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

Final Comments of the Division of Rate Counsel

October 7, 2014

I. Introduction

The Division of Rate Counsel ("Rate Counsel") is pleased to provide these Final 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 focus on the proposal of the Retail Energy Suppliers Association (RESA), NextEra, and the Independent Energy Producers of New Jersey ("IEPNJ") regarding the pass through of the risk of transmission and capacity price increases to New Jersey ratepayers. Rate Counsel will not repeat our position set forth in earlier comments on the various issues raised in the Electric Distribution Companies' ("EDC") joint filing, in Initial Comments filed on September 3 and at the legislative hearing on September 29, 2014, but will rely on those prior comments.

II. Discussion

A. Pass-through of Risks from Energy Suppliers to New Jersey Ratepayers: Changes in the PJM capacity market

In both filed comments and at the Legislative hearing held on September 29, NextEra and RESA commented on anticipated changes to the PJM Reliability Pricing Model (RPM) that could affect future PJM capacity prices. In addition, at the Legislative hearing held on September 29, IEPNJ commented on this issue. All three of these entities argued that the New Jersey ratepayers should insulate BGS providers and Third Party Suppliers ("TPS") from potential price increases in the PJM capacity market. Suggestions were made for the creation of a nonbypassable charge or the modification of the Supplier Master Agreement ("SMA") as possible mechanisms to pass price increases through to some or all New Jersey ratepayers.

NextEra suggests that the Board protect BGS suppliers from possible increases in the capacity market by setting a fixed capacity charge similar to the way that transmission related rate changes are now handled through the SMA.[1] NextEra suggests that with "after the fact" reimbursement, risk premiums would be eliminated and "customers would only pay the actual amounts the utility was required to pay PJM for capacity related charges, specifically related to RPM auction pricing that is not known until after the BGS auction occurs." NextEra proposes that the Board use the same mechanism for passing through changes in PJM capacity market prices that is now used for transmission charges "not just for this year's procurement but for existing suppliers as well."[2]

[1] NextEra Energy Power Marketing LLC Initial comments, September 3, 2014, p.7.
[2] T29:L1-4 (September 29, 2014).

RESA submits that it is not necessary for the Board to “move the capacity market as a whole to nonbypassable attribution,” but, as it is anticipated that the “interim application” of the proposed changes “could create unanticipated ‘after-the-fact’ charges for load serving entities,” RESA urges the Board “to protect the competitive market by applying these costs in a competitively neutral manner.”[3]

At the hearing, IEPNJ asked that the Board be “conscious of the fact” that proposed change to the capacity market “places a significant risk on folks that would participate in the BGS auction” and urged the Board to “manage exposure for all entities here.” T36:L20-22.

Rate Counsel strongly opposes this proposal. Under the “fixed price” construct of the BGS auction, it is the suppliers’ obligation to manage market risk, not the Board’s and certainly not BGS-FP customers’. Competitive energy suppliers are sophisticated financial entities. As such, they have all of the risk management tools, knowledge, experience and capital necessary to manage changes in the marketplace. In general, ratepayers do not have the same sophisticated capabilities or availability to capital. While additional risk may cause competitive suppliers to raise their offer prices in the BGS auction, one of the purposes of the auction is to maintain competition among potential suppliers such that competitive suppliers are managing risk to offer the lowest price at which they can still expect to make a profit.

Changes to PJM’s RPM occur almost every year. That such changes may impact the costs of suppliers should come as no surprise to these sophisticated bidders. While some changes may impact costs more than others, bidders are in a far better position to

[3] Retail Energy Supply Association, comments filed September 3, 2014, p.4.

manage those risks than their customers are. NextEra and RESA's members are – or should be – active members at PJM stakeholder proceedings. If PJM is proposing changes that would impact their costs, they have the ability to advocate changes to the PJM proposal and, even if those changes are not made, they have sufficient knowledge to adequately manage the timing of the changes with the timing of their contracts. If they are permitted by the Board to pass those risks through to ratepayers, they will no longer have an incentive to advocate for lower costs.

Moreover, permitting additional pass-throughs of risks, particularly for past auctions, significantly undermines the "fixed price product" of the BGS auction. The fixed price is intended to make the auction, and thus residential rates, more stable. Ratepayers value rate stability and protection from price volatility. Removing that aspect of the BGS auction will severely undermine its value and the public's confidence in the process.

