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Director

October 29, 2014

Via Hand Delivery

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton NJ 08625-0350

Re: In the Matter of the Provision of Basic Generation Service
for the Period Beginning June 1, 2015
BPU Docket No. ER14040376

Dear Secretary Izzo:

Enclosed for filing please find an original and ten copies of the Division of Rate Counsel's Final Supplemental Comments regarding Section XIII of PJM's Capacity Performance Updated Proposal dated October 7, 2014. These comments are being submitted pursuant to the Board Staff's request for comments dated October 8, 2014. These comments will also be circulated electronically to the email list server used by the Board for this filing.

We have also enclosed one additional copy of the materials transmitted. Please stamp and date the copy as "filed" and return to our courier. Thank you for your consideration and attention to this matter.

Respectfully submitted,
STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: s/ Diane Schulze
Diane Schulze
Assistant Deputy Rate Counsel

c: Service List (via electronic e-mail distribution list)

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

Final Supplemental Comments of the Division of Rate Counsel

October 29, 2014

Introduction

The Division of Rate Counsel (“Rate Counsel”) is pleased to provide these final supplemental comments on the possible impact on BGS of Section XIII of the PJM Capacity Performance (“CP”) Updated Proposal (“PJM Capacity Proposal”) dated October 7, 2014 pursuant to the October 8, 2014 email from Board Staff.

PJM established the Reliability Pricing Model (“RPM”) in June 2007, “to provide a long-term pricing signal for capacity resources and LSE obligations that is consistent with the PJM Regional Transmission Expansion Planning Process (“RTEPP”).”¹ PJM promised that “RPM adds stability and a locational nature to the pricing signal.”² Since then, however, RPM has been repeatedly modified, undermining the goal of providing stability and certainty. Now, after a colder than normal winter demonstrated problems with generators being able to produce the capacity they offered into RPM, PJM has responded by proposing to radically change the market once again with its CP Updated Proposal. BGS providers and Third Party Suppliers (“TPS”) have claimed that PJM’s

¹ Reliability Pricing Model Introduction, page 5, www.pjm.com, 2007. The Regional Transmission Expansion Planning Process was subsequently renamed to Regional Transmission Expansion Planning (“RTEP”).

² Id.

action will result in billions of dollars in unanticipated additional capacity costs, additional costs that suppliers argue should be passed on to New Jersey ratepayers.

Rate Counsel's position, expressed in our initial supplemental comments is that allowing the pass through of increased capacity costs to New Jersey ratepayers sends the wrong message. If the Board allows these BGS providers and TPS to pass through increased capacity costs imposed on them by PJM and/or FERC, there is absolutely no incentive for these suppliers to participate at PJM and FERC to advocate for capacity prices that are reasonable. The persistent changes to RPM will continue and costs for all New Jersey customers will increase. Accordingly, as discussed in our initial supplemental comments, Rate Counsel urges the Board not to modify the SMA or establish a non-bypassable charge to cover any increase in capacity costs for existing contracts.

Clearly, the Board must reject the proposal from several commenters that BGS providers and TPS should be insulated from all changes in RPM through a permanent pass through mechanism. For example, NextEra predicts "material uncertainty will likely result in negative consequences for the entire BGS process pending the final outcome of PJM's CP proposal" and posits that "this uncertainty may persist for future BGS procurements" unless the Board adopts NextEra's proposal.³ NextEra proposes that the Board treat capacity market changes in the same manner as changes to transmission-related charges are currently treated in the SMA. That is, NextEra proposes that participants in the BGS auction would include in their bid for each year of the SMA the then published capacity price in the PJM capacity market. "Any change in PJM Capacity

³ Nextera Energy Power Marketing, comments page 3.

price and/or volume due to subsequent incremental RPM auctions, or costs associated with PJM's proposed imposition of a CP (or similar obligation), should become a pass through for a BGS-FP Supplier."⁴ Similarly, TransCanada proposes that basically all capacity price changes should be passed through to BGS customers, including changes due to the results of an Incremental Auction, a PJM filing with FERC or "any other action taken by PJM."⁵

Rate Counsel strenuously objects to these proposed changes to the SMA. The proposed changes would completely insulate BGS suppliers from any and all PJM capacity market changes. BGS is supposed to be a full requirements product. The proposed changes would fundamentally alter that structure and threaten the stability and purpose of the BGS auction. PJM capacity market rules change frequently, the proposal to add each change into the BGS-FP auction price is a radical change that is neither warranted nor fair. BGS providers are in a far better position to anticipate and influence capacity market changes than BGS customers.

