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October 5, 2020

Via Electronic Mail

Ms. Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625
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**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 final 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
T. David Wand, Esq.
Assistant Deputy Rate Counsel

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**

Final Comments of the Division of Rate Counsel

October 5, 2020

I. Introduction

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 Procedural Order dated March 27, 2020 in this proceeding.

In Rate Counsel's initial comments filed on September 4, 2020 ("Initial Comments"), Rate Counsel noted that the State's Electric Distribution Companies (the "EDCs") had proposed a significant change along with some additional amendments to the Basic Generation Service ("BGS") procurement process.¹ The EDCs recommend that the Board approve modification to the auction process so that EDCs will be responsible for transmission-related costs that are currently the responsibility of the BGS suppliers.²

In Rate Counsel's Final Comments, Rate Counsel responds to Direct Energy's Initial Comments regarding the ability of consumers to compare Third Party Supplier ("TPS") rates with BGS rates if transmission costs are removed from the BGS product.³ Direct Energy recommends that the Board remove Transmission associated costs for TPS providers.⁴ Additionally, Rate Counsel also comments on Commissioner Upendra Chivukula's inquiry at the September 11th Legislative-type Hearing regarding changes to existing Supplier Master Agreements ("SMAs") and the impact that it might have on the perception of the BGS market. Further, Rate Counsel submits comments in response to NERA's statement during the September 11th Legislative-type Hearing regarding the implementation of the February 2021 BGS Auction in light of Covid-19 restrictions. Finally, Rate Counsel comments on the EDCs' proposal to include Capacity Price

¹ Rate Counsel Initial Comments at 1 (Sept. 4, 2020).

² EDC's Joint Filing at 6 (July 1, 2020).

³ Direct Energy Initial Comments at Page 1 (Sept. 4, 2020).

⁴ Id. at Page 2.

proxies 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. This is consistent with the EDC's treatment of unknown capacity prices in last year's BGS auction.

II. Discussion

A. NERA and Auction Process

During the Board's Legislative-Type Hearing, NERA, the company who oversees the BGS auction, noted that the February 2021 auction may need to be conducted remotely due to Covid-19 restrictions. Should this be the case, the auction would be the first one to be held remotely. While the auction already takes place digitally, bidders connecting from home office connections may not experience the stability associated with office setting connections. As such, Rate Counsel recommends that NERA provide additional training to prospective bidders and that the mock auctions test BGS bidders' home office connectivity in order to have seamless auction in February.

B. Resource Adequacy

As noted in the Initial Comments, Rate Counsel strongly believes that the BGS auction was not intended to explicitly transform the state energy mix. Rate Counsel has and continues to advocate that the intent of the BGS process is to provide stable and affordable default service to consumers who do not choose to shop for electricity from third party suppliers. Rate Counsel appreciates the Board's efforts to address the complexities surrounding Resource Adequacy and the state's clean energy goals. While the BGS auction should be part of the state's strategy to meet policy objectives, Rate Counsel believes that the BGS auction process should not be the main mechanism for the state to meet its clean energy goals. Any impact on the BGS auction resulting from the current Resource Adequacy Proceeding should not be allowed to undermine the Auction's primary purpose.

C. Proposed Elimination of Transmission Rates from Future BGS Bids

Rate Counsel incorporates by reference its Initial Comments and the testimony of Litigation Manager Brian Lipman delivered at the Board's September 11, 2020 Legislative-Type Hearing. All of the commenters at the Board's Legislative-Type Hearing were supportive of the elimination of transmission rates for this and future auctions. Rate Counsel agrees that the removal of transmission rate payment timing uncertainty may result in attracting more potential bidders into the BGS process and may result in the elimination of risk adders that suppliers may have included in previous auction bids, when the timing of payments from EDCs was less certain due to the unknown timing of Federal Energy Regulatory Commission ("FERC") final decisions. The increase in the number of potential bidders and the removal of risk adders may result in lower bid prices for consumers. That said, Rate Counsel continues to have concerns about amending past SMA's as set forth fully below under paragraph D.

