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**I/M/O the Provision of Basic Generation Service
(BGS) For the Period Beginning June 1, 2014
BPU Docket No. ER13050378**

Initial Comments of the Division of Rate Counsel

August 30, 2013

The New Jersey 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 2014 BGS procedural schedule established by Board Order dated May 29, 2013 in I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2014, (“2014 BGS Procedural Order”).

Rate Counsel will focus on three areas in these initial comments: (a) the effect of the Board decision to lower the CIEP threshold in the BGS Review Proceeding,¹ (b) the issue of the BGS administrative costs, and (c) Rockland Electric Company’s (“Rockland”) proposal for procuring the supply requirements for its non-PJM service area within New Jersey. Additionally, Rate Counsel incorporates by reference Rate

¹ I/M/O the Review of the Basic Generation Service Procurement Process, BPU Docket No. ER12020150, June 18, 2012, page 11 (“BGS Review Proceeding”)

Counsel's previously filed comments on the issue of JCP&L's recent rating agency downgrade for further discussion on ringfencing.²

² I/M/O the Provision of Basic Generation Service ("BGS") Pursuant to the Electric Discount and Energy Competition Act – Determination on Creditworthiness Requirements for Jersey Central Power and Light Company, BPU Docket No. EO13080721 (the "Creditworthiness proceeding")

a. Lowering the CIEP Threshold

It has long been Rate Counsel’s position that there is no particular benefit to be gained by moving smaller business customers from the stability of the three-year fixed price BGS-FP product onto the volatility of real time pricing. Seemingly, small business owners are in the best position to determine for themselves whether it makes economic sense to switch to a third party supplier and many have chosen to do so. However, the Board has chosen to make this decision for some smaller business owners and has forced these customer to assume the task and to manage the risks of the energy markets rather than giving these smaller business owners the option to choose the service that best fits their business.

As of June 1, 2013, customers with a Peak Load Contribution of 500 kw or more are required to take service under a BGS-CIEP tariff or rate. In lowering the CIEP threshold, the Board speculated that “[e]xposing the class of customers above 500 kw peak load share to hourly or real-time pricing will allow these customers to make more informed decisions to shop, conserve, become more efficient, or even curtail or shift load usage at times of peak demand.”³

It is now time to assess whether smaller use customers have in fact efficiently and effectively managed their energy usage as envisioned by the Board. As noted in the Board’s Order in the Review Proceeding:

RESA asserts that real-time pricing provides customers with the price signals and incentives they need to take advantage of various energy products and services offered by different energy providers. RESA believes that the best way to expand the use of real-time pricing is to lower the BGS-CIEP threshold RESA recommends that the Board seek

³ Id., page 11.

feedback on the CIEP threshold during the BGS auction proceeding each year in order to receive stakeholder input through comments and legislative-type hearings. According to RESA, the Board can garner information, inclusive of up-to-date, to make an informed decision on a future lowering of the CIEP threshold that is gradual, orderly, and structured to enable a greater number of customers to access the value-added products and services provided by competitive retail suppliers.⁴

Rate Counsel agrees that the Board would be well served to fully investigate the impact of its decision to lower the CIEP threshold. While at this point in time there is little actual experience with the lowered threshold it is not too early for the Board to establish a process to determine how smaller business owners are reacting to the new challenge of managing energy usage and markets. The Board should solicit information not just from the retail suppliers but from the customers affected by the Board's mandate. In addition, a thorough cost benefit analysis should be undertaken. Accordingly, Rate Counsel urges the Board to establish a formal review process in an effort to better understand whether the move to real-time pricing was beneficial to customers.

Rate Counsel would also like to comment briefly on the issue the BGS-FP three-year laddered contract.

The current BGS-FP service offers customers mitigation of the risk of price volatility through the use of three-year laddering and fixed price offerings throughout the term of the contract. In comparison to a one-year or shorter term contract, the three-year term provides stability to residential and to smaller commercial and industrial customers that are unable to, or unwilling to, manage the risk that arises from price volatility. Indeed, in the previous BGS proceeding, RESA's representatives admitted at the hearing that one of the reasons that RESA supports more frequent procurements is that then

⁴ Id.

RESA's members could offer products that would mitigate such volatility. It is not in the public interest to force these risks onto ratepayers so that they may simply turn around and pay suppliers to eliminate these risks.

Moreover, stable, predictable, and affordable prices for essential electricity service are particularly important for seniors, low-income customers and small businesses. Such customers cannot respond to significant changes in the price for electricity because they only use a relatively small amount of electricity and they rely on fixed or limited incomes that require careful budgeting to meet their needs.

