IN THE MATTER OF THE BOARD'S INVESTIGATION OF CAPACITY PROCUREMENT AND TRANSMISSION PLANNING BPU - Docket No. EO-11050309

Comments of NRG Energy, Inc.
Before the New Jersey Board of Public Utilities
October 14, 2011

Good Morning President Solomon, I am Ray Long, Vice President, NRG Energy, Inc ("NRG"). NRG is a Fortune 250 wholesale power generation company headquartered in Princeton, New Jersey. We own and operate nearly 26,000 megawatts of electric generating capacity, or enough to support nearly 21 million homes. NRG's retail businesses, Reliant Energy, Energy Plus Holdings, and Green Mountain Energy Company, combined serve more than 1.8 million residential, business, commercial and industrial customers.

As you know, NRG is also the parent company of New Jersey Power Development LLC, which is one of the successful Long-Term Capacity Agreement Pilot Program ("LCAPP") applicants and was awarded a Standard Offer Capacity Agreement ("SOCA") by the Board to develop 660 MW of new, clean electric generation capacity in Old Bridge, New Jersey. Our experience with the early development stages of the Old Bridge project makes NRG uniquely qualified to comment on some of the interconnection issues you are considering here today.

In July 2003, the Federal Energy Regulatory Commission ("FERC") fundamentally reformed the interconnection process in its landmark Order No. 2003, which directed all public utilities to adopt standard processes for evaluating interconnection requests and a standard interconnection agreement governing the rates, terms and conditions of interconnection service. In issuing Order No. 2003, FERC was responding to many of the same complaints we hear today – the interconnection process takes too long, is not standardized, and was being implemented differently by different utilities.

Our recent experience in developing the Old Bridge project is instructive on the types of barriers to entry that currently exist in the interconnection process and shows that interconnection reform is still a work in progress in PJM.

- NRG submitted its interconnection request for its Old Bridge development on 11/30/2010.

- Old Bridge has been waiting for its Feasibility Study – the first and simplest of the three interconnection studies[1] – for over 10 months. JCP&L and PJM have revised the target date of this preliminary study three times.

- Under the PJM tariff, JCP&L was required to complete the Feasibility Study on 4/30/2011.

- After five additional months beyond the tariff requirement date and three delay notifications, Old Bridge finally received the Feasibility Study on October 10, 2011. This is twice as long as required under the tariff to complete this first, most basic step of the interconnection process. If the next two phases of the Interconnection Study process similarly take twice as long as required, it may result in delays of up to a year or longer.

These types of significant delays make it virtually impossible for developers to bring new generation projects to market in a timely manner.

While we continue to work within the PJM Stakeholder process to reform the interconnection process, the time has come for more direct action. The BPU can and should play an active role in pushing FERC to order utilities to process these requests in a timely manner or face the financial consequences of failing to act, and we recommend specific ideas below that could aid the Board should it elect to take direct action. Such action by the Board would provide assistance to the LCAPP awardees with aspects of the critical path time line that are outside of their control.

We address a number of the Board's specific questions below.

1. Testimony presented at the June Hearing points at the existence of barriers to new entry resulting from PJM's interconnection rules and practices. What actions can PJM take that will alleviate bottlenecks in the current transmission interconnection process? What can the Board do to facilitate such PJM actions?

[1] PJM's tariff describes the process as follows in Section 36.2 of its Tariff:

> The Interconnection Feasibility Study assesses the practicality and cost of accommodating interconnection of the generating unit or increased generating capacity with the Transmission System. The analysis is limited to load-flow analysis of probable contingencies and, for Generation Interconnection Requests, short-circuit studies. This study also focuses on determining preliminary estimates of the type, scope, cost and lead time for construction of facilities required to interconnect the project. For a Generation Interconnection Customer, the Interconnection Feasibility Study may provide separate estimates of necessary facilities and upgrades and associated cost responsibility reflecting the generating facility being designated as either a Capacity Resource or an Energy Resource.

Are incumbent generators submitting projects for the purpose of taking up positions in the PJM interconnection queue to the detriment of new entrants?

The existing PJM interconnection process presents a significant impediment to those seeking to develop new generation in New Jersey and other constrained areas. As a result, development projects are finding their interconnection studies delayed by multiple months or even years. NRG's experience with its Old Bridge project, discussed above, is instructive and apparently (and unfortunately) par for the course.

Strong action is needed from the Board. NRG believes that the Board should consider filing a complaint requesting that FERC implement a multi-tiered response to the serious problems the Board has identified with the current PJM Interconnection Queue Process.

First, the Board should request that FERC find that the existing PJM interconnection process is fundamentally broken, and that utilities in PJM must allow interconnection customers the right to hire qualified outside consultants to conduct Feasibility, System Impact and Facilities Studies to expedite the process. Utilities can be provided with the right to review – but not unduly delay – any interconnection studies conducted by these qualified outside firms.

Second, the Board should request that FERC order utilities that delay interconnection studies beyond 30 days from the deadlines currently specified in the PJM tariff to pay liquidated damages for each day that they are late in performing the studies. These liquidated damages should not be recoverable through rate base, but rather should come out of the utilities' shareholders pockets.

