STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of a Generic Stakeholder Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions	)))))))	Docket Nos. GR10100761 and ER10100762

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to the Notice in the above captioned proceeding issued by the New Jersey Board of Public Utilities ("Board") on October 25, 2010, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM,[1] submits these comments. This proceeding has important implications for the electric power market in New Jersey, which is regulated through competition at both the wholesale and retail levels. The cost of fuel and the delivery of fuel is an important factor for generators' relative competitiveness in the wholesale power market operated by PJM. It is essential for efficient outcomes that these costs reflect the economic fundamentals. If costs that do not reflect the economic fundamentals cannot be avoided, then it is important that such costs are evenly imposed so that competitive advantage does not turn on them. Another consideration is that the manner in which costs are imposed may restrict new entry. Accordingly, the Market Monitor recommends that the Board consider uniform removal of societal benefits charges (SBC) from natural gas delivery rates paid by all generators in New Jersey or, in the

---

1 PJM Interconnection, L.L.C., which operates the bulk power grid and administers the organized wholesale electric markets in New Jersey, all or part of 12 other states and the District of Columbia.

alternative, the uniform application of SBC charges to all generators in New Jersey. In either case, competition in New Jersey would reflect costs of natural gas delivery based on the economic fundamentals and not unevenly applied regulatory policies.

I. COMMENTS

Natural gas delivery rates and the associated issues, including how the SBC should be levied and how proposals to bypass should be evaluated, will have an impact on the competitiveness of generators using natural gas. It is not necessarily desirable that all generators pay the same rates or different rates. It is important that such differences reflect the differences in the costs of serving them.

From an economic perspective, the SBC operates as a tax, and it can be expected to be passed along to consumers through electric prices. Another feature of the SBC is that it is proportionately large compared to the costs of gas delivery. If the SBC is not applied evenly, it can determine the relative competitiveness of generators by affecting their fuel costs, which comprise the bulk of the marginal cost of electricity generation. The marginal cost of generation is the competitive offer in a competitive wholesale power market.

In a competitive market energy is priced at the margin. Natural gas units often set prices in PJM, including prices applicable to New Jersey. This means that the SBC can raise marginal energy prices in New Jersey. This also means that any generators that may receive higher prices but do not pay the SBC or pay a relatively lower SBC receive a windfall paid for by electricity consumers.

The SBC currently is not evenly applied in New Jersey or the PJM Region. At least generally speaking, generators that are interconnected to and receive gas delivery service directly from interstate natural gas pipelines do not pay the SBC. Generators that are interconnected to and receive gas delivery service from natural gas distribution companies generally do pay SBC, except where they can demonstrate an ability to bypass the gas distribution system and receive service directly from a non jurisdictional interstate pipeline. A generator that can demonstrate a viable bypass option can negotiate a reduced gas delivery charge, including a reduced or waived SBC charge. New Jersey's neighbors in the PJM region, such as Pennsylvania and Delaware, do not impose an equivalent of the SBC on generators. Consequently, producers in New Jersey pay this tax but not their competitors in neighboring states.

Because SBC is unevenly applied and is a relatively large component of gas distribution rates, it influences competition among generators in the electric markets. This has already been at least partly responsible for litigation between independent generators and competitors with natural gas distribution company affiliates. The concern is that affiliated companies are more ready to waive SBC for their affiliates on the basis of their bypass options. As a result, a focus of this proceeding has been how to more uniformly and fairly administer evaluations of bypass options, or to consider impacts on competition in addition to bypass. The Market Monitor understands that there are practical considerations which underlie this framing of the issue. The Market Monitor nonetheless, respectfully urges the Board and the parties to afford some consideration to potential solutions conceived more broadly than improved rules for evaluating bypass.

Evaluations of bypass options are difficult in the best of circumstances. In a proceeding evaluating bypass, the implicit question is why the option remains unexercised if it is rational. One way or another, the bypass option upon closer inspection may be found less viable than portrayed. An appropriate decision depends upon full disclosure of objective and subjective information from the party attempting to justify the bypass option. The best criterion to evaluate the viability of a bypass option remains, unavoidably, whether or not it is exercised. The Board and stakeholders may be able to craft an improvement over current arrangements, which based on representations made at hearing, mostly appear irregular and situational. It is unlikely however, that any such process will be able to realize the goal of competition based on the economic fundamentals.

There are two ways that this issue can be successfully resolved. The first would be to uniformly waive application of the SBC for natural gas delivery service to electricity generators which participate in the PJM wholesale power market. This would ensure uniform competitiveness on this issue regionally. Bypass would become relevant only on the basis of the relative costs of service. No burdensome administrative process would be needed. Although the limited number of sites close to interstate natural gas pipelines likely would continue to enjoy a competitive advantage, this advantage would turn on the economic fundamentals and not jurisdictional determinations. This would tend to broaden the number of competitively viable siting locations, reduce barriers to entry and promote more liquid markets.

Legislation currently pending in the New Jersey includes a provision that would achieve the above result.[2] If a statutory solution is not achieved, it would be worthwhile for the Board to carefully consider what, if any, options it has to achieve this result.

A second approach to achieving uniform applicability of the SBC charge would be to extend its application to the natural gas delivery service for all electricity generators which participate in the PJM wholesale power market. This necessarily would involve a reexamination of the Board's jurisdiction over natural gas distribution service and end use

---

2 *See* Senate No. 2381, State Of New Jersey, 214th Legislature, 4th Reprint § 5 (Introduced October 18, 2010).

sales that is effected over otherwise non jurisdictional interstate natural gas pipelines. When the Federal Energy Regulatory Commission (FERC) sought to ensure a non bypassable charge for stranded costs resulting from electric industry restructuring, it found a jurisdictional nexus of state jurisdiction at the point of distribution without regard to whether an otherwise identifiable jurisdictional facility was present.[3] A similar solution could apply to the SBC. The Board may have alternative options for achieving the same objective. Taking this step would avoid unproductive evaluations of bypass proposals and ensure a level playing field in New Jersey as far as it concerns SBC costs. This solution would not address the regional competitiveness of New Jersey producers and would retain the SBC as a factor tending to raise electricity costs in New Jersey.

The Market Monitor very much appreciates the opportunity to provide these comments, and hopes that they will be of assistance to the Board as it grapples with the issues raised in this proceeding. The Board already has taken an important step in initiating this proceeding and attempting to establish more uniform policies for natural gas delivery with sensitivity to the implications to that State's restructured electricity markets. The Board may consider the Market Monitor a resource available to assist it, if it determines that this would be helpful.[4]

---

3 *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶31,036, *mimeo* at p. 429 (1996) ("we clarify our view that there is an element of local distribution service in any unbundled retail transaction"), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

4 *See* PJM Open Access Transmission Tariff Attachment M § VI.B & D.

II. CONCLUSION

The Market Monitor respectfully requests that the Board afford due consideration of these comments as it resolves the issues raised in this proceeding.

Respectfully submitted,

Jeffrey W. Mayes

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

Dated: January 28, 2011