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October 13, 2017

STEFANIE A. BRAND
Director

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 Final 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 as modified by the Board Secretary's letter dated August 9, 2017, 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
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By: *Diane Schulze*

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

**I/M/O the Provision of Basic
Generation Service for the Period
Beginning
June 1, 2018**

BPU Docket No. ER17040335

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

Final Comments of the Division of Rate Counsel

October 13, 2017

The Division of Rate Counsel (“Rate Counsel”) is pleased to provide these Final Comments to the Board of Public Utilities (the “Board” or “BPU”) pursuant to the Secretary’s letter dated August 9, 2017 in *I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2018*. (“Notice of a Public Meeting”).

In our Initial Comments filed on September 6, 2017 Rate Counsel noted that the Electric Distribution Companies (the “EDCs”) had proposed two significant changes to the BGS procurement process. First, the EDCs recommended that the Board modify the Supplier Master Agreements (“SMA”) to allow for payment to BGS suppliers for PJM-cost reallocations and other transmission rate adjustments prior to receiving a Final FERC Order.¹ Second, the EDCs proposed to modify the decrement formula for the BGS-CIEP Auction “to complement the higher load cap that was implemented in the 2016 Auction.”² In our Initial Comments, at the legislative-type hearing, and again with this filing Rate Counsel urges the Board to reject the EDCs’ proposals to pay BGS suppliers for changes in transmission costs prior to the issuance of a Final FERC Order. In addition, Rate Counsel cannot support the EDCs’ proposed change to the decrement formula because Rate Counsel has not yet been provided the additional information requested in our Initial Comments.

¹ Joint Filing, IV.C.3, Page 15.

² Joint Filing, VII, Page 26.

II. Discussion

a. Proposed Modification to Section 15.9 of the SMA

As discussed in Rate Counsel's Initial Comments, and at the legislative-type hearing, the EDCs have requested Board authorization to modify the SMA to allow payments to BGS suppliers for changes in transmission rates prior to the issuance of a FERC Final Order. The EDCs further requested that Section 15.9 of the SMA be expanded to include instances where "PJM implements a transmission cost allocation or other change that effectively increases or decreases costs" for BGS suppliers.³ At the legislative-type hearing, the Independent Energy Producers of New Jersey ("IEPNJ") spoke out in support of this proposed modification, arguing that if the Board did not approve the proposed modification, BGS suppliers "will put a price premium in their bid to reflect the carrying cost of paying these FERC charges."⁴ Rate Counsel urges the Board to reject this proposed modification to the SMA. It is not the threat of a risk premium in a competitive auction that concerns Rate Counsel so much as the concern that excess payments made to BGS Suppliers would not be returned to ratepayers in a timely manner, if at all.

In previous attempts to modify Section 15.9 of the SMA the Board has considered ratepayer impact and the harm of adding complexity to an already complex process. For example, in the 2015 BGS Auction proceeding, the Board rejected the proposed modification to the SMA, finding that Section 15.9 of the SMA is "a well-crafted balance" that "provides for a reasonable means of compensating BGS suppliers for unhedgeable costs approved in advance by the Board."⁵ In 2012, the Board rejected a similar proposal

³ Supplier Master Agreement, Section 15.9.

⁴ Testimony on Behalf of IEPNJ, p.3.

⁵ I/MO the Provision of BGS Service for the period Beginning June 1, 2015, BPU Docket No. ER14040370 p. 26, (Nov. 24, 2014).

made by the Joint Suppliers Group, finding that the Joint Suppliers Group had “provided no factual basis that the proposal would provide any benefit to ratepayers, and as proposed, would only add complexity to the BGS procurement process.”⁶ Thus the Board expressly recognized additional complexity and harm to ratepayers as two factors supporting its rejection of the Joint Suppliers Group’s proposal. Similarly, in the instant proceeding, the EDCs’ proposal benefits BGS suppliers with no benefit to BGS customers and adds the complication of requiring the EDCs to seek refunds from BGS suppliers when a Final FERC Order for a lower rate increase makes this necessary.

In fact, Rate Counsel has found only two instances since 2003 where the Board has modified the SMA Section 15.9. The first was in 2004 when the Board modified the language to allow for the pass through of transmission rate decreases as well as increases, a definite benefit to ratepayers.⁷ Subsequently, in 2011, the Board adopted an EDC proposal to change Section 15.9 of the SMA to address a then pending transmission cost re-allocation remand to FERC.⁸ In that proceeding, the EDCs proposed to modify the definition of a Final FERC Order and to change the language in Section 15.9 to “to reduce uncertainty as to when a FERC Order is considered final for purposes of payment of charges collected from BGS customers to BGS Suppliers.”⁹ The EDCs proposed to offer this modification to BGS Suppliers under both prior and existing SMAs “which would also facilitate payments to, and thereby benefit, those suppliers.”¹⁰ At that time, the EDCs agreed that ratepayers would not be harmed from payment since no decrease in the charge was expected from any decision in the pending case. While the EDCs proposal did not

⁶ I/M/O the Review of the Basic Generation Procurement Process, BPU Docket No. ER12020150.

⁷ I/M/O the Provision of BGS Service for Year Three of the Post-Transition Period, BPU Docket No. EO04040288, (Dec. 1, 2004).

⁸ I/M/O the Provision of BGS for the Period Beginning June 1, 2012. Nov. 9, 2011

⁹ *Id.* at 9.

¹⁰ *Id.*

directly benefit ratepayers, there was at least the recognition that ratepayers would not be harmed.

In the instant proceeding, the EDCs have again proposed a change to Section 15.9 of the SMA to benefit BGS suppliers, this time with no promise that ratepayers would not be harmed. Indeed, it is Rate Counsel's position that ratepayers could be harmed by the implementation of this change. As argued in our Initial Comments and at the legislative-type hearing, in the event FERC approves a lower increase or no increase at all, the EDCs would then be charged with collecting over-payments from current and former BGS suppliers. Not only does this add complexity to an already complex process but it is entirely possible that former BGS suppliers are no longer available to recover over-payments from. The Board has previously rejected proposed modification to the SMA Section 15.9 recognizing a need to show some ratepayer benefit – or at least no ratepayer harm – in modifying Section 15.9. The EDCs proposal to pay BGS suppliers for changes in transmission rates prior to a Final FERC Order benefits BGS suppliers to the detriment of BGS customers. This proposal offers more complex processing and the elimination of an important ratepayer protection with no ratepayer benefit solely to accelerate payments to BGS suppliers. The Board should reject this proposed modification to the Supplier Master Agreement.

CIEP Decrement Formula

As noted in our Initial Comments, Rate Counsel is unable to support the proposed change to the BGS CIEP decrement formula without additional information. To date, the EDCs have not provided sufficient reasons for this change, nor have they provided a quantification of the proposed change. Without more information as to the impact of this proposed change on the auction participants and on BGS CIEP customers 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.
