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February 1, 2024

Ms. Loren Altshuler  
Gabel Associates  
417 Denison Street  
Highland Park, NJ 08904

RE: In the Matter of Lacey Community Energy Aggregation Program (LCEA)  
BPU Docket No. EO24010063

Dear Ms. Altshuler:

On January 24, 2024, the New Jersey Board of Public Utilities (“Board”) received draft bidding documents for the above Government Energy Aggregation Program(s) (“GEA Program”) submitted by Gabel Associates. These documents were reviewed by Board Staff (“Staff”).

Pursuant to N.J.A.C. 14:4-6.6(i) and (l), Staff and the New Jersey Division of Rate Counsel (“Rate Counsel”) have 15 calendar days from the receipt of these documents to provide feedback. Please accept this submission as Staff’s comments in this matter. Please note that these comments, even if incorporated into the documents in total, cannot be considered as a determination that these documents, or the GEA Program, comply with the Board’s rules, including its government energy aggregation rules or the requirements of Local Public Contracts Law. Each municipality in a GEA Program is responsible for ensuring compliance with the Board’s government energy aggregation rules, as well as all other legal requirements.

To provide comments expeditiously in response to GEA Program filings, Staff developed the below list of general comments and concerns regarding GEA Programs and bidding documents. Staff recommends integrating these comments into your program and supporting documents, provided they are not already included. Additionally, please find specific comments related to the LCEA Program at the end of this letter.

1. Customer Option to Be Excluded from Future GEA Programs: Pursuant to N.J.A.C. 14:4-6.4(l), the governing body of each municipality that participates in a GEA Program, or its designee, shall maintain a list of residential customers who have advised the municipality, or a designee of the municipality, that they prefer to be excluded from all future GEA Programs. Pursuant to N.J.A.C. 14:4-6.6, the residential customers on this list shall not receive opt-out notices and shall be excluded from all future GEA Programs. If all or part of this responsibility will be designated to the selected Third Party Supplier (“TPS”), Staff recommends that this be clearly reflected in the bidding documents, and Staff recommends that the contract require the TPS to provide the list to the lead agency at the end of the program in a format selected by the lead agency.
2. Selection of Bidder(s): N.J.A.C. 14:4-6.8(g) states the standard as “most advantageous proposal, price and other factors considered.” Staff recommends that the bidding documents include specific standards for selection so that the selection process will produce the most advantageous pricing for residential customers as well as the most advantageous pricing for non-residential customers. If the GEA Program will include multiple customer classes, the lead agency should consider selecting one (1) bidder to supply the residential accounts and a separate bidder to supply the non-residential accounts if needed to ensure that each class receives the most advantageous pricing from a qualified supplier.
3. Reimbursement of Lead Agency Actual Costs: A government aggregator may seek reimbursement of “costs actually incurred ... in establishing or operating the energy aggregation program as reflected in invoices or vouchers authorized and paid by the government aggregator.” N.J.A.C. 14:4-6.8(d). Please note that this section of the rules is not intended to permit the aggregator to allocate employee costs to the program and require the supplier to pay costs associated with these employees such as salaries, benefits, etc. This is not permitted. Staff recommends including language in the bidding documents clarifying the amount of the fees that will be paid to the Energy Agent, if any. Staff further recommends adding language to the bidding documents clarifying whether the lead agency will seek reimbursement of its actual GEA Program costs and, if so, setting forth the amount of costs incurred and describing the items for which reimbursement shall be required.
4. Term of Contract:
  - a. The term of the contract should be set forth in the request for proposal. If more than one (1) term is under consideration, these terms should be specifically set forth so that the bids can be effectively compared.
  - b. Pursuant to N.J.A.C. 14:4-6.10(a)12, the contract shall provide that the supplier will return the customers to the Local Distribution Company (“LDC”) at the end of the GEA Program, or if there are consecutive GEA Programs the TPS shall return the customers to the LDC at the end of the last consecutive GEA Program.
  - c. Staff points out that while requesting bids for a period greater than 12 months could possibly result in lower bid prices, for electric service, going beyond the time period for which the utility Basic Generation Service (“BGS”) rates are known and, for gas service, going beyond the time period for which the utility Basic Gas Supply Service (“BGSS”) rates are known could result in GEA Program rates that are higher than the utility BGS or BGSS rates if BGS or BGSS rates go down during the contract term. It also makes it more difficult to determine whether the contract provides savings for participants. Staff recommends that the lead agency consider this risk and the impact that this could have on GEA Program participants as part of its program development and bid evaluation.

