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TRENTON, NJ

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

In the Matter of the Provision of Basic Generation Service
for the Period Beginning June 1, 2019

Docket No. ER18040356

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Trenton, New Jersey 08625-0350

Dear Secretary Camacho-Welch:

On behalf of Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company (collectively, the "EDCs"), enclosed for filing please find Final Comments in the above-referenced matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joseph A. Shea, Jr.", written in a cursive style.

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**IN THE MATTER OF THE PROVISION OF
BASIC GENERATION SERVICE FOR THE
PERIOD BEGINNING JUNE 1, 2019**

**BPU Docket No.
ER18040356**

**ATLANTIC CITY ELECTRIC COMPANY,
JERSEY CENTRAL POWER & LIGHT COMPANY,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
AND
ROCKLAND ELECTRIC COMPANY**

JOINT FINAL COMMENTS

October 12, 2018

On behalf of Atlantic City Electric Company (“ACE”), Jersey Central Power & Light Company (“JCP&L”), Public Service Electric and Gas Company (“PSE&G”), and Rockland Electric Company (“RECO”) (collectively, the “EDCs”), these Final Comments (original and ten copies) are submitted to the New Jersey Board of Public Utilities (the “Board” or “BPU”).

On June 29, 2018, the EDCs filed a joint proposal (“Joint Proposal”) for an auction process for the provision of Basic Generation Service (“BGS”) for the period beginning June 1, 2019. The Division of Rate Counsel (“Rate Counsel”), Hartree Partners, LP (“Hartree”), and Exelon Generation Company, LLC (“ExGen”) filed Initial Comments. Rate Counsel, the Independent Energy Producers of New Jersey (“IEPNJ”), Direct Energy Business LLC and its affiliates (“Direct”), as well as the EDCs, made oral presentations to the Board at its legislative-type hearing held on September 28, 2018 (the “Hearing”).

The EDCs address comments made by other parties below. The EDCs respectfully request that the Board approve the Joint Proposal, as well as approve the rate design, accounting, cost recovery, and contingency plan proposals set forth in each EDC’s Company Specific Addendum.

I. The EDCs Oppose a Fundamental Change in the Treatment of Transmission-Related Charges

For the 2005 Auctions, the EDCs proposed, and the Board approved, a mechanism by which the Board could authorize the EDCs to pay BGS suppliers, and to recover from BGS customers, changes in transmission-related charges. The mechanism is set out in Section 15.9 of the BGS Supplier Master Agreements (“SMAs”). Under Section 15.9, the EDCs file for Board approval to recover the cost of the increase or decrease in transmission-related charges from BGS customers, and to reimburse (or charge) BGS suppliers for the same. Section 15.9 was

added to the SMAs to provide assurances to BGS suppliers of timely and prudent recovery of transmission-related charges, for the ultimate benefit of New Jersey ratepayers. BGS suppliers must pay transmission-related charges as part of the BGS Auction product. Without Section 15.9, bidders would need to estimate both the size and timing of increases in transmission-related charges over a multi-year timeframe and would need to reflect this expectation in their bids. The resultant amount that would be included in the bids, which would be based on estimates that include a premium for uncertainty, and could well exceed any actual costs collected and paid under Section 15.9, to the detriment of New Jersey ratepayers. The Board, in its Order for the 2018 BGS Auctions, upheld the formulation of Section 15.9 in the SMAs as that provision has been written since 2012¹ and noted that the EDCs retain the right to petition the Board for authority to collect and pay changes in transmission-related rates absent a Final FERC Order.

Hartree and ExGen filed nearly identical Initial Comments concerning transmission cost responsibility. In their Initial Comments, Hartree/ExGen recommend that transmission be removed from the BGS product. Under the Hartree/ExGen proposal, all transmission-related costs would be allocated to the EDCs via PJM's billing line item transfer mechanism. The purported benefit of this change would be to shield BGS suppliers from financing costs due to the mismatch between the time when BGS suppliers pay PJM for transmission-related costs and when the Board approves the EDCs' collection of the increases and payments to the BGS suppliers pursuant to Section 15.9. Hartree/ExGen note that the mismatch currently totals \$125 million and is growing at "a rate of \$21 million per-month" (Initial Comments, Page 1) and that

¹ The language of Section 15.9 was amended in 2012 to provide additional clarity with respect to the definition of a "Final FERC Order."

the magnitude of the amounts involved could lower supplier participation or increase risk premiums in their BGS bids.

