



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF DEMAND RESPONSE) ORDER OF AMENDMENT
PROGRAMS FOR THE PERIOD BEGINNING)
JUNE 1, 2009 -- ELECTRIC DISTRIBUTION)
COMPANY PROGRAMS) DOCKET NO. EO08050326

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

By Order dated December 10, 2008 ("December Order"), the Board adopted a modified version of a program originally proposed by the Demand Response Working Group ("DRWG") to offer an incentive in the form of a premium payment to curtailment service providers ("CSPs") who registered new or incremental capacity in the PJM Interconnection LLC ("PJM") Interruptible Load for Reliability ("ILR") program for the period beginning June 1, 2009. The Order further directed the State's electric distribution companies ("EDCs"), Public Service Electric & Gas Company ("PSE&G"), Jersey Central Power & Light Company ("JCP&L"), Atlantic City Electric Company ("ACE"), and Rockland Electric Company ("RECO"), to recover the costs of the program, along with reasonable and prudent administrative costs, through a separate component of the Regional Greenhouse Gas Initiative ("RGGI") Recovery Charge ("RRC") pursuant to N.J.S.A. 48:3-98.1.

The Board's decision to implement the modified DRWG proposal stemmed from its desire to "jump-start" the DR market in New Jersey once it became apparent that proposals filed by the EDCs in response to the Board's Order dated July 1, 2008 in this docket could not be reviewed in time for those programs to make any significant impact for the period beginning June 1, 2009. A complete procedural history of this proceeding can be found in the December Order, and will not be repeated here for reasons of expediency.

Since the issuance of the December Order, several developments have occurred and several issues have been raised that require the Board to amend it. At its April 3, 2009 agenda meeting, the Board approved one such amendment, extending the program's eligibility deadline to May 1, 2009 to match an extension in the ILR registration deadline approved by FERC on March 27, 2009. At the same agenda meeting, the Board also approved the four EDCs' compliance filings to recover their program costs through their respective RRCs based on new and incremental ILR registered by the original deadline.

¹ Commissioner Frederick F. Butler did not participate in this matter.

Staff has recommended further amendments to the December Order. Although none of these proposed amendments change the basic operation of the program or the intent of the Board's action in establishing it, the Board believes they are material enough in nature to merit an amended Order, as opposed to simple clarification.

On March 25, 2009, Staff circulated a letter to the service list in this proceeding, outlining the proposed amendments and the rationale behind each of them. Staff requested comments by March 31, 2009. Comments were received in a timely manner from the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), PSE&G and JCP&L. Rate Counsel commented on three of the proposed changes; PSE&G and JCP&L commented on one apiece. The following is a discussion of the proposed amendments and the comments received on each.

1) An end date for the cost recovery period should be specified.

The December Order contains a cost recovery schedule that establishes May 1, 2009 as the start for the recovery of program costs and administrative expenses, but does not specify an end date. Staff has recommended that the Order be amended to establish an end date for cost recovery of September 30, 2009.

Rate Counsel, in its comments, agrees with the establishment of an end date and a 5-month recovery period, but proposes that the period run between June 1, 2009 and October 31, 2009. Such an extension, however, will mean that actual revenues for service rendered through the end of the recovery period will not be available until the late October billing cycles are read at the end of November.

Based on this information, the Board rejects Rate Counsel's position, and HEREBY DIRECTS that the Order be amended to establish an end date for cost recovery of September 30, 2009.

2) The true-up deadline to be extended.

PJM will issue a report following the September 30, 2009 conclusion of the summer season on the performance of accounts that were found to be eligible for this program. PJM states that this report will be issued "in the October/November 2009 timeframe" but cannot give a more specific date. This report is critical to the EDCs' true-up filing – which the December Order requires by November 1, 2009 – since non-performance by a CSP will reduce its premium payment. In addition, setting a September 30, 2009 end date for cost recovery means that actual revenues through that date may not be available until late-month billing cycles are read toward the end of October.

Rate Counsel, in its comments, recommends changing the true-up deadline to simply read "30 days following the receipt of the PJM performance report." Such a change, however, would be academic if the PJM performance report is issued on or after November 1, 2009. In addition, this change may not provide the EDCs with sufficient time to prepare and review the true-up filings for submission to the Board for approval. No other comments were received on this issue.

