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November 27, 2017

VIA FEDERAL EXPRESS AND EMAIL

The Honorable Irene Kim Asbury
Secretary, New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
irene.asbury@bpu.state.nj.us

Re: I/M/O the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs

Dear Secretary Asbury:

This firm represents the Retail Energy Supply Association ("RESA") in the above-captioned matter. Enclosed for filing please find the original and ten (10) copies of the following:

1. RESA's Verified Petition to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs;
2. Verification of Robert Gibbs; and
3. Certification of Service.

A check in the amount of $25.00 is also enclosed for the requisite filing fee. Copies are being provided to the service list by electronic mail or regular mail.

Respectfully submitted,

Murray E. Bevan

Enclosures

cc: Enclosed Service List

I/M/O the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs
BPU Docket No. _____

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs	)	**VERIFIED PETITION** Docket No. _____

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This is a Verified Petition Seeking to Reopen the Matter of the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("Petition") and establish a mechanism for the release of gas capacity to the State's third party suppliers ("TPSs") by the gas distribution companies ("GDCs"). This petition is filed pursuant to N.J.A.C. § 14:1-1 *et seq.* under the rules of practice of the Board of Public Utilities ("Board") by the Retail Energy Supply Association[1] ("RESA" or "Petitioner"). RESA is a broad and diverse group of retail energy suppliers that share a common vision that competitive retail energy markets deliver

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

more efficient, customer-oriented outcomes than do regulated utility providers. RESA members offer retail electric and gas service to residential, commercial, and industrial customers in New Jersey, throughout PJM, and in other competitive markets across North America.

I. The Provision of Basic Gas Supply Service

1. On January 6, 2003, the Board issued an Order with respect to the Matter of the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., Docket No. GX01050304 (the "BGSS Order"). The BGSS Order established the provision of default basic gas supply service ("BGSS") provided by the GDCs and competitive gas supply service provided by TPSs in New Jersey.

2. In pertinent part, the BGSS Order establishes that commercial and industrial customers receive monthly BGSS service, while residential and small commercial customers receive periodic BGSS service. Customers on monthly BGSS service have their gas rates adjusted every month based on the New York Mercantile Exchange ("NYMEX") price for each month. Periodic BGSS pricing for residential and small commercial customers, on the other hand, is subject to three (3) price adjustments per year. The first of these adjustments is effective on October 1 of each year (after notice and a hearing, subject to Board approval) followed by two self-implemented rate adjustments on November 1 and January 1, provided notice is given to the Board and the Ratepayer Advocate.

3. Self-implementing rate adjustments for Periodic BGSS service allow the GDCs to provisionally adjust the Period BGSS rate upwards by a maximum of 5% of the total residential customer bill. Furthermore, the GDCs are permitted to decrease rates at any time provided the

Board and Ratepayer Advocate are notified at least two (2) weeks in advance of the decrease and are provided with supporting documentation.

4. Under the BGSS Order, the Board reserved the right to "revisit and/or modify its decision in this matter at any time upon notice to the parties should circumstances so warrant."[2] The New Jersey retail gas supply market has changed significantly since 2003 – natural gas prices have dropped and different gas capacity sources are available. RESA posits that a review of New Jersey's retail gas market is long overdue.

II. Gas Capacity Release

5. The BGSS Order references I/M/O the Petition of Public Service Electric and Gas Company's proposal to Transfer its Rights and Obligations under its Gas Supply and Capacity Contracts and Operating Agreements to an Unregulated Affiliate and Other Relief, Docket No. GM00080564 (the "PSE&G Order).[3]

6. Among other things, the PSE&G Order discusses PSE&G's proposal to implement an "optional" gas capacity release program to ensure TPSs have the opportunity to obtain interstate capacity to deliver natural gas to their customers on PSE&G's system if the capacity could not be obtained elsewhere.[4] However, it is not clear if this "optional" gas capacity release program still functions.

7. Gas capacity release programs in many other states have been instituted following the Federal Energy Regulatory Commission's ("FERC's") establishment of the complete unbundling of

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[2] BGSS Order, *10-11.

[3] BGSS Order, n. 1.