Rate Counsel, in its comments presented at the Hearing, opposes the recommendation by Hartree to remove transmission from the BGS product. Rate Counsel's view is that the current structure of Section 15.9 allows for "guaranteed recovery" (Comments of Stefanie A. Brand, Director, New Jersey Division of Rate Counsel, September 28, 2018, page 3) of transmission-related costs by BGS suppliers, and the mismatch between the transmission-related costs that a BGS supplier is required to pay and the amount paid for transmission within the BGS price is a "timing issue" (Hearing Transcript at page 27, lines 21-22) only. While Rate Counsel understands that there may be costs to BGS suppliers related to this timing issue, Rate Counsel does not see evidence that such costs require a change to Section 15.9.

The EDCs join Rate Counsel in opposing the recommendation to remove transmission from the BGS product. The BGS Auction process appropriately requires BGS suppliers to assume all responsibilities of a PJM load serving entity inclusive of all transmission costs and, as pertinent here, changes in such costs. Requiring the EDCs to become responsible for all transmission service could distort the retail market because BGS suppliers would not be providing this service while third party suppliers ("TPS") are responsible for procuring transmission service. Moreover, the approach embodied in Section 15.9 has resulted in an effective process that not only results in a competitively-determined, market-based BGS supply, but also serves to maintain an appropriate separation between the EDCs and the provision of BGS, as contemplated by the Electric Discount and Energy Competition Act ("EDECA"). Thus, any change in this approach would be inconsistent with the statutory requirements and the Board's goals both for BGS and for retail competition.

While the EDCs oppose the Hartree/ExGen recommendation, the EDCs respectfully express their concern to the Board that participation in the BGS Auctions may be negatively impacted by the current treatment of certain transmission-related charges. The first issue faced by BGS suppliers is that, from their perspective, Section 15.9 is not a “pass through” and does not assure “guaranteed recovery.” Section 15.9 provides that, upon a change in transmission-related costs, the EDCs will seek approval from the Board to change the rates charged to BGS customers and to reimburse (or charge) the BGS suppliers for the transmission cost increase (or decrease). Upon receipt of Board approval for the change in the rates charged to BGS customers, the EDCs begin to charge the amended rate. However, under the Board’s current practice, only after the issuance of a final FERC Order that is not subject to refund may the EDCs pay the BGS suppliers. Given the EDCs’ obligation to seek Board approval prior to collecting the incremental transmission-related costs, and the Board’s ability to approve collection but not payment to BGS suppliers, BGS suppliers may not view their recovery of such costs as being certain or guaranteed.

During the proceeding for the 2018 BGS Auction, the EDCs proposed amendments to Section 15.9 to address the issue of the timing of reimbursement of BGS suppliers for transmission-related increases. The EDCs’ proposed language would have provided specific recognition that the Board may approve both the collection of transmission-related increases (or decreases) from BGS customers and to reimburse (or charge) BGS suppliers, prior to the issuance of a “Final FERC Order.” The Board rejected this proposal, based on the Board’s finding that “[c]onsistent with the currently-approved [Section 15.9] language, the EDCs can, and have, petitioned the Board for authority to begin collecting and paying such changes absent

a Final FERC Order on a case by case basis.”²

The EDCs respectfully submit that, rather than considering the drastic and unnecessary change in the very structure of the BGS auction that Hartree/ExGen propose, the Board instead use its discretionary authority to approve both the EDCs’ collection of transmission-related increases (or decreases) and reimbursement (or charge) to BGS suppliers prior to the issuance of a Final FERC Order in appropriate circumstances. As the Board is no doubt aware, intervenors in FERC proceedings can seek rehearing and file appeals of FERC orders that result in years-long delays in the final resolution of FERC rate matters. Allowing the EDCs to reimburse BGS suppliers before the issuance of a Final FERC Order not subject to refund would address the Hartree/ExGen concern regarding the potential impact on auction participation and would reduce risk premiums in supplier bids related to the uncertainty of reimbursement for transmission costs, while maintaining the BGS auction structure that has successfully served New Jersey for many years.