D. Proposed Change in SMA language for Prior Auctions

In Rate Counsel's Initial Comments, we opposed modification to existing SMAs. During the Legislative-type hearings, Commissioner Chivukula also commented on the impact of the proposed change on existing contracts. Rate Counsel continues to be concerned that changing existing contracts may have the unintended consequence of introducing regulatory uncertainty for potential bidders. While the current proposed change to existing SMAs benefits BGS suppliers, there may be some point in the future that a proposed change in the SMA would be to the detriment of BGS Suppliers. A perception that existing SMAs can be changed fairly easily may introduce further risk for the suppliers that will be reflected in their bids. Further, the same concerns that may warrant a change to the 2021 BGS SMA are not applicable to existing SMAs, because the impact, if any, on bidding behavior in prior auctions has already occurred and would not be remedied by a change to the SMA terms. Rate Counsel accordingly does not recommend

that the Board change existing SMAs to remove transmission costs, but rather make any change prospectively.

E. Third Party Suppliers

In its Initial Comments, Direct Energy expressed concerns that TPSs may be disadvantaged if the BGS product eliminated transmission related costs, because consumers who are interested in shopping for electric generation currently use “the price to compare” which is based on the BGS supplier price, including transmission.⁵ At issue is not the amount of transmission costs, since those costs have been already determined by PJM, it is more a matter of the timing of the payments collected by EDCs for transmission costs, and the associated financial costs associated with the lag in the payment timing. Rate Counsel agrees that the TPS price and BGS price to compare should be an apples-to-apples comparison so that consumers can make informed choices when shopping for a supplier. Therefore, adding the transmission cost incurred by the EDC to the BGS cost on a kwh basis should provide a useable price to compare that will assist with the apples-to-apples comparison that consumers wishing to shop need to make informed choices.

Rate Counsel is opposed to Direct Energy’s recommendation that the Board remove transmission costs for TPS to mirror the BGS supplier prices at this time. The TPS prices are not regulated, and TPSs provide a different product for their customers. The removal of transmission costs for TPS providers may result in unintended consequences for the BPU and ratepayers and may have legal impediments. For example, if the Board orders all transmission related services to be provided by the EDCs throughout the State, it is unclear what will happen to an existing multi-year TPS supply agreement that includes the transmission component. The Board’s jurisdiction to make such a change to existing contract must be addressed as well. A smooth transition is paramount to maintain the integrity of the market. In addition, not all TPS in the

⁵ Id. at 1.

state are represented in the BGS proceeding. If the Board wishes to explore taking the transmission component out of the TPS product offering and transferring that obligation to the EDCs, a proceeding should be initiated to open a broader inquiry with all interested parties invited to participate.

F. Setting Capacity Proxy Price for 2022/23 and 2023/24 Delivery Years

Rate Counsel supports extending the EDC's capacity price proxy for the 2022/23 and 2023/24 Delivery Years in the absence of PJM Base Residual Auctions ("BRA") that have been suspended. At this time no one knows exactly when PJM will resume the suspended auctions. The EDCs proposal to extend the capacity proxy price from last year's proceeding appears to be a reasonable solution to provide bidders with certainty. The use of the capacity proxy price keeps bidders from padding their bids to hedge against unknown capacity prices. This should result in more competitive bids from suppliers.

III. Conclusion

Based on the foregoing, Rate Counsel recommends that NERA prepare for the possibility of home office accommodations for the February 2021 auctions. In addition, Rate Counsel recommends that the BGS not be used as the main driver to reach the Board's Resource Adequacy goals. Rate Counsel respectfully requests that the Board accept, at this time, the EDCs' proposal to remove transmission-related costs from the BGS product in future SMAs. However, Rate Counsel recommends that the Board not alter existing agreements as it will create regulatory uncertainty and is not necessary to address any bidding behavior going forward. Rate Counsel recommends that the Board ensure that the price to compare between BGS and TPS rates are apples-to-apples, by including the transmission cost incurred by the EDC to the BGS cost on a kwh basis on customers' utility bills. Finally, Rate Counsel agrees with the EDCs proposal to

include a proxy capacity price for the 2022/23 and 2023/24 capacity auctions in lieu of the BRA that has yet to occur.

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