

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

Investigation of Resource Adequacy Alternatives	BPU Docket No. EO20030203
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COMMENTS OF ENVIRONMENTAL DEFENSE FUND

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

Pursuant to New Jersey Board of Public Utilities’ (“BPU” or “Board”) April 17, 2020 Supplemental Notice extending the comment deadline to May 20, 2020, Environmental Defense Fund (“EDF”) respectfully submits the following comments in the above-captioned proceeding. In support thereof, EDF states:

I. INTERESTS OF EDF

EDF is a membership organization, with over 2 million members, whose mission is to preserve the natural systems on which all life depends. Guided by science and economics, EDF seeks practical solutions to resolve environmental problems. EDF uses the power of markets to achieve beneficial environmental outcomes, and consistent with its organizational purpose is engaged in activities to facilitate cost-effective and efficient energy market designs that encourage investment to support the ongoing deployment of renewable energy resources and energy efficiency. EDF has also presented extensive analyses, both before this Board and at the Federal Energy Regulatory Commission (“FERC”), to support its advocacy—all of which have been aimed to increase efficiency and provide customer benefit.¹

¹ Reply Comments of the Environmental Defense Fund, FERC Docket No. AD18-7 (May 9, 2018) (proposing a shaped nomination service which would allow generators to explicitly specify the quantity of gas they need each hour, with an accompanying transportation pricing

II. COMMENTS

The BPU's March 27, 2020 Order states that it is the policy of the State to "[p]lace greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers *in greater variety and at lower cost* than traditional, bundled public utility service."² The Board's focus on competitive markets is the right one. EDF has long asserted that well-designed and well-functioning competitive markets that accommodate states' legitimate authority to regulate generation will tend to produce environmentally beneficial outcomes and lower consumer electricity costs.³

As the Board observes, PJM Interconnection L.L.C.'s ("PJM") capacity market has included a Minimum Offer Price Rule ("MOPR") since it began procuring resource adequacy for the PJM region in 2006.⁴ Since 2006, the MOPR has been shaped and refined by a series of FERC orders and appellate litigation. For example, in 2011, FERC accepted PJM's proposal to add wind and solar generation to its list of generator types that were allowed to offer into the

structure); *see also I/M/O Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program And Associated Cost Recovery Mechanism*, Docket No. GR17070776, Direct Testimony of Virginia Palacios (January 19, 2018) (setting forth the benefits of integrating advanced leak detection technology and analytics into the utility's operations).

² *In the Matter of BPU Investigation of Resource Adequacy Alternatives*, Order Initiating Proceeding, Docket No. EO20030203 (March 27, 2020) (citing N.J.S.A. 48:3-50(a)(2)).

³ *See, e.g., Certification of New Interstate Natural Gas Facilities*, FERC Docket No. PL18-1 Environmental Defense Fund Comments at page 3 (July 25, 2018) (explaining that competitive markets, structured and optimized within the rubric of fair market competition, will safeguard energy customers, channel economic energy infrastructure investment and facilitate beneficial environmental outcomes).

⁴ *In the Matter of BPU Investigation of Resource Adequacy Alternatives*, Order Initiating Proceeding, Docket No. EO20030203 (March 27, 2020).

capacity market at a price of zero.⁵ In addressing the MOPR issue, FERC bears two essential responsibilities: “The first is its responsibility to promote economically efficient markets and efficient prices, and the second is its interest in accommodating the ability of states to pursue other legitimate state policy objectives.”⁶

FERC’s December 19 Order—as PJM observes—disrupts this careful balance.⁷ EDF and others have pointed out significant deficiencies with FERC’s order,⁸ which need to be corrected going forward in order to maintain the integrity of PJM’s market. FERC’s order puts in place administrative pricing beyond what is necessary to prevent market manipulation. This undermines state laws designed to correct market failure by incorporating the social cost of environmental externalities into energy prices.⁹

If past is prologue, however, it seems that—through stakeholders’ suggestions for continued refinements on compliance and appellate challenges of FERC’s orders—the appropriate balancing of FERC’s objectives will be restored. To the extent that the Board’s primary concern is the December 19 Order’s attack on clean energy programs, it should be noted that PJM’s pending March 18, 2020 compliance filing has already taken a substantial step toward

⁵ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 152 (2011) (“We accept PJM’s proposal to add wind and solar generation to its list of generator types that are not required to offer into the base residual auction at a price higher than zero”).

⁶ *NESCOE v. ISO New England Inc.*, 142 FERC ¶ 61,108 at P 35 (2013).

