



State of New Jersey  
DIVISION OF RATE COUNSEL  
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May 27, 2015

**By Hand Delivery**

Ms. Irene Kim Asbury, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Re: I/M/O the Verified Petition of the Retail Energy Supply Association for Board-Approved Mechanism for Third-Party Providers to Recover Incremental Costs Incurred as a Result of PJM's Capacity Performance Proposal  
BPU Docket No. EW15010092

Dear Secretary Asbury:

Please accept the New Jersey Division of Rate Counsel ("Rate Counsel") reply to the Retail Energy Supply Association's ("RESA") letter dated May 19, 2015 in opposition of Rate Counsel's motion to Dismiss RESA's January 20, 2015 petition (the "Petition") in the above-referenced matter. In its Petition, RESA requested that the New Jersey Board of Public Utilities ("BPU" or the "Board") create a funding mechanism to allow third party suppliers ("TPS") to collect from retail customers potential losses that could result from a change in the PJM capacity market rules. After extensive discovery, Rate Counsel filed a motion to dismiss RESA's Petition on May 6, 2015.

Case Mgmt  
Gertsman  
C. Vachier  
Energy  
DAG

RESA's May 19<sup>th</sup> letter response to Rate counsel's motion to dismiss is both lacking in credible evidence and citation to applicable New Jersey law in support of its position. Instead of responding to Rate Counsel's legal concerns for granting the type of relief sought, RESA instead relied heavily on "equity" arguments. RESA's response is replete with unsupported conclusory statements that are legally insufficient to support the Petition and should be given no weight.

RESA argues without citation to any New Jersey law that the Board has jurisdiction to, and as a policy matter should, order the State's EDCs to collect from ratepayers, recover wholesale market costs incurred by TPSs. The brief states, "RESA is seeking a Board determination that certain wholesale costs, such as the incremental capacity market costs, are, as a matter of policy, best recovered by the EDCs on behalf of all market participants." RESA Reply p. 3. RESA then goes on to state that "inequitable treatment between BGS Suppliers and TPSs cannot be justified." RESA Reply p. 4. However, RESA only argues for "equality" when it comes to protection from market changes but does not seek equality with respect to BGS supplier obligations. In short TPSs do not have the same obligations as BGS suppliers. BGS is a strictly regulated product. BGS suppliers are required to enter into Supplier Master Agreements approved by the Board. The term of the BGS FP (now called the "BGS RSCP") contract must be three years, no more no less. As conceded by RESA, customers may migrate back to BGS suppliers or leave BGS at any time during the three years that the BGS FP contract is in place. That migration risk is all on the shoulders of BGS FP Suppliers as providers of last resort. RESA Reply p.5. BGS suppliers have very stringent credit worthiness requirements. See Article 6 of the BGS-FP Supplier Master Agreement. In contrast, TPS can choose whom they enter into a supply agreement with for any length of time. For RESA to narrowly compare only the

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