

**I/M/O the Provision of Basic Generation Service
(BGS) For the Period Beginning June 1, 2015
BPU Docket No. ER14040376**

Initial Comments of the Division of Rate Counsel

September 3, 2014

I. Introduction

The Division of Rate Counsel (“Rate Counsel”) is pleased to provide these comments to the Board of Public Utilities (the “Board” or “BPU”) pursuant to the 2014-2015 BGS procedural schedule established by Board Order dated May 21, 2014 in *I/M/O the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2015* (“2015 BGS Procedural Order”).

In these comments, Rate Counsel will address the following issues:

1. The recommendation made by the Board’s consultant Boston Pacific in the 2014 Annual Final Report to raise the statewide load cap from 33% to 45% for the BGS-CIEP (Commercial and Industrial Energy Pricing) auction;
2. The effect of the Board’s decision to lower the CIEP threshold from a peak load contribution of 750kW to 500kW;
3. BGS administrative fees including the legal fees associated with the BGS auction patent defense; and,
4. Rockland Electric Company’s proposal for procuring the supply requirements for its non-PJM service area.

II. Discussion

a. Increasing the CIEP statewide load cap.

In addressing the competitiveness of the BGS-CIEP auction, the Board's consultant Boston Pacific noted the BGS-CIEP auction was "adequately competitive" but "somewhat less competitive" than the BGS-FP auction.¹ Boston Pacific noted the "excess quantity offered was low but adequate" and noted that there were five winners in the CIEP auction "one less winner than last year."² In addition, Boston Pacific noted of "particular concern" is "the fact that some bidders who previously participated in the CIEP auction may no longer be participating."³

To address the issue of low excess supply, Boston Pacific recommended increasing the statewide load cap in future BGS-CIEP auctions from the current load cap of approximately one-third of the CIEP tranche target to a load cap of about 45 percent of the CIEP tranche target. Rate Counsel urges the Board not to adopt this recommendation at this time.

With only a redacted copy of Boston Pacific's 2014 Annual Final Report, which does not include bidder information, Rate Counsel cannot independently assess the severity of the problem of low excess supply. There is no way for Rate Counsel to determine whether raising the load cap will increase the number of bidders in the CIEP auction. Any analysis done by Boston Pacific to support its recommendation is not presented in the redacted copy of the Boston Pacific Annual Final Report. The redacted report notes that "bidders who do offer in the CIEP Auctions tend to offer at the load

¹ *Annual Final Report on the 2014 BGS-FP and CIEP auctions and the 2014 RECO Swap RFP*, Prepared by Boston Pacific Company, June 3, 2014, p.9 (redacted version) ("Annual Final Report").

² *Id.* at 10.

³ *Id.* at 16.

cap” and reasons that higher load caps would result in increased offers, “thereby increasing the ratio of offers to need and potentially driving down prices.” While it may be true that an increase in the number of tranches a bidder can win may increase the amount of supply offered into the CIEP auction, it does not necessarily follow that this increase in supply produces a more competitive auction or increased bidder participation in the auction.

In addition, recent developments that may affect the New Jersey electric market and future BGS auctions suggest that the proposed change should not be made at this time. On June 18, 2014, Exelon Corporation and Pepco Holdings Inc. (“PHI”) filed a petition before the Board seeking the Board’s approval of Exelon’s acquisition of PHI. If the merger goes forward, Pepco Energy Services would join Exelon Generation and Constellation Energy under a single parent, further concentrating the market. In its analysis of the 2014 auction, Boston Pacific noted that the winning shares have a Herfindahl-Hirschman Index (HHI) of 2,504, which is just above 2500, which FERC considers the threshold for a highly concentrated market. If the merger is approved, the number of bidders could be further reduced resulting in an even higher HHI. While this issue is the subject of the FERC’s, and the BPU’s ongoing review of the merger, Rate Counsel recommends that the Board remain cautious about implementing untested changes in the CIEP auction at this time. Accordingly, Rate Counsel recommends that the Board further examine the causes of decreased bidder participation and explore alternate mechanisms to ensure competition in the CIEP auction.

b. Lowering the CIEP Threshold

In the BGS Review Order⁴, the Board adopted the proposal of the Retail Energy Supply Association (“RESA”) to “gradually expand the CIEP class” to include commercial and industrial customers with a peak load between 500kW and 750kW. The Board reasoned that exposing these customers to real-time pricing would “allow these customers to make more informed decisions to shop, conserve, become more efficient, or even curtail or shift load usage at times of peak demand.” *BGS Review Order, page 11*. The Board tacitly acknowledged that this change could result in higher costs for these customers but posited that “the net rate impact will be minimal and can be effectively mitigated by these commercial and industrial customers through a combination of energy efficiency, shopping, demand response, and conservation.” *Id.*

Rate Counsel continues to have concerns about the wisdom of forcing mid-sized customers into the BGS-CIEP class in order to bolster competition, especially when these mid-sized customers already have the option to shop or to be served under BGS-CIEP. Rate Counsel submits that further lowering the CIEP threshold only serves to force customers onto an hourly price structure, even if these customers are unable to deal effectively with hourly prices and have therefore chosen to remain as BGS-FP customers. Business owners are in the best position to determine for themselves whether it makes economic sense to switch to a third party supplier and certainly many have chosen to do so. The Board should not force these customers to change their mind when they have determined that switching is not economically reasonable for their business.