⁷ Request for Rehearing and Request for Clarification of PJM Interconnection, L.L.C., Docket No. EL16-49 *et al.* at page 2 (January 21, 2020).

⁸ Request for Rehearing of the Clean Energy Advocates, Docket No. EL16-49 *et al.* (January 21, 2020) (setting forth numerous grounds as to why “the Order contravenes the basic requirements of the Federal Power Act and Administrative Procedure Act”).

⁹ See Sylwia Bialek and Burcin Unel, “Capacity Markets and Externalities” (Institute for Policy Integrity, New York University School of Law, April 2018), https://policyintegrity.org/files/publications/Capacity_Markets_and_Externalities_Report.pdf

mitigating the feared near-term financial impacts of the new MOPR on solar, onshore wind, and nuclear by proposing more realistic financial assumptions to be used in calculation of both the default and unit-specific price floors.¹⁰ Additionally, the cost impacts of the MOPR may not be substantial until New Jersey's first offshore wind project, Ocean Wind, is ready to bid into the capacity market. This history and backdrop should inform the Board's action here and suggest that the BPU should take a measured approach to action in this proceeding.

While assuming responsibility for resource adequacy is one path New Jersey could take, the risks are substantial and include, among others: increased market power by utility-affiliated generators (along with a potentially limited statutory or practical ability to penalize such manipulation), inefficient procurement due to atomization of the market, increased administrative costs, and increased administrative burdens on suppliers who would have the option of bidding into, potentially, a number of different capacity procurements in the PJM area (some might limit the number of markets they bid into, further limiting the number of suppliers in each region).

The BPU should maintain its commitment to competitive markets not only by urging FERC to correct the errors of its recent orders, as it has already done,¹¹ but by working with PJM and stakeholders on both incremental and more fundamental capacity market reform. For example, some experts opine that PJM has consistently over-procured capacity due to inaccurate load forecasts, flaws in the market design, and failure to account for the value of resources that

¹⁰ PJM Compliance Filing Concerning the Minimum Offer Price Rule, FERC Docket No. EL16-49 *et al.* at pages 52-66 (March 18, 2020).

¹¹ Request for Rehearing and Clarification of the New Jersey Board of Public Utilities, Docket No. EL16-49 *et al.* at page 6 (January 21, 2020) (demonstrating that the December 19 Order impermissibly regulates an area left to the states by the Federal Power Act and puts forth a replacement rate that is arbitrary and capricious, unjust, unreasonable and unduly discriminatory and preferential).

do not participate in the capacity market.¹² Each of these issues could be examined and potentially addressed through proceedings at PJM.

Over the longer term, the capacity market, along with PJM’s energy and ancillary services markets, will need to be gradually reshaped to remove reliance on administrative constructs that stifle the efficient interplay of supply and demand, and to adapt to increasingly responsive load and high penetration of wind and solar.¹³ The BPU should remain involved in these PJM matters.

We look forward to working further with the Board in developing detailed policy recommendations to implement the broad principles outlined here.

III. CONCLUSION

Wherefore, the Environmental Defense Fund respectfully requests that the Board consider its Comments in taking any action in this proceeding.

¹² James F. Wilson, “Over-Procurement of Generating Capacity in PJM: Causes and Consequences,” prepared for Natural Resources Defense Council and Sierra Club (Feb. 2020), <https://www.sierraclub.org/sites/www.sierraclub.org/files/blog/Wilson%20Overprocurement%20of%20Capacity%20in%20PJM.PDF>; James F. Wilson, “Missing Money” Revisited: Evolution of PJM’s RPM Capacity Construct, prepared for the American Public Power Association, September 2016, https://www.publicpower.org/system/files/documents/markets-rpm_missing_money_revisited_wilson.pdf; Sonia Aggarwal *et al.*, Wholesale Electricity Market Design for Rapid Decarbonization: A Decentralized Markets Approach, June 2019, <https://energyinnovation.org/wp-content/uploads/2019/07/Wholesale-Electricity-Market-Design-For-Rapid-Decarbonization.pdf>.

¹³ *See, e.g.*, Massachusetts Attorney General’s Office and Regulatory Assistance Project, Wholesale Electric Market Design for a Low/No-Carbon Future – Report on the October 2019 Symposium & Proposed Next Steps at page 7 (March 2020), <https://www.mass.gov/doc/wholesale-electric-market-design-for-a-lowno-carbon-future/download> (setting forth areas of agreement on market reform, including more effective scarcity pricing, increased importance of demand flexibility, need for new, specialized ancillary services that value flexibility, meaningful regional carbon pricing, evolving resource adequacy standards to meet the requirements of a system’s peak hour, among others).

Respectfully submitted,

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