



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
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November 28, 2007

Via Hand Delivery

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: I/M/O the Provision of Basic Generation Service-
Implementation of a Demand Response Program
BPU Dkt. No. EO07050351

Dear Secretary Izzo:

Please accept these comments (original and 10 copies) on behalf of the Department of the Public Advocate, Division of Rate Counsel, ("Rate Counsel") filed pursuant to the notice posted on the New Jersey Board of Public Utilities (Board" or "BPU") website requesting that comments on the above captioned filing be filed by November 28, 2007.

An additional copy of this filing is also enclosed. Kindly stamp and date the additional copy as "filed" and return it to our courier. Thank you for your consideration and attention to this matter.

Background

At the public agenda meeting on June 14, 2007, the Board's Staff recommended that the Board direct the State's electric distribution companies ("EDCs"), demand response providers, and other interested parties to form a demand response working group to design and propose, with Staff's guidance, the implementation of a New Jersey demand response procurement process. Staff recommended that the group start working on its proposal no later than July 2, 2007 and that the group's proposal be filed with the Board by October 1, 2007. The Board adopted Staff's recommendation.

On June 26, 2007 a Secretary's letter was sent to the parties on the BGS Electric List Server advising of the formation of the Demand Response Working Group ("DRWG") and the date of the initial meeting, July 12, 2007. Attached to the letter was a document entitled Demand Response Pilot Procurement Process & Program Guidelines which set out certain key dates and program design characteristics. The guidelines envisioned a procurement process of a competitive nature with a target demand response procurement, for each EDC, of 5% of the total load bid into the next BGS auction, with demand response providers bidding in the auction on one or more 25 MW tranches, for a contract term of three years. The guidelines also provided that the DRWG should establish a Measurement and Verification protocol and that penalties should be developed for demand response providers who win the right to provide demand response but fail to deliver.

On September 21, 2007, the DRWG filed a request for an extension of time to file the DRWG's proposal with the Board. At that time, the DRWG informed the Board that

the group had discussed a demand response pilot program which would “piggyback” on an existing PJM demand response program with an added incentive, or “Premium Payment” for New Jersey participants. The September 21 letter further advised the Board that the group had “begun to discuss the details of an appropriate Premium Payment and how it may be derived and funded.”

On September 27, 2007 Rate Counsel, in a letter to the Board, expressed its concern that the DRWG’s proposal did not conform to the Board’s directive in the Secretary’s Letter dated June 14, 2007 that the Demand Response procurement should be of a competitive nature. Rate Counsel asked the Board for additional guidance on this issue before the DRWG engaged in extensive “Premium Payment” discussions.

At the October 3, 2007 agenda meeting Board Staff recommended that the Board grant the extension of time until November 14, 2007 and that the Board authorize a public comment period with comments to be filed at the Board by November 28, 2007. Staff, in addressing Rate Counsel’s concern regarding the non-competitive nature of the Pilot Program, recommended that the Board reaffirm the direction given to the DRWG at the earlier agenda meeting, that is, “that the DRWG have the flexibility to design and propose a demand response procurement process” and the Board would issue a decision on the program after review of the program and any comments received. The Board adopted Staff’s recommendation.

On November 14, 2007, the DRWG filed its proposal for a demand response pilot program with the Board. The proposed pilot program would, with PJM’s assistance, follow the rules and procedures in place for the currently existing PJM capacity programs – the Interruptible Load for Reliability (“ILR”) program and the Demand Response

("DR") program. The proposed pilot would be offered statewide and that newly registered New Jersey participants in the PJM programs would receive a supplemental payment above the existing PJM market value. The letter set forth issues to be explored further in Phase 2 of the process: (1) that the group would explore a competitive process for demand response procurement in future years, and (2) that the group would explore curtailment events supporting EDC-specific operational needs.

Discussion

Rate counsel supports the Board's efforts to increase demand response programs within the State and, as a participant in the DRWG, is hopeful that the proposed pilot program will help achieve a significant increase in New Jersey's participation in the current PJM demand response programs. Rate Counsel submits the following two comments on the DRWG proceeding.

Competitive Procurement Process

In the initial stage of this process, Rate Counsel recommended that the New Jersey supplemental payment over the PJM market value should be determined through an RFP process. Rate Counsel felt that a competitive demand response procurement process would produce the best price for New Jersey ratepayers and would provide the Board with necessary information on the market value of demand response in New Jersey. This proposal was not adopted by the group and the premium payment was established by the members of the working group. While Rate Counsel is hopeful that the safeguards of the budget cap and the \$22.50 per MW per day cap, will ensure that the

pilot program is not detrimental to New Jersey ratepayers, Rate Counsel strongly urges a competitive RFP process for future procurement programs.

Rate Counsel believes that a competitive RFP process is the best way to get the best price for New Jersey ratepayers. It is unlikely that New Jersey ratepayers can receive the best price for demand response when parties setting the price are the same parties receiving the payment. The administratively determined price developed by the DRWG is acceptable only because the proposed program is a limited term Pilot program and is strictly constrained by the budget cap and the \$22.50 per MW per day cap. Only under such constraints would it be acceptable to continue to allow demand response providers set the price they would receive for the product that they sell. Rate Counsel submits that in future years the price should be set in a competitive manner.

Further, demand response programs can be designed in many forms and target different users. A competitive RFP process would take advantage of industry expertise and would encourage the design of efficient programs that could have an appreciable impact on the State's long term energy goals. Use of a competitive RFP, while perhaps more administratively complex, would allow for a broader response from the market with different technologies or end-use applications and would facilitate participation by a variety of demand response providers.

In sum, Rate Counsel recommends that the Board direct the DRWG to implement a competitive demand response program in the Phase 2 stage of this process. Rate Counsel submits that a competitive RFP process would provide maximum efficiency, providing the Board with flexibility in the design of demand response programs and, at

the same time, giving the Board the benefit of the significant, specific experience in direct load programs available in the State.

EDC Transaction Expenses.

The DRWG's November 14, 2007 letter to the Board stated that the DRWG recommended to the Board that the costs of the DR Pilot program, including the Premium Payments and the EDCs' incremental administrative costs, be funded by the EDCs' Retail Margin collections. Rate Counsel respectfully requests that if the Board adopts the DRWG's proposal, the Board should specify that only reasonable and prudently incurred incremental administrative costs are eligible for recovery through the EDCs' Retail Margin Collection. The Order should also direct the EDCs to provide the Board and Rate Counsel with a full accounting for these costs with an opportunity for discovery and full review, including evidentiary hearings, by the Board's Staff, Rate Counsel and any other interested parties.

Conclusion

Rate Counsel believes that a portfolio of well designed demand response programs can be a valuable component of New Jersey's energy resource portfolio. Rate Counsel supports the Board's efforts to increase the amount of capacity in New Jersey through the implementation of such programs and looks forward to continued participation the Phase 2 stage of the DRWG.

Thank you for this opportunity to submit comments in this matter.

Respectfully submitted,

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