[4] The PSE&G Order was focused on the transfer of PSE&G's rights and obligations under its capacity contracts and operating agreements to an unregulated affiliate, "Newco."

transportation, storage, and marketing of natural gas in FERC Order No. 636.[5] FERC Order No. 636 gives all sellers of natural gas equal footing in moving natural gas from the wellhead to the end-user or local distribution company ("LDC"). FERC Order No. 636 also requires that interstate pipelines offer services allowing for the efficient and reliant delivery of natural gas to end users. These services include the institution of "capacity release" programs, which allow the resale of unwanted pipeline capacity between pipeline customers.

8. In addition, FERC Order No. 712 provides exemption from its Asset Management Agreement ("AMA") requirements for tying and bidding requirements for capacity releases made as part of state-approved retail open access programs.[6] FERC Order No. 712 encourages the development of a robust wholesale capacity release market and supports retail competition by promoting a level playing field through utility asset cost allocation.

9. The current New Jersey gas capacity release programs have not been investigated or reviewed in over a decade. Because of this, the GDCs' current gas capacity release programs tend to be generic and outdated, and are not well-subscribed, utilized, or easily understood by TPSs.[7]

10. Because gas capacity in New Jersey is fully subscribed by the GDCs, TPSs are subject to increased costs, and must purchase their own capacity to transport gas to the city gate. As a result, TPSs pay for embedded transportation demand rates for delivered supply – and TPS customers pay a duplicative cost because TPS customers are also subject to the transportation costs of the GDC asset

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[5] FERC Order 636 was issued as a Final Order in two separate matters: Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Docket No. RM91-11-000, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM87-34-065; 59 F.E.R.C. ¶ 61,030 (1992).

[6] Promotion of a More Efficient Capacity Release Market, Docket No. RM08-1-000; 123 F.E.R.C. ¶ 61,286 (2008).

[7] For example, Elizabethtown Gas requires suppliers to purchase "comparable capacity" for service of customers on certain rate classes. The current structure of the capacity market in New Jersey makes the cost of this capacity extremely high for TPSs, often curtailing the ability of TPSs to serve customers in Elizabethtown's territory.

portfolio.

11. A lack of gas capacity procurement in New Jersey impedes the development of a competitive gas market in New Jersey and frustrates the intent of the Electric Discount and Energy Competition Act ("EDECA") to promote competitive retail markets because TPSs are forced to pay more for gas capacity than the GDCs serving default BGSS to customers.

Benefits of Reopening the Board's 2003 BGSS Order

12. The GDCs have consistently used the BGSS Order to decrease gas rates mid-winter, crediting customers during peak usage months and distorting the appearance of the cost of natural gas by issuing massive credits.

13. It has been almost fourteen years since the Board entered the BGSS Order. The retail gas market has undergone significant changes since the initial implementation of Monthly and Period BGSS pricing. The BGSS Order clearly states that "customers benefit by having a price structure that is more consistent with market conditions."[8]

14. Reopening the BGSS Order and correcting the mechanisms which allow the GDCs to accrue overpayments resulting in the issuance of massive winter credits furthers the Board's goal of a price structure that is consistent with market conditions.

15. While on the surface the issuance of credits to BGSS residential customers appears to be a good thing, the Board should investigate why massive credits are allowed to accrue for these customers, as it distorts the competitive market and sends mixed signals to customers on the actual cost of natural gas.

16. Moreover, the initiation of a stakeholder proceeding to create an avenue for the

[8] BGSS Order at *7.

purchase of gas capacity by TPSs on behalf of their customers also furthers the Board's goal of a price structure that is consistent with market conditions.

17. According to the Board's most recently available data, as of August 2017, only 5.19% of residential gas accounts and 21.35% of commercial and industrial gas accounts have switched to a TPS from default BGSS service.[9] The retail gas market in New Jersey, despite undergoing restructuring prior to the electric retail market (for commercial and industrial customers), is simply stagnating.[10] Reopening the BGSS Order allows the Board to take another look at the structure of the retail gas market, with the benefit of some fourteen years of experience as a backdrop.

18. Creating gas capacity release programs in each GDC territory allows each GDC to improve their individual optimal least cost gas sourcing while incorporating storage capacities. Moreover, if gas capacity release programs are implemented, the GDCs will no longer be locked into sole-source/no bid contracts with their affiliated supply companies because the GDC's capacity would be available for unaffiliated competitive marketers (gas TPSs).

19. Implementation of gas capacity release programs ensures that TPSs have a bigger stake in the retail gas market and that they pay a fair fee for capacity.