2. Is it inappropriate to have PJM transmission-owning entities ("TOs") perform interconnection studies given that some of the TOs are part of holding companies that own generation through other affiliates or subsidiaries that participate in the PJM markets? Are such TOs causing intentional delays in the interconnection process to benefit incumbent generation affiliates?

While NRG takes no position on whether New Jersey utilities are engaging in this type of behavior, the Board may wish to consider requesting, in conjunction with the complaint described in response to Question 1, FERC to institute an investigation to explore whether incumbent utilities are intentionally delaying interconnection studies for certain key projects that they strategically oppose. A FERC investigation would provide these utilities an opportunity to demonstrate that they are allocating sufficient resources to the interconnection study in accordance with their tariff-mandated obligations.

3. *Should responsibility for the performance of engineering interconnection studies and the identification of necessary transmission upgrades and attendant costs be transferred from the TOs to PJM, or to a third party entity (e.g., an independent engineering consultant)? What would be the most expeditious means for achieving such a transfer of responsibility to PJM or other independent entity? Should an interconnection applicant be given the choice to use a third party consultant to carry the interconnection studies as an alternative to the current process?*

We strongly recommend that the Board direct the utilities under its jurisdiction to retain the necessary resources to process interconnection requests in accordance with the applicable PJM tariff. There are several workable means of bringing independent engineering resources into the interconnection study process. Qualified independent engineering consultants can be hired by the utility to aid in their processing of interconnection requests or they can be hired directly by the interconnection customer. In either case, the interconnection customer pays the actual costs of the study and provides the utility an opportunity to review the results of the studies.

Specifically, NRG recommends that utilities be provided the opportunity to choose between:

(a) allowing interconnection customers to hire qualified consultants and independently conduct the feasibility, system impact or facility study, coupled with a 30 days review period, after which the study would be deemed acceptable; or

(b) the right to directly hire and supervise the outside resources, subject to a condition that the utility pay liquidated damages if they are unable or unwilling to complete the analysis under the deadlines imposed by the tariff.

In either case, NRG recommends that both the utility and the interconnection customer receive a day-for-day extension to their deadline for any delays resulting from PJM or an outside regulatory body.

5. Since implementation of the RPM in 2007, why has the market responded with disproportionately greater amounts of new generation capacity built outside of LDAs with higher capacity prices such as those that comprise New Jersey? If higher Base Residual Auction ("BRA") clearing prices serve as the incentive for new generation capacity, why have we witnessed relatively minimal new generation in New Jersey; conversely, what factors are leading generators to build new generation capacity in lower-priced regions of PJM rather than in the constrained LDAs where their expected revenue stream is higher over time? What accounts for the high percentage of total new capacity resources coming

from withdrawn or cancelled retirements in New Jersey relative to the experience in other LDAs under RPM to date? (See Comments of PJM Interconnection, L.L.C., Docket No. EO 11050309, June 17, 2011, Tables 1 – 2) DOCKET NO. EO11050309.

Building a billion dollar plus power plant is an inherently long-term investment. In order to justify building such a plant on a merchant basis, the generator must have a reasonable assurance that it will, over the expected life of the facility, earn a return on its investment. In practical terms, this means that a new combined cycle in New Jersey has to earn, on average, its levelized cost of new entry year in and year out.

Most, if not all, of the new large capacity additions that have been built within PJM over the last several years have been supported by some form of contract. NRG is aware of no new combined cycles that have been built in PJM without access to a substantial outside revenue stream.

Capacity market structures do not currently provide the long-term certainty for payback on large scale generation investment. There are issues with capacity market design which provide disincentives for generation investment. Regulatory uncertainty caused by changes to the capacity market design over the past 10 years has been a disincentive to investment in projects with a long-term payback. Why would someone build a billion dollar project with a 10 year plus payback if the rules of the market could change (or have historically changed)?

While this debate continues at PJM, only projects with contracts have moved forward within the PJM states. New Jersey has recognized this and has taken the same long-term contract approach to see generation infrastructure developed that has been successful in other states including New York and Connecticut.

6. *Is the RPM construct capable of signaling the need for specific types of generation capacity, in particular mid-merit and base-load capacity? Are other capacity markets outside of PJM able to provide appropriate incentives to develop mid-merit and base-load generation? If so, what aspects of those capacity markets are transferable to PJM? Is it possible to develop non-peaking capacity projects without resorting to long-term contracts outside of the RPM construct? If not, what should be the duration of those contracts? Could a long-term fixed price signal in RPM either through a reformed New Entry Price Adjustment ("NEPA") mechanism or through a voluntary auction for long-term capacity procurement result in more mid-merit base load generation being built in constrained LDAs such as those comprising New Jersey?*

There are a number of mechanisms for providing generators with the ability to manage their risk by providing generators the ability to lock in a price for

longer than the current 1-year RPM structure. While PJM is currently exploring methods of improving the function of RPM, it is unknown whether and when PJM will develop improvements to the function of RPM . Moreover, when and if PJM does develop improvements to its RPM, it is unknown whether the improvements will satisfactorily address the problems currently facing new entry generators.