⁴ I/M/O the Review of the BGS Procurement Process, BPU Docket No. ER12020150, June 18, 2012 (“BGS Review Order”)

Since June 4, 2013, customers with a Peak Load contribution of 500 kW or more have been required to take service under a BGS-CIEP tariff. In previous comments, Rate Counsel recommended that the Board investigate the impact of this decision to lower the CIEP threshold prior to further lowering the CIEP threshold. Information should be gathered not only from retail suppliers but from the customers affected by the lower CIEP threshold. With one year of experience, the EDCs should be able to determine how smaller business owners are reacting to the new challenge of managing energy usage and markets. Prior to making any further changes, Rate Counsel recommends that the Board direct the EDCs to solicit specific information from customers about the impact of the lower CIEP threshold on customers' bills and customer reaction to the change.

c. Administrative Costs

Every year in the EDCs Joint Proposal, the EDCs notify the Board that the “EDCs will retain NERA as the Auction Manager to administer the Auctions” and advise the Board that “[a]s in years past, the cost of the Auction Manager will be recovered through tranche fees paid by winning bidders.”⁵ These fees are ultimately paid by New Jersey ratepayers, whether through tranche fees or through the BGS reconciliation charge and therefore the Board has an obligation to ensure that these amounts being paid by ratepayers are just and reasonable.⁶

⁵ I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2015, Joint Proposal for Basic Generation Service, BPU Docket No. ER14040370, July 1, 2014, p. 19.

⁶ *In re Redi-Flo Corp.*, 76 N.J. 21, 39 (1978) (“N.J.S.A. 48:2-13 charges the Board with the task of overseeing the operation of all public utilities in accordance with the purposes of the Public Utilities Act, and foremost among these responsibilities is its duty to ensure that rates are not excessive.”)

In previous comments Rate Counsel raised the issue of legal fees resulting from the BGS patent defense claim being collected from ratepayers through the BGS administrative fees. In response, the Board directed the EDCs to submit a report to Staff and Rate Counsel “detailing the total amount of BGS auction patent legal fees paid to date and the recovery of these fees from ratepayers.”⁷ The Board then stated that “after receipt and review of this information by Staff, Staff will inform Rate Counsel and the EDCs how it plans to proceed before making any recommendation to the Board.”⁸

On April 30, 2014, PSE&G, on behalf of the EDCs, provided to the Board a table of the annual fees billed to the EDCs in connection with the BGS “patent issues.” Legal fees through February 2014 total \$2,383,359.83. While we have not yet received the Staff proposal, Rate Counsel questions whether these fees should be paid by ratepayers.

In addition, all the amounts paid through the BGS administrative charge may be due for further review. For example, in 2012 PSE&G paid over \$1.14 million in fees associated with NERA’s services as BGS Auction Manager, with lease payments for NERA’s Newark office and in outside counsel fees for the BGS patent defense claim. At a minimum, Rate Counsel questions the continued need for ratepayer funding of NERA’s Newark office. Rate Counsel accordingly recommends that the Board continue and expand the Staff action taken in the previous BGS proceeding and initiate a review of all BGS administrative amounts.

⁷ *I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2014, BPU Docket No. ER13050378, Decision and Order, Nov. 22, 2013.*

⁸ *Id.*

c. Rockland Electric RFP

In its Company specific filing, Rockland Electric Company (RECO) addressed its need to purchase electric supply to meet its full service obligations for its non-PJM areas, the Central and Western divisions. These areas represent less than ten percent of RECO's BGS load.

Similar to last year, Rockland proposes to purchase its capacity needs for non-PJM BGS customers in the NYISO monthly capacity market and to blend its forecast of these capacity prices into the BGS-FP price. RECO anticipates the impact of these prices on the total BGS prices will be minimal.

However due to changes in Commodity Futures Trading Commission ("CFTC") rules, a change in RECO's energy procurement process for the Central and Western divisions was required. To address the change in CFTC rules, RECO proposes to procure energy needs of BGS customers in the Central and Western divisions in the NYISO Day-Ahead and Real Time Markets and to blend its forecast of those prices into the BGS-FP price. RECO will make a monthly compliance filing indicating the actual prices paid. As with its capacity purchases, RECO anticipates that the impact of these energy purchases on total BGS prices should be minimal.

The Company also proposed an alternative method for energy procurement "in the event the Board wants to continue with an RFP process for energy procurement" with the Board agreeing on a range of acceptable prices prior to the commencement of the NYMEX auction.

Rate Counsel does not object to either RECO market priced proposal or the NYMEX auction alternative. Rate Counsel recommends that the Company continue to

monitor PJM and NYISO prices and its procurement practices to ensure that ratepayers are not exposed to undue commodities risk as a result of such transactions and to keep the Board informed of commodity prices in the NYISO.