Based on the need to provide sufficient time for preparation of accurate true-up filings after the PJM performance report is issued, the Board rejects Rate Counsel's position and HEREBY DIRECTS that the true-up filing deadline shall be extended to December 1,

2009 or 30 days following the receipt of the PJM performance report by the EDCs, whichever is later. This will provide the EDCs with sufficient time to incorporate any performance penalties into their filings, and include actual revenues for service rendered through September 30, 2009.

3) The deadline for CSP payments will have to be extended.

The Board recognizes that a connection exists between the true-up filing deadline and the deadline for payments to CSPs. If the true-up deadline is extended, an extension must also be made to the deadline for CSP payments.

Rate Counsel expressed concern in its comments that the proposed adjustments to the recovery schedule may delay premium payments to the CSPs until January 2010. However, none of the CSPs who have been participating in this case and who also received notice of these proposed amendments expressed any similar concerns.

Accordingly, the Board HEREBY DIRECTS that the cost recovery schedule be amended to state that the deadline for payments to eligible CSPs is January 1, 2010, or 30 days after the filing of the true-up, whichever is later.

4) Any over- or under-recovery of program costs should be rolled into the System Control Charge ("SCC").

The EDCs pointed out that several months will have elapsed between the end of the cost recovery period on September 30, 2009 and the return or collection of any over- or under-recovered revenues in early 2010. As a result, a component of the RRC which will have been dormant for several months will be revived for one month, and then disappear again. The EDCs contend that this may result in customer confusion and unnecessary administrative costs.

The EDCs collectively proposed that any over- or under-recoveries be included in their 2010 SCC filings as the SCC is currently used to recover the costs associated with legacy air conditioning cycling program). According to the EDCs, any over- or under-recovery, along with appropriate carrying charges, could be rolled into the SCC factor that will become effective May 1, 2010. Since RECO does not have an SCC, any over- or under-recovery, along with appropriate carrying charges, could be rolled into its 2010 RGGI Recovery Charge with other programs whose costs are recovered in that manner.

However, PSE&G notes in its comments that it has already petitioned the Board in its filing in this proceeding to roll its SCC balance into the RRC, and reset the SCC to zero. PSE&G requests that the phrase "or the appropriate successor rate clause" be added to this amendment so that its over- or under-recovery can go through its RRC if the Board approves its request.

Rate Counsel's comments question the use of the SCC for this purpose, quoting the reasoning expressed in the Board's December Order for not using the SCC as the primary cost recovery method for this program, and arguing that these considerations still remain valid.

After reviewing these comments, the Board agrees with Rate Counsel on this issue and believes that there is insufficient reason to amend its Order with regard to continuation of the component of the RCC attributable to this program.

5) Revise the method for calculating interest on over- and under-recoveries.

The December Order directs calculating interest on any over- or under-recovery “at the weighted average of the interest rates on each utility’s commercial paper and bank credit lines utilized in the prior month.” However, the EDCs have stated that they may not use commercial paper or bank credit lines every month. No comments were received on this issue.

The Board believes that for the sake of consistency, the interest rate applied to any over- or under-recovery for this program should be calculated on the same basis as the interest rate for over- or under-recoveries in the Universal Service Fund (USF). The interest rate on USF over- and under-recoveries shall be the interest rate based on a two-year constant maturity Treasuries as published in the Federal Reserve Statistical Release on the first day of each month (or the closest day thereafter on which rates are published), plus sixty basis points, but shall not exceed the overall rate of return for each utility as authorized by the Board. The interest rate should be reset each month. The Board HEREBY DIRECTS that the USF rate be used in lieu of the commercial paper/ bank credit line rate.

6) Clarify the basis for determining the data used in calculating the program budget.

The December Order states that “[e]ach EDC’s share of the budget will be determined by its percentage share of New Jersey’s total non-residential electric load minus any existing non-residential demand response in that EDC’s service territory, multiplied by the 600 MW goal.” Staff recommended that this statement should be clarified to indicate that the basis for this calculation will be the data submitted for the 2008-2009 PJM Planning Year.

