State of New Jersey
Board of Public Utilities

In the Matter of the Review of
The Basic Generation Service
Procurement Process

Docket No. ER12020150

Final Comments of the Retail Energy Supply Association

The Retail Energy Supply Association ("RESA")[1] respectfully submits these final comments in the above-referenced proceeding addressing the Basic Generation Service ("BGS") "procurement process, policy issues directly related thereto and issues that are of particular interest to the Board of Public Utilities ("Board") that warrant individual consideration outside of the yearly BGS review process," as directed by Board notice issued on February 29, 2012. These final comments will respond to the reply comments of other stakeholders, as well as testimony offered at the legislative-style hearing on May 4, 2012.

RESA is pleased that the Board has undertaken this proceeding to analyze the procurement process and consider modifications that would lead to a better, more competitive auction. As RESA has demonstrated through its initial comments, reply comments, and testimony, the status quo is not sufficiently competitive. Simply put, the current procurement process does not comport with the core policy goal of the New Jersey Electric Discount and Energy Competition Act of 1999 ("EDECA"), N.J.S.A. 48:3-49 *et seq.*, which aims to place greater reliance on competitive markets to deliver energy to consumers in greater variety and value than traditional regulated utility service, and to provide diversity in supply of electric power throughout New Jersey. Instead, the current procurement process perpetuates pre-EDECA policies by supporting non-market-reflective pricing and encouraging customers below 750 kW to remain with BGS-FP service rather than seek out beneficial products from retail suppliers. Were the Board to impose a BGS-Commercial and Industrial Energy Pricing ("CIEP") threshold of 300 kW and require more frequent procurements in the BGS-Fixed Price auction, RESA believes that all New Jersey energy customers would finally be able to experience the advantages of the competitive marketplace that EDECA envisioned.

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[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

New Jersey's Electric Distribution Companies ("EDCs") have argued throughout this proceeding that no changes should be made to the procurement process and that New Jersey should remain an outlier among re-structured states insofar as its high BGS-CIEP threshold and infrequent BGS procurements are concerned. This argument is not surprising; the status quo encourages customers to remain with BGS service, rather than contracting for electricity supply with a Third Party Supplier ("TPS"). Thus, even though EDECA was enacted thirteen years ago, New Jersey has one of the lowest percentages of customers below 750 kW who have switched to competitive supply. And, RESA anticipates that New Jersey's switching statistics will remain low until meaningful changes, namely reducing the BGS-CIEP threshold to 300 kW and requiring more frequent procurements, are made to the procurement process.

Lowering the BGS-CIEP Threshold to 300 kW

First and foremost, RESA believes that the Board must reduce the CIEP threshold to 300 kW immediately, thereby requiring that all customers above this threshold participate in BGS-CIEP. As relatively large commercial and industrial businesses,[2] these customers have the necessary expertise and personnel to strategically monitor their energy consumption and make informed decisions about which value-added products and services best fit their particular business needs. Yet, these customers can choose not to avail themselves of BGS-CIEP service, denying themselves the price signals and incentives they need to take advantage of various energy products and services offered by different energy providers. For example, a CIEP customer may decide that price stability is the most important feature in any energy supply arrangement it enters into and choose an energy supplier that it believes best provides such stability. Or, a CIEP customer may decide it is most interested in participating in energy efficiency and conservation programs and choose a TPS which enables it to employ demand-side management strategies to reduce its energy costs, especially with regard to the high incremental costs of energy during peak demand times. Greater participation in such energy efficiency and conservation programs, which would naturally be the result of a lower BGS-CIEP threshold of 300 kW, supports one of the essential policy goals of the 2011 Energy Master Plan, which is to reduce peak demand through efficiency and conservation measures.

In addition, reducing the BGS-CIEP threshold to 300 kW may also benefit remaining BGS-FP customers by reducing BGS-FP auction prices. Specifically, wholesale suppliers worry about migration risk with respect to customers not subject to mandatory BGS-CIEP pricing and likely factor such risk into their price offerings. With three year BGS-FP commitments, there is the real possibility that sometime during the three-year term, market prices could suddenly rise above the BGS price and customers would swarm back to BGS service. Reducing the threshold to 300 kW reduces the migration risk, at least for customers above that threshold.

Furthermore, contrary to the position of the EDCs and Rate Counsel, the lack of interval meters for some utility customers with peak load demands below 750 kW should not be an obstacle to lowering the CIEP threshold. Other states do not require interval meters in order to

[2] As provided in the testimony of Jay Kooper at the legislative-style hearing on May 4, 2012, "a 500 kW peak demand customer is about the size of a super big-box Wal-Mart Store and a 300 kW customer is about the size of the Bloomindales located in the Short Hills Mall."

support hourly pricing, but use rate class load profiles to charge customers on a real-time basis. In fact, this is exactly the practice employed today in New Jersey when a customer without an interval meter shops for service with a TPS. The TPS's cost to supply energy to such customers, as determined at the wholesale level by PJM, is based on a load profile for that customer. The customer's basic summary meter measures monthly consumption and this consumption value is extrapolated into an hourly usage distribution using the load profile. The load profile is developed by the EDC based on a sophisticated analysis of historical usage patterns of customers in a particular rate class. Accordingly, full deployment of interval meters need not be considered as a prerequisite for lowering the CIEP threshold.