However, Rate Counsel recognizes the Board's concern regarding existing BGS suppliers who could not have reasonably foreseen PJM's proposed CP changes to the capacity market at the time of bidding into the BGS auction. If the Board is inclined to do anything, the pass through should be limited to allow current BGS providers to pass through incremental costs that they can demonstrate are the result of CP changes. However this should not apply to TPS. BGS is a regulated product, there are no individually negotiated contracts, all winners in the auction are required to sign the same SMA. On the other hand, as noted by in comments filed in this proceeding, "Third Party

⁴ Id.

⁵ TransCanada comments, Exhibit A.

Suppliers had the freedom to determine what products and services to offer into the New Jersey Retail Electric Marketplace.”⁶ A TPS provider is in the business of managing risk and has the ability to address future changes of law or unanticipated price increases due to regulatory action in a negotiated contract. While TPS do not generally disclose the terms of their contracts with customers, it is reasonable to assume – at least with larger sophisticated commercial and industrial customers that are most likely to shop – that these retail contracts already account for changes in law or in the PJM tariff. It would be fundamentally unfair to allow those TPS to be compensated again for those risks via a pass through to ratepayers. In addition, TPS are sophisticated financial entities with large, diverse portfolios that are constantly being adjusted. As with BGS-FP providers, TPS presumably hedge their portfolio and may self-supply or may enter into bilateral contracts to meet their capacity obligations. Thus, it is Rate Counsel’s position that if the Board feels compelled to pass some of the increased capacity costs resulting from the CP proposal onto ratepayers, the Board should limit this pass through to current BGS providers. The Board could reasonably allow current BGS providers with one and two years left on their contracts to pass on to BGS customers proven, incremental capacity costs due solely to PJM’s implementation of the CP product.

The Electric Distribution Companies⁷ (the “EDCs”) have proposed a modification to the BGS Supplier Master Agreements for “good and valuable consideration.”⁸ While Rate Counsel agrees this is a good start, Rate Counsel believes

⁶ Comments of Noble Americas Energy Solutions LLC and Noble Americas Gas & Power Corp, p.3.

⁷ Comments submitted by PSE&G on behalf of Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company and Rockland Electric Company, dated October 22, 2014.

⁸ Arguably BGS customers, third party beneficiaries to the SMA, have received no consideration for this modification to the SMA.

that the proposed language, as it stands, is unacceptable. Rate Counsel does not believe that bidders in the upcoming 2015 BGS auction should be protected from the proposed changes. By February 2015, bidders in the BGS auction should be able to reasonably project future capacity costs, at least for the next three years. As noted earlier, PJM changes the rules of RPM on a regular basis and bidders are able to work these changes into their bids each year. BGS bidders are in the best position to determine the effect of these RPM changes on their portfolio of supply sources and to manage the risk of change. If the Board allows bidders in the upcoming BGS auction to pass through increased capacity costs that may occur in the next three years, it would establish a dangerous precedent and set the state on a course away from the full requirements product that lends stability to the BGS auction. It would also remove important incentives for suppliers to advocate for stability and fairness at PJM. Thus, the EDCs proposed modification to the SMA should be limited to allow the pass through of costs only for current BGS providers for the second and third years of the SMAs.

In addition, there is no attempt in the language proposed by the EDCs to extract only those incremental proven costs associated with the implementation of the Capacity Performance product. BGS suppliers must provide the Board with sufficient documentation for any claimed increase in capacity costs resulting from the CP changes.

In sum, given that BGS providers and TPS suppliers 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 if the Board feels it

must do something, it should limit the pass through of increased capacity costs due to the CP to BGS customers only for the remaining years on existing BGS contracts. While the assumption of additional risk in the 2015 BGS auction 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.

Rate Counsel thanks the Board for the opportunity to provide these comments.