In its comments, JCP&L recommends that the program budget document developed by Staff should be attached to the amended Order as Attachment C. JCP&L also suggests that the equation for the EDC DR Cap in Attachment A of the December Order should be revised to reconcile it with the language of the Order, remove extraneous terms and to reference Attachment C so it reads as follows:

$$\text{EDC DR Cap} = [(MW_{\text{EDC}} - MW_{\text{EDCILR}}) / (MW_{\text{NJ}} - MW_{\text{NJILR}})] \times 600 \text{ MW}$$

Where:

MW_{EDC} reflects EDC non-residential load in MW

MW_{EDCILR} reflects EDC non-residential existing demand response in MW

MW_{NJ} reflects statewide non-residential load in MW

MW_{NJILR} reflects statewide non-residential demand response in MW

Values used in the above equation, and the resultant EDC DR Cap values are depicted in Attachment C.

After review of the comment and Staff's recommendation, the Board HEREBY DIRECTS the following:

- 1) that the budget statement be clarified to indicate that the basis for this calculation will be the data submitted for the 2008-2009 PJM Planning Year;
- 2) that the equation for the EDC DR Cap in Attachment A be reconciled with the language of the Order;
- 3) that extraneous terms in the equation be removed; and
- 4) that Staff's budget document, which is attached hereto, be attached to the Order as Attachment C.

7) Premium payments to CSPs should be based on performance during required tests as well as actual events.

If no actual DR events are called by PJM prior to August 15, 2009, PJM has advised Staff that it reserves the right to require CSPs to participate in a test event to measure their performance. Staff has recommended a change in the language in the last paragraph of Attachment A to include required tests as a measure of CSP performance if no actual events are called during the summer of 2009. No comments were received on this issue.

Therefore, the Board HEREBY DIRECTS that the language in the last paragraph of Attachment A be changed to include required tests as a measure CSP performance if no actual events are called during the summer of 2009.

8) CSPs should be judged on the performance of their entire portfolios rather than on the performance of individual accounts.

PJM has advised the Board that its assessment of performance levels by a CSP for purposes of assessing penalties (in the form of decrements to PJM capacity payments) should be based on the CSP's entire New Jersey portfolio rather than on the performance of individual New Jersey accounts. Thus, a CSP would not be penalized if it is able to deliver its promised New Jersey capacity by obtaining additional load from one customer to make up for load not delivered by another customer.

Staff recommended that the language in paragraph 5 of Attachment B be modified to reflect the fact that CSPs' performance will be judged on the basis of their entire New Jersey portfolio.

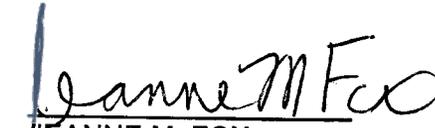
In its comments, JCP&L suggests adding the following to Staff's proposed amendment: "...and recognize that EDCs will rely on PJM's findings and determination of CSP performance as the basis for payment."

Based on the recommendations of Staff and PJM and the submitted comment, the Board HEREBY DIRECTS that the language in paragraph 5 of Attachment B be modified to reflect the fact that CSPs' performance will be judged on the basis of their entire New Jersey portfolio, recognizing the EDCs' reliance on PJM's performance findings as the basis for payment under this program. .

All other provisions of the December Order remain in full force and effect.

DATED: 4/27/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

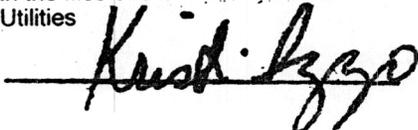

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
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Board of Public Utilities
I/M/O Demand Response Programs for the Period Beginning June 1, 2009 – Electric Distribution Company Programs,
Docket No. EO08050326
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Attachment C

ALLOCATION FORMULA FOR DRWG MODIFIED PROPOSAL

EDC	TOTAL DEMAND	RESIDENTIAL	NON RESIDENTIAL	DR	NR less DR	% SHARE	BUDGET SHARE (in \$)
PSE&G	10,363	4,521	5,842	195	5,647	59.54	3,373,908.50
JCP&L	6,122	3,428	2,694	112	2,582	27.22	1,542,455.30
ACE	2,526	1,413	1,113	28	1,085	11.44	648,261.90
RECO	464	291	173	2	171	1.8	101,999.30
TOTAL	19,475	9,653	9,822	337	9,485	100	5,666,625

NOTES:

All demand data is in megawatts (MW)

Demand data obtained from BGS Auction website (www.bgs-auction.com); DR data obtained from PJM website (www.pjm.com)

Demand data is as of June 1, 2008 except for ACE, which is August 22, 2008; DR data is as of August 31, 2008

Budget calculated on the basis of \$22.50 per megawatt-day premium payment and statewide goal of 600 MW, plus administrative expenses of 15%