- d. The bidding documents may permit other methods of determining the price, rather than fixed price only, to be proposed by bidders. Staff recommends that the lead agency consider the increased difficulty of evaluating bids based on alternative pricing models.
5. Confidentiality: Pursuant to N.J.A.C. 14:4-6.10(a)14, the contract between the lead agency and the TPS shall include a provision stating that all customer information that is provided to the TPS for the GEA Program shall be deemed confidential and shall not be used or disseminated by the TPS for any purpose other than the facilitation of the GEA Program. Further, pursuant to N.J.A.C. 14:4-6.3(b), any designee of the TPS shall execute a confidentiality agreement prior to receiving any customer related information, and this should be reflected in the contract.
6. Customer Billing: Pursuant to N.J.A.C. 14:4-6.10(a)13, the contract between the lead agency and the TPS shall include a clear description of the customer billing arrangements, which shall include who will bill the customer and whether budget billing will be available. If budget billing is available, the agreement shall provide that a true-up of the account shall be made at least once every 12-month period during the term of the GEA Program. If it is your intent that the customer will be provided with one (1) bill from the utility for utility and TPS services, the bidding documents should reflect that the customer will be billed on a utility consolidated billing basis, and it should address specifically what will happen if the customer no longer qualifies for utility consolidated billing. The lead agency should consider including a requirement in the bidding documents that the selected supplier will provide budget billing to residential participants, particularly those who presently utilize budget billing. This requirement should include details that will allow the bidder to understand what is involved in providing budget billing. It should provide details explaining that, rather than invoicing and collecting monthly charges from a customer equal to monthly metered usage multiplied by the contract price, the supplier will invoice and collect an equal amount each month. If a supplier is selected that does not offer budget billing, Staff recommends that adequate steps be taken to ensure that customers are aware of this and the impact that this will have on their bills so that customers are not left unprepared for bills that can be significantly higher than they would otherwise be. This should be clearly explained in the opt-out notice.
7. Opt-Out Notices: Please ensure that you submit the draft opt-out notice for use in notifying residential customers to the Board and Rate Counsel pursuant to N.J.A.C. 14:4-6.6(t). Pursuant to N.J.A.C. 14:4-6.6(r)9, please ensure that the draft opt-out notice includes a GEA Program summary that reflects the specifics of this GEA Program in the standardized format that is posted on the Board's website (<http://www.nj.gov/bpu>). Please ensure that you submit the final version of the opt-out notice and GEA Program summary to the Board and Rate Counsel pursuant to N.J.A.C. 14:4-6.6(s).
8. Fixed Price Contracts: Please be reminded that, pursuant to N.J.A.C. 14:4-7.12, the rate cannot be characterized as "fixed" or "firm" if it can be changed other than for changes in certain government charges such as the Sales and Use Tax ("SUT") as set forth in N.J.A.C. 14:4-7.6(l). In addition, the contract should not include material change notices if the contract price is marketed as fixed. N.J.A.C. 14:4-7.6 prohibits TPS contracts from including provisions (sometimes referred to as "material change notices") that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by operation of law, such as a change in the SUT. TPSs are prohibited from increasing rates that have been characterized as "fixed" or "firm" without the customer's affirmative consent. Furthermore, terminating the agreement without the customer's consent based upon these material change provisions is also prohibited by the rules.

