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April 2, 2020

Via Electronic Mail

All Persons on the Attached Service List

**RE: I/M/O City of Hoboken Energy Aggregation Program - Concord Energy
Services and Commercial Utility Consultants
BPU Dkt. No.: Pending**

Hon. Mayor Bhalla, City Council Members and Ms. Gonzalez:

Pursuant to documents submitted by Concord Energy Services and its subcontractor Commercial Utility Consultants, Inc. (collectively, the “Energy Agents”), on behalf of the City of Hoboken, it is our understanding that the City intends to organize an Option 2 government energy aggregation program pursuant to N.J.A.C. 14:4-6.1 et seq. The City will serve as the Lead Agency for the City of Hoboken Energy Aggregation Program (“CHEAP” Program).

On behalf of the City, the Energy Agents will bundle the load of qualifying residential accounts located within the boundaries of Hoboken and solicit bids for electricity generation service from duly licensed electric power suppliers through a Request for Proposal process.

Pursuant to N.J.S.A. 48:3-94b(1):

Thirty days prior to the commencement of public bidding the governing body shall transmit the bid notice and all bidding documents to the board and the Division of Ratepayer Advocate¹ for review. The board and the Division of the Ratepayer Advocate shall have 15 days to review the bid notice and bidding documents and provide comments to the governing body, which may accept or reject the comments.

¹ The Division of Rate Counsel (“Rate Counsel”) is a New Jersey State agency that is a successor to the Division of Ratepayer Advocate.

On March 26, 2020, on behalf of the governing body of the City, the Energy Agents filed with Rate Counsel and the Board of Public Utilities (“BPU”) drafts of the Notice to Vendors Proposal Specifications and Instructions for Residential Energy Aggregation (“RFP”) and the Agreement for Provision of Electricity Generation Supply Services for Residential Government Energy Aggregation (“SSA”) (collectively, the “March 26 Filing”), in accordance with N.J.S.A. 48:3-94b(1).² See also N.J.A.C. 14:4-6.6(s). Pursuant to State statute, Rate Counsel is required to review and comment on the draft bidding documents of an Option 2 energy government aggregation program for consideration by the governing body of Hoboken. The following are Rate Counsel’s comments on the March 26 Filing.

General Overview

Rate Counsel represents and protects the interests of all utility customers, including residential, small business, and small and large industrial customers, schools, libraries, and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel also gives consumers a voice in setting energy, water, and telecommunications policy that will affect the rendering of utility services well into the future. It is clear that the March 26 Filing consists of draft documents with certain material terms missing. Therefore Rate Counsel’s comments provided herein will touch upon broad issues and concepts, and will leave the task of creating a workable and consistent group of documents to the City and its attorneys.³ If the terms of the March 26 Filing are changed in any way after Rate Counsel’s submission of comments, such changes should be reviewed by an attorney retained by the City of Hoboken.

Term of Agreement

The term of service is not specified in the March 26 Filing; instead, it seeks an approved vendor for an unspecified term, of either twelve, sixteen or twenty-four months, starting on a date to be determined; other terms not to exceed twenty-four months will also be accepted. (RFP, pp. 2-3 & 13, Part 2, § 1) The CHEAP Program is to begin on either August 1, 2020 or February 1, 2021. (RFP, p. 13) The March 26 Filing should be modified to explain how bids offering different prices for different lengths of time, with prices that may vary over time, will be compared to each other.

² We note that the March 26 Filing did not include any proposed form of agreement that would govern the relationship between the selected third-party supplier vendor and individual residential customers who participate in the Program. Accordingly, Rate Counsel is unable to review or comment on such documents.

³ Any change proposed by Rate Counsel in this comment letter should be considered a global change that should be made to all relevant government energy aggregation documents including the RFP, SSA and any other agreement entered into to further the Program.

The March 26 Filing would allow extensions or renewals of the Agreement for an unspecified term (RFP, pp. 16-17), up to a total of no more than five consecutive years when combined with the original term.⁴ (SSA, § 2.01(E))⁵ While any extension or renewal would be negotiated to ensure the price remains lower than the BGS price, (SSA, § 2.01(B)), without competitive bidding it is unclear how the City can ensure that CHEAP Program participants are offered the lowest price available. Rate Counsel recommends modifying the March 26 Filing so that Hoboken will solicit bids from competing TPSs at the end of each contract term if it is considering extending or renewing the Agreement with a particular TPS.

