, downloaded August 7, 2009.

[22] Connecticut Energy Advisory Board, 2009 Comprehensive Plan for Procurement of Energy Resources, May 1, 2009, available at http://www.dpuc.state.ct.us/DOCKCURR.NSF/0/def2b1174cc7ada2852575ac0060027b/$FILE/2009%20CEAB%20Procurement%20Report%20Final1.pdf; The Brattle Group, Integrated Resource Plan for Connecticut, January 1, 2009, available at http://www.ctenergy.org/pdf/2009IRPEDCFINAL.pdf.

[23] Pepco Holdings, Inc., "Maryland SOS Public Disclosure Information," http://www.pepcoholdings.com/business/suppliers/sos/disclosure/; BGE, "Auction Results," http://www.bge.com/portal/site/bge/menuitem.dff8c30cc1fa2858047eb471016176a0; Allegheny Power, "RFP," http://www.alleghenypower.com/RFP/Maryland/PreviousSolicitationResults.asp (downloaded August 7,2009).

- Allegheny Power procured 20.1 percent of its residential load from a single supplier, and procured 100 percent of its type II non-residential load from two suppliers.

The June 2009 results have not yet been posted.

The bid monitor reported no difficulties in the June 2009 procurement: the regulatory price anomaly threshold (PAT) did not come into play as it did in the October 2008 procurement, and bidder response was improved over the April auction. 1245.2 MW of SOS supply were procured in June.[24]

CONCLUSION

In sum, it is Rate Counsel's position that the creation of a Portfolio Manager could expand BGS-FP service to include, if economically attractive, a wider range of resource options than is currently available. A Portfolio Manager could take advantage of opportunities in the evolving energy markets and leverage the market to, hopefully, mitigate price increases and volatility for New Jersey's BGS ratepayers.

[24] Direct testimony of Richard Mazzini, The Liberty Consulting Group (bid monitor), Maryland PUC Case Nos. 9056 and 9064, June 11, 2009.