II. The EDCs Support In Part IEPNJ’s Request for Clarification on the RPS

In its written comments provided at the Hearing, IEPNJ requests clarification regarding the percentage of Class I renewable energy and the percentage of solar energy required of BGS suppliers for the three energy years of the upcoming BGS-RSCP supply period (June 1, 2019 to May 31, 2022).

Considering Class I obligations first, IEPNJ notes that the Clean Energy Act of 2018 (the “Act”) increases the minimum percentage to 21% starting on January 1, 2020 and specifies that

² *I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2018*, BPU Docket No. ER17040335, Order dated November 21, 2017, at p. 9.

this minimum percentage will be 35% by January 1, 2025. However, the Act does not provide a schedule of specific percentages between January 1, 2020 and January 1, 2025. There are several ways in which the percentages could be escalated from 21% to 35% in the intervening years. The EDCs support the request for clarification from IEPNJ as any information to BGS suppliers in this regard will reduce any risk premium in the bids. IEPNJ requests that the Board order the BGS Auction Manager and the EDCs to provide specific percentages of Class I responsibilities. The EDCs and BGS Auction Manager respectfully submit that the Board alone has the authority to provide this guidance; it is beyond the scope and authority of the BGS Auction Manager and the EDCs to opine on the proper rate of escalation from 21% to 35%. Accordingly, the EDCs respectfully request that, to provide full certainty to bidders in the upcoming BGS-RSCP Auction, the Board specify the following in its Order: (i) a confirmation that the minimum percentage for Class I renewable energy of 21% would be in effect from January 1, 2020 to May 31, 2020; (ii) a determination of the minimum percentage for Class I renewable energy in effect for Energy Year 2021 from June 1, 2020 to May 31, 2021; and (iii) a determination of the minimum percentage for Class I renewable energy in effect for Energy Year 2022 from June 1, 2021 to May 31, 2022. The EDCs note that BGS suppliers with existing BGS contracts from the 2017 and 2018 BGS Auctions are also subject to these Class I requirements.

Considering next the solar obligations for Energy Year 2020 and Energy Year 2021, IEPNJ notes that the Act exempts BGS supply contracts entered into prior to the Act becoming effective (in contrast to Class I obligations, for which there are no exemptions). IEPNJ notes that, as a result of the exemption, the minimum percentage obligations applicable to the 2019 BGS and 2020 BGS suppliers cannot be read directly from the Act. The EDCs agree. In

addition to providing Solar Renewable Energy Certificates (“SRECs”) to meet the minimum solar percentage stated in the Act, these BGS suppliers will also have to provide SRECs to satisfy the requirements that would have been otherwise imposed on exempt providers. For Energy Year 2020, the 2019 BGS suppliers (both RSCP and CIEP) will be responsible for the shortfall in solar requirements created by the exemption given to the 2018 and 2017 BGS-RSCP suppliers. For Energy Year 2021, the 2019 BGS-RSCP suppliers, the 2020 BGS-RSCP suppliers, and the 2020 BGS-CIEP suppliers will be responsible for the shortfall in solar requirements created by the exemption on the 2018 BGS-RSCP Suppliers.

IEPNJ again requests that the Board issue an Order that “directs the Auction Administrator and the EDCs to provide clear guidance, with specific percentages, to BGS suppliers regarding SREC [...] responsibilities” (IEPNJ written comments, page 3). The EDCs respectfully submit that providing specific percentages is not only beyond the scope of administering the BGS Auctions as in the case of the Class I requirement, but is simply impossible. However, it is easy to provide a formula to calculate the required percentage:

Percent nonexempt providers

$$= (\% \text{ in the Act}) + (\text{increase in } \%) \times \frac{\text{exempt load}}{\text{nonexempt load}}$$

namely, BGS suppliers will provide SRECs for the percentage as required by the Act and in addition, non-exempt BGS suppliers will provide SRECs to satisfy the increase in percentage for which exempt suppliers are not responsible in proportion to the amount of load that is under exempt BGS contracts. While it is easy to provide a formula, the percentages can only be approximated. The percentages cannot be set ahead of time as that would require knowing exactly the relevant amount of load in a future Energy Year from those BGS contracts that are exempt, and knowing exactly the relevant amount of load in a future Energy Year from those