Addenda, Exceptions and Modifications to the March 26 Filing

Should the City agree to make any material change to the March 26 Filing, for example by issuing supplemental information in addenda form, or agreeing to modify, waive or amend the SSA, (see RFP, pp. 3, 6 & 9; SSA, §§ 7.06 & 8.04), Rate Counsel asks to review the revised document(s) before they are finalized. In any event, if the terms of the March 26 Filing are changed in any way after Rate Counsel's submission of comments, such changes should be reviewed by the City's attorneys and notice of any material changes should be provided to all participating customers.⁶

Selection and Award Process

The RFP invites proposals offering one of eight bid groups. All eight of these options request bids with "flat" pricing; however, the language describing the pricing is unclear and inconsistent. First, it is unclear whether a "flat" price is the same as a "fixed" price as contemplated by Board rules for government energy aggregation programs. See N.J.A.C. 14:4-6.6(r)(9)vi and vii. Second, three of the eight options (1, 2A and 3A) state that the "flat" price will remain "locked in for the entire term," while the other five options do not describe their price as "locked in." (RFP, pp. 13-14, Part 2, § 1) The SSA, however, defines a "flat" price as "a flat, locked in rate per kWh for the term of the contract." (SSA, § 1.01) The City will also accept bids with "alternative" pricing options. (RFP, p. 15) Without clarity as to the price structure, it is unclear whether participants in the CHEAP Program would pay less for their energy supply than residents who choose to remain with BGS supply.

Within the eight pricing options, the City is soliciting pricing proposals for electric supply with four different portions of renewable energy content: a portion consistent with the current New

⁴ As per N.J.S.A. 40A:11-15.

⁵ Rate Counsel concurs with the provision that the TPS must transfer all participating customers to BGS service upon termination of the contract. (SSA, § 2.01)

⁶ Rate Counsel concurs with the provision in the March 26 Filing that the Energy Agents will provide any addenda to all vendors. (RFP, pp. 3 & 5)

Jersey renewable portfolio standards (“RPS”)⁷ (2A & 3A); an additional 10% above the RPS (2); an additional 20% above the RPS (3); or 100% renewable energy, as defined in the RFP (1A, 2B & 3B).⁸ The description of Bid Group 1 does not mention any specific RPS standard, so the current RPS standard would apply. (See RFP, p. 13) In addition, five of these pricing groups (1A, 2A, 2B, 3A & 3B) will require CHEAP participants to opt into them. (RFP, p. 13-14) All proposals must include the cost of the renewable energy content in the bid prices. (RFP, p. 13-14)

The SSA invites bids on one or both of two Bid Groups, one offering an increased portion of renewable energy and the other simply meeting the New Jersey RPS standard. (SSA, § 2.01) The SSA describes the first of those Bid Groups as offering 100% renewable energy, but seems also to include the options of 20% or 10% enhanced renewable energy content. Rate Counsel recommends clarifying the description of the Bid Groups in the March 26 Filing and ensuring the RFP and SSA are consistent.

The RFP also sets forth a formula for selecting the winning bid by a third-party electricity supplier (“TPS”), based on the lowest TPS bid over the term of the Program compared with the BGS rate. (RFP, p. 16, Part 2, § 2) However, that formula does not state how the City will weigh competing proposals that may offer different rates for different terms of service (e.g. a lower price for 12 months versus a slightly higher price for 24 months), especially when, as noted below, the BGS-RSCP price for the longer terms is not yet known. Presumably this uncertainty could be mitigated by comparing all bids against the Energy Agents’ projected BGS rates over the various Program terms, as well as by the bidder offering the options to either reduce the Agreement price if the BGS price should fall below it or remain a certain amount lower than BGS throughout the entire Program.⁹ Comparison also may be complicated by bids offering different portions of renewable energy. Rate Counsel suggests that the RFP describe how different prices for different terms, and fixed versus variable, including different portions of renewable energy, will be compared. This may help to ensure the bid is awarded to the lowest bidder.

BGS Tariff Price and Bid Price

Although the current BGS-RSCP tariff includes both seasonal rates and rates that vary with usage and/or time of day, the bidders will not be provided a breakdown of usage by season, month, energy block or time of use. If no such breakdown or estimate is provided, it is unclear how the BGS-RSCP tariff prices will be compared with the bid prices. The bidders will receive

⁷ As mandated by the New Jersey Clean Energy Act, N.J.S.A. 48:3-87(d), and its implementing Board Order, BPU Docket Nos. ER18040356 and EO18111250, Decision and Order (revised Dec. 28, 2018).