In sum, Rate Counsel believes that it is essential that the process for procuring Basic Generation Service is managed with the concerns of customers foremost in everyone's mind. The process must be administered to assure affordable and stable electricity prices for residential customers. The goal must be the lowest price for BGS-FP supply with reasonable price stability over the term of the procurement plan for this service. The driving force for making any change to the current BGS procurement process should flow from an analysis that demonstrates that a proposed change will result in lower prices for BGS customers. Proposals for a lower CIEP threshold and for more frequent, shorter term FP contracts do not meet this standard and should be rejected by the Board.

b. BGS Administrative Expenses

In responses to discovery provided by the EDCs in this proceeding, it was acknowledged that BGS Administrative Fees, recovered from ratepayers, include certain legal costs associated with the BGS patent claim defense. In fact, PSE&G, in its March

21, 2013 filing with the Board, claimed over \$200,000 paid in 2012 to Stroock, Stroock & Lavan, LLP, the law firm “which maintains the BGS auction model patent and defends against claims that the BGS auction model infringes certain of third party patent rights.”⁵ JCP&L in 2012, in addition to paying NERA fees of \$474,788.50 paid close to \$75,000 to Stroock, Stroock & Lavan. Similarly, Rockland Electric Company replied that BGS Administrative fees were comprised of (1) NERA fees, (2) New Jersey Treasury Department fees and (3) legal fees paid to Stroock, Stroock and Lavan. It is unclear exactly how much New Jersey BGS customers have paid over the years to protect the BGS auction patent but Rate Counsel suggests that this issue deserves the Board’s attention. Accordingly, Rate Counsel requests that the Board direct the EDCs to provide the Board and Rate Counsel with the total amount of BGS auction patent legal fees paid to date and the legal basis for the recovery of these fees from ratepayers.

Secondly, although Rate Counsel did not receive a copy of the Atlantic City Electric (ACE) BGS Administrative costs filing, as noted in previous comments, ACE has acknowledged including internal labor costs in the BGS Administrative fees charged to BGS customers. According to the BGS Administrative Cost filings made by the other EDCs earlier this year, ACE is the only EDC to do so. Rate Counsel recommends that the Board direct ACE to discontinue charging internal labor costs through the BGS Administrative fee. BGS administrative costs charged to customers should be consistent among the four EDCs. Accordingly, ACE should be directed to stop including internal labor costs in its BGS Administrative costs. Rate Counsel suggests that the Board should

⁵ IM/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2013, BPU Docket No. ER12060485, PSE&G submission dated March 21, 2013.

make clear exactly what expenses can be flowed through to ratepayers as BGS Administrative costs.

c. Rockland Non-PJM Supply

In December 2012, in order to hedge for electric supply for its non-PJM areas, RECO issued an RFP for four separate financial swaps pertaining to the energy and capacity requirements for RECO's Central and Western divisions. The auction for these swap arrangements failed to attract the necessary number of bidders. Accordingly, the Board directed Rockland to file a proposal to remedy the failure of the RFP to obtain the intended energy and capacity swap agreements.

On January 4, 2013, Rockland filed with the Board a proposal to conduct an auction soliciting competitive bids from qualified bidders for "fixed for floating" financially settled NYMEX futures for an energy tranche and for an Unforced Capacity (UCAP) tranche.⁶ At that time, Rockland proposed to conduct this auction for both the energy and the UCAP transaction annually going forward with the terms of these transactions corresponding to those of the BGS years (i.e., June 1 through May 31). By Order dated March 20, 2013, the Board approved Rockland's proposal with modifications. The Board directed Rockland to file a revised proposal for procuring the supply requirements for its non-PJM service area as part of its 2014 BGS filing.

⁶ I/M/O the Provision of Basis Generation Service for the Period Beginning June 1, 2013 – Rockland Electric Company's Request for Proposal, BPU Docket No. ER12060483, Decision and Order, March 20, 2013.

In its July 1, 2013, Company Specific Addendum for the 2014 BGS auction, Rockland proposed to conduct an auction similar to the auction proposed in its January 4, 2013 filing for its energy tranche. According RECO, at the end of the auction, RECO will evaluate the bids and recommend to the Board for approval those proposals which are in the best economic interest of RECO's BGS customers.

However, because of recent developments in the NYISO capacity market, RECO will not be able to conduct such an auction for its capacity requirement. Therefore, RECO proposes to purchase the capacity needs of BGS customers located in its Central and Western Divisions in the NYISO monthly capacity market and to blend its forecast of those prices into the BGS-FP price. According to RECO, because the Central and Western Divisions constitute less than ten percent of RECO's BGS load, and because the impact of the forecasted prices would be further diluted by the three-year nature of the BGS product, the impact of these capacity purchases on total BGS prices should be minimal. RECO will make a monthly compliance filing with the Board reporting the actual prices paid from the NYISO market.

Rate Counsel does not object to this proposed procedure.