BGS contracts that are not exempt. Further, such an assessment would require knowledge of the exact amount of relevant load on BGS and the exact amount of relevant load of each EDC (as each EDC has different percentages of load under exempt versus non-exempt contracts). For example, for Energy Year 2020, if we assume that the loads are the same as in Energy Year 2018, then the percentage required of non-exempt BGS suppliers can be estimated to be 7.41%. If we assume instead that the BGS-RSCP load is the same but all CIEP customers shop, then the percentage can be estimated to be 7.99%.

The situation whereby BGS suppliers will have to come to their own estimate of RPS obligations is not novel. BGS suppliers were also exempt under the Solar Act of 2012. The EDCs respectfully submit that, as was the case then, rather than determining and providing specific percentages up front, the EDCs and the Auction Manager can provide a methodology to calculate the percentages and each bidder will be responsible for estimating the percentage based on its own forecast of BGS load.

IEPNJ, in its oral comments, also noted that the solar percentages for Energy Year 2019 are unclear. The Act simultaneously requires: (i) that BGS suppliers with already signed contracts as of the date of enactment be exempt from the increase in requirement; (ii) that incremental requirements from the exemption become the responsibility of BGS suppliers that do not already have signed contracts as of the date of enactment; and (iii) that the exemption not be construed to lower the solar requirement. However, there are no BGS suppliers that do not already have signed contracts as of the date of enactment and that have responsibility for meeting the RPS for Energy Year 2019. Thus, it seems that not all three requirements of the Act can be satisfied simultaneously. For Energy Year 2019, the EDCs respectfully ask the Board to confirm that the correct interpretation is that no BGS supplier will face increased solar

requirements.

III. Comments by Direct Do Not Belong In This Proceeding

In its written comments provided at the Hearing, Direct proposes that certain costs presently collected through distribution rates should be allocated to BGS rates. Specifically, Direct argues that “as result of the EDCs allocating costs to their distribution businesses that are necessarily incurred to support the provision of BGS, their BGS prices are understated.” (Direct written comments at the legislative hearing, page 2).

Direct also claims that: “absent Direct Energy’s proposed modifications, consumers will continue to receive improper price signals and will be unable to meaningfully compare BGS prices charged by the EDCs to offers that are available in the retail market from third party suppliers.” In terms of specific costs, Direct proposes that costs associated with “headquarters, services, meters, general plant, common plant, intangible plant, rents, customer care and collections, billing, advertising, sales, insurance, injuries, administrative and general (‘A&G’), employee benefits, working capital and taxes other than income taxes” should all be allocated to BGS rates.

The EDCs note that EDECA provides that “the charges assessed to customers for basic generation service shall be regulated by the [B]oard and shall be based on the reasonable and prudent cost to the utility of providing such service, including the cost of power purchased at prices consistent with market conditions by the electric public utility in the competitive wholesale marketplace and related ancillary and administrative costs, as determined by the [B]oard.” N.J.S.A. 48:3-57(a)(1). Therefore, contrary to Direct’s broad proposal for a formula-based allocation of enterprise-wide costs to BGS charges, the applicable provision of

EDECA only allows BGS charges to include power purchase costs and those costs that are “related ancillary and administrative costs.” *Id.*

Finally, the BGS proceeding is not the proper forum for an examination of the EDCs’ administrative costs. The Board is currently auditing the EDCs’ administrative expenses related to the BGS Auction. That administrative audit proceeding is the proper place for the Board to review the “related ancillary and administrative costs” to provide BGS (including the issues raised by Direct); otherwise those issues will be considered simultaneously in two separate proceedings. Should the Board nevertheless retain this issue for consideration in the immediate proceeding, the EDCs offer the following comments in response to those presented in writing by Direct at the Hearing.

As for Direct’s assertions, first, in order to support its cost allocation argument, Direct proffers that “the BGS business should be treated as a division or unit that is functionally separate from the distribution business, with all direct costs and an appropriate level of indirect or shared costs allocated to it and recovered from BGS customers.”³ Direct further argues that “it is common and prudent business practice to allocate an appropriate amount of costs to any business or business unit so that management can better understand the practical implications of running that line of business.” (Direct written comments at the legislative hearing, page 6.)