⁸ “Class I renewable energy generated within or delivered into the PJM region, consistent with N.J.A.C. 14:8-2.7.” (RFP, pp. 13-14)

⁹ The “BGS Flat Price Guarantee” defined in the SSA would seem to require such a price reduction, but the RFP does not seem to offer or explain that option. (SSA, § 1.01)

only the total annual residential load, broken down by monthly historical usage for the participating residential tariff class,¹⁰ within the City. (RFP, p. 2) In addition, since the City is soliciting bids for up to twenty-four months of service, it is unclear how bids for different lengths of service, fixed and variable, will be evaluated and compared. Among other variables, BGS-RSCP rates beyond June 1, 2021 are not yet known.

Further complicating bid comparisons, alternative pricing options may be considered if they produce the lowest bid and highest savings per kWh, as well as “protection” to Program participants versus the BGS-RSCP rate. (RFP, p. 16, Part 2, § 2) It is unclear how the City would choose between a fixed-price bid that offers the lowest price per kWh and an “alternatively” priced bid that would be reduced if the applicable BGS-RSCP price should fall below the contract price. Rate Counsel recommends revising the March 26 Filing to clarify how dissimilar bids would be compared.

Payments to Energy Agents and Reimbursements to Municipality

BPU rules allow reimbursement as administrative fees of a municipality’s out-of-pocket costs actually incurred in establishing or operating the aggregation program, “as reflected in invoices or vouchers authorized and paid by the government aggregator.” N.J.A.C. 14:4-6.8(d). Moreover, N.J.A.C. 14:4-6.8(e) requires bid specifications to state the items for which reimbursement shall be required, an estimate of the costs and the maximum amount that may be reimbursed.

The March 26 Filing requires bid prices to include a variety of fees, costs and taxes, including energy agent fees. (RFP, p. 15 & 25; SSA, § 1.01 “Contract Price” & § 5.01.B)

The Energy Agent Fee, to be paid by the selected TPS, would be calculated at an unspecified rate per kWh of electricity sold during the entire term of the Program, in addition to a one-time fee of \$2.00 per every eligible household. It appears that the Energy Agent Fee must be paid for every household in Hoboken eligible for the CHEAP Program, whether or not they decide to participate. (RFP, pp. 15-16 & 25; SSA, § 1.01 “Contract Price” & § 5.01.B)

The March 26 Filing also requires the selected TPS to pay Administrative Fees, not to exceed \$2,000, to the City to reimburse its out-of-pocket costs actually incurred in establishing or operating the Program. (RFP, p. 15; SSA, § 5.01.C) The City would document its out-of-pocket costs by providing invoices or vouchers to the TPS. (Id.) Rate Counsel concurs with this requirement, to ensure that any reimbursement is consistent with N.J.A.C. 14:4-6.8, which requires that reimbursement for expenses actually incurred by the aggregator in establishing or operating the program be reflected in invoices or vouchers.

The March 26 Filing does not state or estimate the total amount of the Energy Agent Fee. Rate Counsel suggests either setting a cap on the amount of the Energy Agent Fee, or providing public

¹⁰ Only the RS residential rate class will participate in the Program. (RFP, pp. 2 & 25)

notice of the estimated total amount of that fee over time, e.g. monthly, quarterly, or over the full contract term. See N.J.A.C. 14:4-6.6(r)(3) (TPS must disclose cost information to residential customers). Indeed, a published press opinion has expressed concern over the lack of transparency in energy agent fees in New Jersey government energy aggregation programs.¹¹

Rate Counsel recommends posting all public documents relating to the Program, including the final versions of the public opt-out notice (when prepared) and the final version of the March 26 Filing, on the Energy Agents' (and if possible the City's) web site and also making them available in hard copy at a physical location (such as the municipal building) where residents may review them. This can assist those without internet access.

Of course, all documents relating to the Program, including public notices, must comply with all provisions of public utility, consumer protection and other applicable law. Please have an attorney for the City review the March 26 Filing and Rate Counsel's comments herein for further guidance on this matter.

Respectfully submitted,

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By: /s/ Brian Weeks
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cc: Service List (via e-mail)

¹¹ Michael Strugatz, "N.J. power companies' three-card monte," Star-Ledger, Sept, 28, 2013, available at http://blog.nj.com/njv_guest_blog/2013/09/nj_power_companies_three-card.html (viewed 3/27/20).

I/M/O the Government Energy
Aggregation Program of the City of
Hoboken, New Jersey

BPU Docket No. *Pending*

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