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October 22, 2020

VIA ELECTRONIC MAIL

Honorable Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of the BPU Investigation of Resource Adequacy Alternatives--
Rate Counsel's Reply to PSEG Post-Technical Conference Comments
BPU Docket No.: EO20030203**

Dear Secretary Camacho-Welch:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in reply to the post-technical conference comments submitted in this matter by PSEG. In accordance with the procedure specified in the Supplemental Notice of Technical Conference issued by the Board of Public Utilities ("Board") in this matter on August 20, 2020, these comments are being filed electronically with the Board's Secretary at board.secretary@bpu.nj.gov.

Please acknowledge receipt of these comments.

INTRODUCTION

Rate Counsel is submitting these comments in reply to the post-technical conference comments submitted in this matter by PSEG on October 2, 2020. In their initial comments in this matter, PSEG and Exelon Generation Co., LLC (“Exelon”) proposed an “Integrated FRR Procurement Approach” in which a single New Jersey electric distribution company zone, presumably JCP&L, would become an FRR entity. In earlier comments and in remarks at the September 18, 2020 Technical Conference, Rate Counsel has explained the legal and technical issues that make the FRR option in general, and the original PSEG-Exelon proposal in particular, a potentially costly and risky option for New Jersey.

In its October 2, 2020 post-technical conference comments, PSEG acknowledged that the original PSEG-Exelon proposal would require legislative changes, and offered two alternative procurement approaches which it asserted could be implemented within the Board’s existing authority. PSEG Post-Technical Conference Comments at 2. Exelon’s post-technical conference comments expressed agreement with PSEG that the new PSEG proposals should be considered by the Board. Exelon Post-Technical Conference Comments at 2-3. Although a brief summary of one of the proposals was presented during the September 18, 2020 technical conference, the details of both were provided for the first time in PSEG’s October 2, 2020 post-Technical Conference comments. In these comments Rate Counsel addresses PSEG’s argument that the Board can implement an FRR plan without new legislation, and its suggestion that the Board needs to move quickly to adopt one of its FRR proposals.

RATE COUNSEL COMMENTS

I. The Board Lacks Authority Under Current Law to Implement an FRR Plan.

PSEG argues at pages 4-7 of its post-technical conference comments that the Board possesses authority to implement an FRR option. PSEG argues at some length that the Board possesses broad regulatory authority over the State's public utilities. This is indeed a well-established principle. However, it is also well established that an agency's authority is limited by the scope of its enabling legislation. In re Centex Homes Petition for Extension of Service, 411 N.J. Super. 244, 267 (App. Div. 2009). PSEG disregards the fundamental changes to the scope of the Board's authority that resulted from the enactment of the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq. ("EDECA"). Since the enactment of EDECA, the State's electric utilities have been excluded from the business of competitive electric generation service. As explained in Rate Counsel's May 20, 2020 initial comments in this matter, the State's electric utilities are responsible for providing basic generation service ("BGS") but are otherwise limited to providing electric transmission and distribution service. Rate Counsel Initial Comments at 11-12. This limited role is fundamentally at odds with taking on the obligation to acquire capacity, an element of electric generation service for all customers within the service territory of an electric distribution company ("EDC"). Since EDCs are statutorily excluded from participating in the competitive electric generation service market, the Board lacks the authority to allow or require them to do so.

None of the Board Orders cited in PSEG's post-technical conference comments holds to the contrary. At pages 5-6 of its comments PSEG cites a number of Orders in which the Board considered the prudence of a utility's purchases of capacity. With one exception, these Board

Orders were issued during the mid-1990s, prior to the enactment of EDECA. The only exception is the Board's August 1, 2003 Summary Order resolving Jersey Central Power & Light Company's 2002 base rate filing and three other matters, cited at page 5 and footnote 9 of PSEG comments. I/M/O the Verified Petition of Jersey Central Power & Light Co for Review and Approval of an Increase in and Adjustments to its Unbundled Rates and Charges for Electric Service, BPU Dkt Nos. ER02080506, ER02080507 EO02070417, EO02030173 & ER95120633, Summary Order 2003 N.J. PUC LEXIS 248 (Aug 1, 2003),¹ The language quoted at page 4 of PSEG's post-technical conference comments involved capacity purchases related to JCP&L's provision of BGS during the transition period between the initiation of customer choice under EDECA and before BGS began to be provided through the Board's BGS auctions. 2003 NJ PUC LEXIS 248, at *28-*31. This decision merely affirmed the Board's authority to review purchases of capacity that were made to provide BGS during the transition period. It does not support the proposition that the Board can make the State's EDCs responsible for procuring the capacity that is used by competitive suppliers of generation service.