Direct’s characterization of the EDCs’ BGS obligation is incorrect. The provision of BGS service is not, and should not be considered, a “business” that is “functionally separate” from other obligations of the EDCs. Instead, BGS is an obligation to provide a non-competitive default service that is imposed on the EDCs under EDECA, which, aside from the “cost of power purchased at prices consistent with market conditions”, specifically requires that the

charges to customers can only include “related ancillary and administrative costs.”⁴ Those “ancillary and administrative costs” should not include an allocation of all possible costs (including Direct’s proposal to include “sales” costs for a service that is non-competitive) based solely on Direct’s assertion that this would constitute “good business practice.” In fact, costs that are reasonably and appropriately considered “related ancillary and administrative” costs are currently included in BGS costs, including the common costs incurred by the EDCs related to conducting the annual BGS auction (including the cost of the BGS Auction Manager and the Auction Manager’s office space in New Jersey, common legal fees, and others). In the case of ACE, ACE allocates to BGS costs labor functions related to power purchasing, contract administration, daily mark-to-market monitoring, Renewable Portfolio Standards reporting, credit evaluations, and billing. ACE maintains that these functions are clearly tied to the BGS supply process and are appropriately included in BGS costs.

Next, Direct argues that “these changes are necessary in order to promote the development of the competitive retail market and to ensure that customers are receiving proper price signals that enable them to make apples-to-apples comparisons between offers made by competitive retailers in the market and the price for BGS provided by the EDCs.” (Direct written comments at the legislative hearing, page 3.) This statement presumes that the “offers made by competitive retailers in the market” already includes a similar allocation of costs from EDCs as proposed by Direct, or that the TPSs solely incur all such costs. Again, Direct’s presumptions are incorrect. Along with the obligation to provide a BGS default service option for its customers, EDCs are required to provide the systems, processes, and resources to enable its customers to receive service from TPSs, and to support TPSs directly by including TPS charges

⁴ N.J.S.A. 48:3-57(a)(1) and -57(d).

in the EDCs' bills. These activities and services require that the EDCs incur a similar, if not greater, level of costs compared to the costs associated with the BGS obligation. These TPS-related costs are presently included in the EDCs' distribution rates. If these (EDC-specific) costs related to BGS are allocated to BGS rates, but similar categories of costs related to the EDC's retail access obligation are not similarly charged directly to TPSs (or directly to their customers), then Direct's proposal would actually create the 'apples-to-baked-beans' scenario that Direct notes in its comments and asserts it is trying to resolve in its proposal. The Board should not go down this road without a full evaluation and allocation of all the costs required to support the competitive market.

Lastly, Direct proposes a mechanism by which costs should be allocated using revenue to allocate distribution and BGS costs. First, as discussed above, this recommendation is at odds with N.J.S.A. 48:3-57(a)(1), which only allow costs directly related to BGS to be included in the EDCs' BGS charges. In addition, as also noted above, in order to ensure an 'apples-to-apples' comparison for customers, if an allocation methodology related to EDC-specific costs is required of all EDCs with respect to commodity service, it should include an allocation of EDC costs to both BGS suppliers and TPSs. However, as customers can switch suppliers monthly (resulting in the ratio of BGS vs. TPS customers or revenue changing monthly), the resulting allocation process would be inherently complicated and potentially detrimental to an EDC in terms of its ability to fairly recover its costs. Thus, the EDCs do not believe that such a methodology is beneficial or warranted.

IV. Conclusion

In conclusion, the EDCs reiterate their request that the Board approve the Joint Proposal,

as well as approve the rate design, accounting, cost recovery, and contingency plan proposals set forth in each EDC's Company Specific Addendum. The EDCs also respectfully request that the Board consider allowing payment of transmission-related costs to BGS suppliers ahead of a Final FERC Order not subject to refund where appropriate, clarify the RPS obligations of BGS suppliers in the upcoming BGS Auctions, and consider the issues of BGS administrative cost recovery within the administrative audit proceeding.