20. Gas capacity release programs also ensure that customers benefit from the capacity acquired on their behalf (whether by their GDC or by a TPS) and may result in lower prices to customers, particularly shopping customers who are currently paying twice for capacity.

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[9] The Board's August 2017 Switching Statistics are attached to this petition. Switching data is periodically updated and can be found at http://www.state.nj.us/bpu/about/divisions/energy/switching.html/. By contrast, data from New York from December 2016 indicates that 57% of large commercial accounts, 31.4% of small commercial accounts, and 17.1% of residential accounts switched to retail suppliers. In addition, 11.9% of Pennsylvania residential customers have switched to retail gas suppliers as of October 1, 2017. Both New York and Pennsylvania have developed gas capacity release programs. The New York and Pennsylvania switching statistics are attached to this Petition.

[10] *See* BGSS Order at *9, noting that commercial and industrial customers were able to take advantage of competitive gas service in 1994, while electric competition was not initiated until 1999.

21. Introducing more entities into the gas capacity market creates market diversity and lowers gas capacity costs.

22. Incorporating a gas capacity release program where transportation and storage capacity follow the customer based on the customer's individual peak day requirement is an efficient and transparent way to ensure fair and equitable cost allocation between GDC and TPS activity.

23. On an annual basis, the Board reviews the Basic Generation Service ("BGS") process, and previously revisited the mechanism for default electric service in I/M/O the Review of Basic Generation Service Procurement Process, Docket No. ER12020150. The Board has not yet initiated any review of the BGSS process since its inception in 2003. RESA believes the Board is overdue for a review of the BGSS process and should take this opportunity to develop gas capacity release programs to enhance retail gas competition and ensure that the competitive gas market is functioning as intended.

Proposed Board Action

24. RESA proposes that the Board revisit the BGSS pricing and crediting mechanism. GDCs should not be able to accrue credits to customers totaling in the millions or hundreds of millions of dollars per heating season.[11] Accrual of massive credits owed to customers indicates that the BGSS pricing structure is not market-reflective and distorts the perception of gas prices.

25. RESA further proposes that the Board initiate a stakeholder proceeding to create updated and functioning gas capacity release programs in each GDC territory. The programs would have to be specific to each individual GDC as each GDC has separate pipelines and

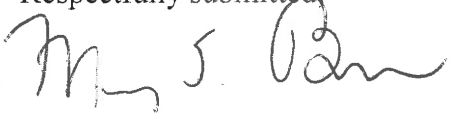
[11] *See, e.g.,* http://livingstontownship.org/pseg-extends-bill-credits-customers-will-save-on-winter-heating-bills/ and http://www.app.com/story/money/business/consumer/2016/12/21/pseg-bill-credits/95716190/.

pipeline arrangements which should be taken into consideration when developing a gas capacity release mechanism.

26. RESA believes these two actions will further stimulate the development of a healthy and competitive retail gas market by eliminating financial barriers to competition and ensuring that appropriate pricing signals are sent to customers and market participants.

Therefore, RESA urges the Board to reopen the BGSS Order to (1) address the BGSS procurement process and (2) initiate a stakeholder proceeding to create a workable mechanism for TPSs to purchase gas capacity on behalf of their customers.

Respectfully submitted,



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Date: November 27, 2017

cc: Attached service list

VERIFICATION

STATE OF NEW JERSEY :
:
CITY OF SOMERSET :

I, Robert Gibbs, hereby state that I am the New Jersey Chairman of the RETAIL ENERGY SUPPLY ASSOCIATION, the Petitioner in the foregoing Petition; that I am authorized to make this Verification on behalf of the RETAIL ENERGY SUPPLY ASSOCIATION, that the foregoing Petition was prepared under my direction and supervision; and that the statements in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Robert Gibbs
New Jersey Chairman
RETAIL ENERGY SUPPLY ASSOCIATION

SWORN TO AND SUBSCRIBED before me on the 27th day of November, 2017.

Notary Public

My commission expires: 2/9/22

ADRIANA M. FERRARI-ASAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 9, 2022

I/M/O the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs

BPU Docket No._____

CERTIFICATE OF SERVICE

I certify that on this 27th day of November 2017, on behalf of the Retail Energy Supply Association, I caused ten (10) copies of the Verified Petition of Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs to be served on the following individual electronically and via overnight delivery:

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I further certify that on the same date I caused one (1) copy of the above-mentioned document to be served on the following individuals electronically and via regular mail:

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