At page 6 of its post-technical conference comments, PSEG appears to acknowledge that requiring competitive suppliers to use capacity procured by the FRR entity would be inconsistent with the competitive generation service market envisioned by EDECA. Specifically, PSEG suggests that the FRR option could be implemented consistently with retail open access by

¹ PSEG provided the Westlaw citation to the Summary Order, which is not available to Rate Counsel. Based on a review of the content as described in PSEG's comments, the Summary Order cited in the text above appears to be the same Order cited to in footnote 9 of PSEG's post-technical conference comments. The Board subsequently issued a Final Order, reported at 2004 N.J. PUC LEXIS 192 (May 17, 2004), in which it memorialized and provided detailed reasoning for the actions taken in the Summary Order.

allowing competitive suppliers to procure their own capacity and provide it to the FRR entity.

Rate Counsel has two observations.

First, while PSEG's suggestion could satisfy competitive suppliers' potential objections to the FRR option, it does not remedy the Board's fundamental lack of jurisdiction to implement this option without legislative changes. The FRR option would make one or more of the State's EDCs ultimately responsible for procuring capacity for both BGS and competitive suppliers. This is inconsistent with the limited responsibilities envisioned for EDCs in EDECA.

Second, providing competitive suppliers with an option to procure their own capacity could have the effect of increasing migration from BGS to competitive supply, leaving a smaller and smaller number of BGS customers to bear the costs of meeting the States' clean energy objectives. As explained at length at pages 28-32 of Rate Counsel's initial comments in this matter, the Board's current BGS structure has worked well to provide a stable and reasonably priced alternative for customers who are not able to or do not want to shop for electricity. This objective would be undermined by allowing competitive suppliers to opt out of paying costs that must be borne by BGS providers.

II. If the Board Decides to Consider an FRR Plan It Should Not Act Hastily.

PSEG continues to urge the Board to act quickly to implement an FRR plan, and, in fact, suggests at page 15 of its post-technical conference that it Rate Counsel and others are "irresponsible" for suggesting a more cautious approach. PSEG appears to be suggesting at page 18 of its comments that the Board should attempt to have an FRR plan in place before prior to the resumption of the PJM capacity options. Rate Counsel cautions that this cannot be, nor

should it be, a quick process. There are significant and complicated issues that must be addressed before New Jersey can implement an FRR plan.

Initially, Rate Counsel notes that the proposals discussed in PSEG's comments do not address a crucial threshold issue that was highlighted in Rate Counsel's June 24, 2020 Reply Comments in this matter. The proposals in PSEG's post-technical conference comments are not complete proposals. They are only two options for structuring the procurement of capacity. The basic structure of PSEG's proposal remains the same: a single EDC would procure all of the New Jersey resources subject to the MOPR, and the costs would be shared by all New Jersey consumers. As explained at page 3 of Rate Counsel's reply comments, PJM and FERC almost certainly would recognize this FRR plan for what it is, an end run around MOPR, and would likely change the FRR and MOPR rules accordingly. Any FRR plan should be closely coordinated with PJM to avoid changes that would nullify the plan.

Also, the details of an FRR plan require careful analysis. If necessary legislative changes were to be enacted, the Board would then have to consider a number of issues. One of the primary issues is to ensure that an FRR plan remains beneficial to New Jersey ratepayers throughout the implementation. An FRR plan must be for a minimum of five years. PSEG proposes annual solicitations for capacity. The Board could structure an FRR to allow it to delay any firm commitment until it has seen the results of the initial solicitation. However, once a commitment is made New Jersey will be forced to remain in the FRR for at least five years, and any spikes in prices will be beyond the Board's control. There are also market monitoring issues. The Board currently does not have the personnel to monitor the FRR. The PJM IMM does not currently monitor any FRR for the FRR entity. It is unclear whether the PJM IMM

could monitor the FRR or if a different entity would be needed. Any implementation will require significant technical expertise as the FRR rules are extremely complicated and require full compliance.

CONCLUSION

For the reasons explained above and in Rate Counsel's earlier comments, the Board lacks authority under existing New Jersey law to implement the FRR option. The arguments to the contrary cited in PSEG's post-technical conference comments should be rejected. The Board should also reject PSEG's suggestions that it adopt an FRR plan without adequate deliberation.

Respectfully submitted,

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