However, RESA believes that there are significant benefits to broader implementation of interval, or "smart" meters that are capable of measuring customer consumption on a real-time basis. RESA supports expanded deployment of such metering technology as it would encourage more efficient consumption patterns, promote innovative time of use product offerings from TPSs, and facilitate customer participation in demand response programs.

Requiring More Frequent Procurements for BGS-FP Customers

Second, as RESA has argued throughout this proceeding and in past BGS proceedings, it does not support maintaining any of the current laddered three-year contracts used in the BGS-FP auction, and especially does not agree with Rate Counsel's suggestion that any of these contracts should be made even longer. In the current structure, where the price of default supply is divorced from the real cost at the time of its use, customers are blocked from the same robust choices as customers on BGS-CIEP pricing, due to barriers to TPSs' market entry. The boom-bust cycle created by three-year rolling contracts, where BGS-FP customers pay artificially low or high prices for electricity based on a three-year blended average, effectively prices TPSs out of the market in years when BGS-FP pricing is artificially below market prices and discourages them from re-entering the market even when prices are artificially above market. The three-year laddered contract pricing results in the most artificial fixed-price default service of restructured states in the Northeast and is also the one of the main reasons why New Jersey severely lags behind these other restructured states in the amount of customers who have switched from BGS service to a retail supplier.

The effect that three-year, laddered contracts has on BGS-FP customers is that these customers lose out on the myriad of value-added products and services that are available to customers on BGS-CIEP through robust competition, including costs savings, budget certainty, electricity from renewable energy sources, airline miles or other attributes of value. Thus, while it is true that TPSs stand to benefit from more frequent, shorter-term auctions as Rate Counsel and the EDCs have suggested throughout this proceeding, it is also true that customers benefit from more choices that would be created in a market with more frequent procurements that occur closer to the time of delivery.

In addition to stifling competition, BGS-FP's blended portfolio approach also impedes the implementation of important regulatory and statutory changes to New Jersey's energy policies. In nearly every Board and legislative proceeding that impacts pricing in the BGS auction, such as the Solar Transition Working Group proceeding, or solar legislation (S-1925)

currently before the Senate Environment and Energy Committee, BGS-FP suppliers have argued—mostly successfully— for such changes to take effect no less than three years from the date of enactment in order for their contracts to be exempted from the increased costs resulting from any change. Thus, beneficial Board and legislative actions are often delayed in achieving their desired effect and cause both an administrative burden on Board staff, who must implement the change, and additional costs on TPSs, who must comply with the change. Accordingly, RESA believes that the BGS procurement process should be modified to incorporate more frequent, shorter-term BGS-FP contracts, as RESA has argued throughout this proceeding.

Removing RPS Component from BGS Product

With respect to Rate Counsel's and SEIA's proposal to remove the Renewable Portfolio Standard ("RPS") component from the BGS product definition, RESA does not support this recommendation in isolation. RESA is sympathetic to Rate Counsel's concern over the increasing cost of RPS compliance. As the Board is well aware, these obligations impact not only BGS pricing by imposing the RPS obligation on wholesale BGS suppliers, but also TPS costs and pricing, because TPSs are similarly obligated to meet the RPS requirements. By assigning the RPS procurement requirement to both BGS suppliers and TPSs, the current RPS market structure in New Jersey was originally intended to create a fair and level playing field for both BGS pricing and TPS offers. Removing the RPS component from the BGS product definition would upset the original intent of this market design. Including the RPS cost as an obligation for BGS suppliers ensures that resulting BGS prices truly and accurately reflect the contemporaneous cost of acquiring Renewable Energy Credits ("RECs") in the open market to meet the state's RPS standard. Establishing a separate procurement process, to be managed by the EDCS, for RECs and/or SRECs could result in the RPS component of resultant BGS prices becoming significantly divorced from current market prices for RECs and SRECs. This could exacerbate the competitive disadvantage that TPSs have already experienced as a result of the incongruous exemption from certain portions of the SREC obligation for pre-existing BGS contracts.

While RESA does not support the Rate Counsel's position to remove the RPS component from the BGS product at this time, given the significant uncertainty introduced into the RPS market by continual legislative revisions to the RPS requirements, most notably with frequent proposed modifications to the solar requirements and the introduction of a new off-shore wind carve out, the concept of completely transitioning the RPS obligation to the EDCs (and removing the obligation from BGS Suppliers and TPSs) may warrant consideration in the future. However, at this point, RESA agrees with MSEIA's testimony that SEIA's proposal to remove the RPS requirement from the BGS product is "overly complicated."

Conclusion

In conclusion, RESA is encouraged that the Board has taken this opportunity to examine the BGS procurement process and believes that such examination has demonstrated that meaningful changes are needed to promote the competitive marketplace that EDECA envisioned in New Jersey.

Respectfully submitted,



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