

Long
10/12/18



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

RECEIVED
CASE MANAGEMENT

OCT 17 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

October 17, 2018

STEFANIE A. BRAND
Director

RECEIVED
MAIL ROOM

OCT 17 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Via Hand Delivery

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

Re: I/M/O the Provision of Basic Generation Service (BGS) For the Period Beginning
June 1, 2019
BPU Docket No. ER18040356

Dear Secretary Camacho-Welch:

This letter is being submitted on behalf of the Division of Rate Counsel ("Rate Counsel") to the Board of Public Utilities (the "Board" or "BPU") as a supplemental filing triggered by the inclusion of a new proposal in Final Comments filed by the New Jersey Electric Distribution Companies¹ (the "EDCs") and Exelon Generation Company, LLC ("Exelon") on October 12, 2018. In those Final Comments both the EDCs and Exelon re-visited a proposal to modify the Supplier Master Agreement ("SMA") that was raised and discussed in last year BGS proceeding and ultimately rejected by the Board. The Board should once again reject this proposal to modify the SMA.

AMS
Legal *A. Vachon, Esq.*
Legal *A. Peterson*

¹ Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company and Rockland Electric Company.

Rate Counsel seeks leave from the Board to make this supplemental filing. As neither the EDCs nor Exelon mentioned the proposed modification to the SMA prior to the filing of Final Comments, Rate Counsel was not given the opportunity to respond in our Final Comments.² At the legislative hearing, held just two weeks prior to the filing of Final Comments, the EDCs, although seated at counsel table with the BGS Auction manager, did not mention this proposal. Indeed, each EDC representative had “no comment” at the legislative hearing.³ In Final Comments, Exelon claimed to be present at the hearing but did not make an appearance.⁴ Therefore other parties were denied prior notice of this alternative proposal and thus were denied the opportunity to respond in Final Comments.

Specifically, on October 12, 2018, the EDCs filed Final Comments in this BGS proceeding. In those Final Comments the EDCs, for the first time in this proceeding, proposed a modification to Section 15.9 of the Supplier Master Agreement (“SMA”) that would change the current procedure for the pass through of transmission related increases to BGS suppliers. In Final Comments, the EDCs argued that the Board could “use its discretionary authority” to approve the pass through of transmission rate increases “prior to the issuance of a Final FERC Order in appropriate circumstances.”⁵

Not surprisingly, Exelon filed Final Comments with the same proposed modification to Section 15.9 of the SMA. Exelon, in Initial Comments, proposed that the pass through of transmission related increases to BGS Suppliers should be abandoned in favor of the EDCs assuming directly the Firm Transmission Service obligation. This proposal was then

² Notably, at the Legislative hearing, President Fioridato reminded the parties that “Final written comments should only respond to the issues raised in the initial comments and in today’s hearing.” Final written comments should not be used to raise new issues in this proceeding.” T6:L20-25.

³ T8:L3-22 (Sept. 28, 2018).

⁴ Exelon Final Comments, p.1, fn2.

⁵ EDCs Final Comments, p. 6.

supplemented in Exelon's Final Comments with an alternative proposal, that is, that the Board should eliminate the requirement that a FERC Order imposing increased costs be final, not subject to refund before such costs could be recovered by BGS suppliers. Exelon threatened that "if the current process under section 15.9 of the SMA remains in place, suppliers will have no choice but to price this type of regulatory risk into upcoming BGS auction offers, resulting in exactly the cost increases to customers that the Board has been working to avoid."⁶

Because neither Exelon nor the EDCs made this proposal prior to the filing of Final Comments, Rate Counsel was not given the opportunity to respond to this proposal in our Final Comments. Accordingly, the Board should reject this last minute proposed modification to the SMA.

Rate Counsel did however address this same proposal in the 2017 BGS auction proceeding when it was raised by the EDCs in their July 2017 Joint Filing. At that time Rate Counsel urged the Board to reject this proposal based on concerns that excess payments made to BGS Suppliers would not be returned to ratepayers in a timely manner, if at all.⁷ The Board agreed with Rate Counsel in that proceeding and rejected the EDCs proposed modification to the SMA noting that "[w]hile understanding the concerns raised by the EDCs and IEPNJ related to this issue, the Board is not persuaded that the proposed modifications are necessary at this time."⁸ The Board went on to say that "[c]onsistent with the currently-approved 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."⁹ Thus, the Board rejected the

⁶ Exelon Final Comments, p. 5

⁷ A copy of those comments is attached to this letter for the Board's convenience.

⁸ *I/M/O the Provision of Basic Generation Service (BGS) For The Period Beginning June 1, 2018*, BPU Docket No. ER17040335, Decision and Order, Nov.21, 2017 (hereinafter "2017 BGS Order").

⁹ *Id.*

EDCs' proposed modification to the SMA concluding "that the current construct provides a balance between the protection of ratepayers and the concerns of BGS suppliers regarding risk, while allowing the Board discretion on a case by case basis."¹⁰ The same reasoning should prevail in this proceeding.

The EDCs and Exelon have disguised this "alternative proposal" as a response to an issue raised in Initial Comments. But, in essence, they have introduced a new issue in Final Comments that cannot be rebutted. Rate Counsel believes however that the failure of the EDCs and Exelon to reveal this proposed modification at the legislative hearing violates the spirit if not the letter of the Board's directive that "Final Comments should only be used to respond to issues raised in the Initial Comments, issued raised at the legislative-type hearing or questions raised by Board staff as part of this matter."¹¹ The Board's decision in the 2017 BGS proceeding was based on all parties being given ample opportunity to comment on the proposal. The earlier decision is the proper one and should not be reversed based on "alternative proposals" raised for the first time in Final Comments.

¹⁰ Id. at 10.

¹¹ Notice of Public Meeting, July 27, 2018.

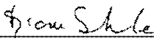
Ms. Aida Camacho-Weich, Secretary
October 17, 2018
Page 5

A copy of this letter will be sent to the email list server used by the Board for these BGS filings. We have also enclosed one additional copy of this letter. 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, DIVISION OF RATE COUNSEL

By: 
Diane Schulze, Esq.
Assistant Deputy Rate Counsel

DS/lg

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