B. Pass-Through of Risks From Energy Suppliers To New Jersey Ratepayers: The Creation of a Nonbypassable Charge For Changes To Transmission-Related Costs

RESA further argues that TPS receive a different treatment compared to BGS provider counterparts with regards to various PJM transmission related charges. RESA argues that these "cost components, which are regularly reconciled for BGS customers, are best suited for the utilities to handle as part of a nonbypassable charges (sic)."[4] RESA specifically mentions three types of wholesale charges that RESA claims are "out-of-market" charges that are regularly passed on to BGS customers which they argue should be collected from all New Jersey ratepayers through a nonbypassable charge.

[4] RESA comments page 4.

Rate Counsel urges the Board to reject this proposal and believes that the better course is for both BGS suppliers and TPSs to include these costs in the offered price for any fixed price product.

1) PJM Network Integration Transmission Services (NITS)

NITS are charges to load for transmission service. NITS rates for each utility are listed in Appendix H of the PJM tariff and generally depend upon the peak load served by the supplier as a pro rata share of the total peak load served in that service area. Since the rate for transmission service is known well in advance, the primary risk in NITS charges seems to be the supplier's customer base and their peak load usage, of which the supplier should be fully aware and able to anticipate within reasonable ranges.

2) PJM Transmission Enhancement Charges (TECs,)

TECs are neither a significant portion of the total bill or "entirely outside [their] ability to anticipate." TECs are charges for approved transmission projects (new or upgrades) within PJM, and any entity active in the PJM stakeholder process – specifically the Regional Transmission Expansion Planning (RTEP) process - should be aware of these projects well in advance as the RTEP is a multi-year process. The PJM tariff requires that "The Transmission Provider shall post on its Internet site by October 31 of each calendar year each recalculated Transmission Enhancement Charge that shall be effective during the subsequent calendar year." Thus the supplier should be able to account for these TECs when they submit their bids for a fixed price product.

3) PJM Deactivation Charges or Reliability Must Run (RMR).

Generation Deactivation charges are described in Section V of the PJM tariff. They are, as described, charges to load for generation resources that have elected to retire (deactivate) but were deemed needed for reliability by PJM, and are being paid a cost of service rate to continue operation. Notices of changes in zonal charges are provided to the Markets & Reliability Committee. Again, these are charges and, in some circumstances, refunds, that should be known to the suppliers well enough in advance for them to account for them in their bids. For example, according to PJM's "Customer Guide to PJM Billing" dated July 1, 2014, "Charge refunds are also being provided from September 2008 through February 2017 for a plant in the PSEG zone that was previously collecting payments but has since decided to stay operational." With the change in operational status, the collected payments made to plant are now being refunded to network customers in all zones in New Jersey. We see no mention of these refunds of deactivation (RMR) charges in the comments.

Rate Counsel urges the Board not to establish a non-bypassable charge to cover these costs. BGS suppliers and TPS should manage all of their costs and account for them in their fixed price bids. These PJM charges are not sprung upon suppliers with no prior notice or forewarning. Presumably both BGS suppliers and RESA members actively participate in PJM proceedings where such tariff changes are proposed and discussed. If these sophisticated financial entities are truly unable to anticipate any of these costs, and these costs are large enough to undermine the BGS auction, then BGS providers and TPS should provide significantly more evidence to support their claim. Merely stating that they do not want to account for these costs in their bids is not sufficient. They should further explain why end-use customers should bear these risks even though they have paid for a "fixed-price" product.

Given that BGS providers and TPSs have the risk management tools, knowledge, experience and capital necessary to manage changes in the marketplace, the suppliers' proposals to pass costs onto ratepayers should be rejected. It is not necessary, and even harmful to shift the risk of PJM charges onto New Jersey ratepayers. As discussed above, it is Rate Counsel's position that none of these costs should be passed through to BGS customers but should be included in the BGS bid price. While the assumption of additional risk may cause competitive suppliers to raise their offer prices in the BGS auction, one of the purposes of the auction is to maintain competition among potential suppliers such that competitive suppliers are managing risk to offer the lowest price at which they can still expect to make a profit. Thus, rather than burdening ratepayers with additional nonbypassable charges, Rate Counsel believes that none of these costs should be directly passed through to ratepayers but should be integrated into the cost of supply as part of a full requirements fixed price product.