9. Non-Residential Customers: If the GEA Program includes non-residential customers and there are charges or penalties for these customers -- for example, charges for leaving the program early -- these customers should be made aware of the specific details regarding these charges and any other relevant substantive provisions prior to opting into the program. N.J.S.A. 48:3-85(a)(1)(a) provides that a TPS shall not provide electric generation service or gas supply service to a customer in this State unless the TPS has provided the customer with a one-page information sheet summarizing the material terms and conditions of the contract as determined by the Board. If the GEA Program includes non-residential customers who meet the definition of a customer at N.J.S.A. 48:3-85(a)(1)(b), the TPS shall provide these customers with a one (1) page GEA Program summary.
10. E-Procurement Pilot Program: If the E-Procurement Pilot Program will be used as part of the bidding process, please be advised that the use of the E-Procurement Pilot Program does not relieve you of the responsibility of complying with applicable Board rules, including those covering TPS, government energy aggregation, and the confidentiality of customer specific information.
11. TPS Responsibilities:
  - a. Staff recommends including language in the TPS contract that the TPS be familiar with and comply with the applicable provisions of Title 48; the Board's rules in N.J.A.C. 14:4 as they relate to a TPS; customer rights pursuant to N.J.S.A. 48:3-85 and N.J.A.C. 14:7; the Renewable Energy Requirements under N.J.S.A. 48:3-87 and N.J.A.C. 14:8; and the utility's customer account services master agreement. Staff further recommends that the TPS contract include acknowledgement by the TPS that it must utilize the current Electronic Data Interchange ("EDI") protocols to flag the customers that it enrolls as part of this GEA Program as GEA customers.
  - b. Staff recommends that a provision be included in the TPS contract to require that the selected supplier provide the lead agency with the necessary customer information in a specific format regarding all of the customers that it is serving at the end of the GEA Program.
  - c. If the contract provides that the selected TPS will be performing some of the obligations of the lead agency (for example, sending out the opt-out notifications) the request for bids should require the supplier to include in its bid documents sufficient information and references that will allow the lead agency to pick a supplier based on that review that will be able to adequately perform these obligations.
  - d. The TPS contract should include accurate, specific details regarding the services that the TPS will be required to supply to ensure uninterrupted supply to program participants.
12. Consistency: Please ensure that the terms included in the request for proposal are consistent with the terms in the TPS contract.
13. Second Round: The GEA Program may allow residential customers who have ended their TPS contracts and have not entered into a new one since the beginning of the GEA Program to be included in the program via a second opt-out. Staff agrees that if these customers leave their TPS, they should have the opportunity to join the GEA Program. However, in consideration of the fact that these customers recently chose to leave a TPS and return to BGS/BGSS service, Staff believes it would be better to include these customers on an opt-in basis rather than an opt-out basis.

14. Undeliverable Mail: In the event that any of the opt-out notices to residential customers are returned because they are undeliverable, these residential customers should not be included in the original program and must affirmatively opt-in in order to receive the anticipated savings of the GEA Program.
15. Executed Contract: Please ensure that you submit a copy of the executed contract pursuant to N.J.A.C.14:4-6.6(n).
16. LCEA – Government Energy Aggregation Program(s):

*RFP:*

- a. The RFP permits multiple durations, extending up to 24 months. While soliciting bids for periods exceeding 12 months could possibly yield lower bid prices, extending beyond the known utility BGS rate duration could lead to program rates surpassing utility BGS rates, should the BGS rates decrease during the contract term. This extended duration also complicates the process of determining whether the contract provides savings for participants.
- b. “Administrative Fee” – Municipalities may be reimbursed by the TPS for certain costs the municipality incurs while operating the energy aggregation program as per N.J.A.C. 14:4-6.8(e). These costs must be “actual” and “reflected in invoices or vouchers” paid by the municipality as per N.J.A.C. 14:4-6.8(d).

*Agreement:*

- a. Section 13.1 of the Agreement specifies that the parties must attempt to resolve any disputes by negotiations before proceeding to litigation; however, a time limit is not specified.

Sincerely,



Stacy Peterson  
Deputy Executive Director