

**Request for Written Comments  
Investigation of Resource Adequacy Alternatives  
Docket No. EO20030202**

**Comments of LS Power Development, LLC  
May 20, 2020**

On March 25, 2020, the New Jersey Board of Public Utilities (the “BPU”) issued an order, “Request for Written Comments, Investigation of Resource Adequacy Alternatives” (the “BPU Order”). LS Power Development, LLC (“LS Power”) appreciates the opportunity to provide comments on whether New Jersey should elect the Fixed Resource Requirement Alternative (“FRR”) under the PJM Open Access Transmission Tariff (the “OATT”) to meet the State’s electric reliability requirements in lieu of continuing to participate in PJM’s competitive capacity auctions. The differences in approach are stark. Under the FRR mechanism, a utility selects its resources to meet the reliability obligation while PJM’s capacity construct results in the reliability obligation being met at the lowest cost to consumers through a competitive bidding process. LS Power believes the FRR option would be a costly path for New Jersey to pursue, with increased risk and no long-term benefit to customers. Under an FRR construct, financial penalties for non-performance are shifted from capacity resources to the utility and ultimately the consumer. That decision would saddle NJ customers for a minimum of five years with whatever purchase decisions are made for them at a particular point in time. New Jersey customers have benefitted from their participation in all the PJM markets: emissions have been reduced and energy and capacity prices have decreased,<sup>1</sup> while the participation of new supply resources such as demand response, wind, solar and battery storage have been incorporated seamlessly into

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<sup>1</sup> <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2018/2018-new-jersey-state-data.ashx?la=en>

those markets from a reliability and cost efficiency perspective. The recently issued Federal Energy Regulatory Commission order on the Minimum Price Offer Rule (the “MOPRex Order”)<sup>2</sup> will not undermine the overall benefits of continued participation in the PJM capacity auction, especially in comparison to the risks and costs that will be absorbed by NJ consumers in choosing the FRR option. Policy makers will best serve New Jersey customers by continuing to reap the benefits of lower costs and environmental impacts that the PJM markets have delivered and by supporting and enhancing additional renewable portfolio standards to incent the integration of low carbon energy and storage resources, as outlined in the State’s Energy Master Plan.<sup>3</sup>

## INTRODUCTION

The State of New Jersey is committed to an environmental stewardship that ensures 100% clean electric energy production by 2050. LS Power supports this goal not just on paper, but through its investments as well. LS Power has a long history in the state of New Jersey. LS Power was founded in New Jersey in 1991 and continues to maintain its largest office in East Brunswick. In addition, LS Power subsidiaries developed and continue to operate the West Deptford Energy Station in West Deptford, are completing the first competitive transmission project in New Jersey and are actively engaged in creating the roadmap for electric vehicle charging in the State through its’ affiliate EVgo.

LS Power is an active energy investor and manages over 18,000 MWs of capacity in the United States, including demand response, energy efficiency, storage and generation capacity.

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<sup>2</sup> 169 FERC ¶ 61,239 (December 19, 2019).

<sup>3</sup> See <https://www.nj.gov/governor/news/news/562020/approved/20200127a.shtml>

LS Power owns EVgo, the nation's largest fast charging platform for electric vehicles. LS Power makes fuel neutral and carbon free investments that include solar, wind, battery energy storage, pumped storage hydro, demand response and energy efficiency<sup>4</sup>. LS Power is investing over \$2B in high voltage transmission projects across the U.S. to support the delivery of renewable energy and enhance grid reliability. LS Power also owns natural gas fired generation and is a leading developer of battery storage in the United State, which reliability studies demonstrate repeatedly will be critical to support a transition to a carbon neutral future as envisioned by the New Jersey Energy Master Plan.

The BPU inquiry appears to stem from a concern that because of the MOPRex Order, the PJM market will not guarantee capacity payments to future off-shore wind resources and thus New Jersey will not meet be able to meet its goals under the Energy Master Plan and/or its consumers will be burdened with higher costs. This concern is compelling the BPU to consider the FRR construct and leave PJM's capacity market.<sup>5</sup> LS Power supports the BPU's efforts in this proceeding to not jump to conclusions, but to enable all the facts to be presented to make a well-reasoned determination. The FRR was designed for use by vertically integrated utilities in states that did not deregulate their generation supply and without retail access.<sup>6</sup> If New Jersey were to opt-into FRR for one or all of the vertically integrated utilities under the NJBPU's jurisdiction, it would be the first application of FRR in a deregulated state with retail access. For this reason and others articulated herein, a thorough vetting of FRR is required before New Jersey commits its generation supply for a long term. New Jersey should recall the issues that

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<sup>4</sup> In fact, LS Power owns the largest battery storage project in the United States, located in California.

<sup>5</sup> It is not clear whether the BPU is considering this for a single utility zone, or for the whole state. Nonetheless, the discussion herein is applicable to either option.

<sup>6</sup>The FRR is also available to municipal and cooperative electric entities.

arose with millions of dollars stranded costs from the long-term “QF” contracts when New Jersey deregulated in the late 1990s/early 2000s. The bottom line is that there are no rights and wrongs here, just policy choices and consequences. LS Power believes that if the BPU does a thorough investigation of the facts, it will conclude that the better policy choice for New Jersey consumers will be to pursue its Energy Master Plan goals while continuing to participate in all of the PJM markets. The facts will demonstrate that choosing the FRR construct will cause New Jersey customers to lose out on both the economic efficiencies and technological advancements that PJM has provided, making it far more costly for New Jersey to achieve its 2050 goals.

#### Does the MOPRex Order Impacts the Energy Master Plan’s Goals?

Before discussing the consequences of pursuing the FRR construct, it is important to note the impact, if any, the MOPRex Order will have on New Jersey’s Master Energy Plan goals and ratepayers:

1. The MOPRex Order will help New Jersey’s nuclear plants. The prices pursuant to which New Jersey nuclear units will be mitigated too have created very low barriers for such units to clear the PJM capacity market while ensuring that capacity prices are not artificially suppressed by subsidized resources bidding at artificially low prices, even zero, to ensure they clear the market. PJM has filed information supported by PJM’s Independent Market Monitor that demonstrates the MOPRex Order is unlikely to prevent nuclear units from clearing PJM’s capacity auction.<sup>7</sup> Exelon Corporation, the largest owner of nuclear plants in PJM, recently told FERC that FERC should accept the Cleared MOPR Floor Offer Prices (“Default Floor

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<sup>7</sup> See Monitoring Analytics, Potential Impacts of the MOPR Order (March 20, 2020), available at [https://www.monitoringanalytics.com/reports/Reports/2020/IMM\\_Potential\\_Impacts\\_of\\_the\\_MOPR\\_Order\\_20200320.pdf](https://www.monitoringanalytics.com/reports/Reports/2020/IMM_Potential_Impacts_of_the_MOPR_Order_20200320.pdf)

Prices”) contained in PJM’s MOPRex compliance filing “particularly the **low Default Floor Prices** [emphasis added] proposed for the existing dual unit nuclear resource class.”<sup>8</sup>

Assuming that the owners of nuclear power plants continue to bid their units into the market as they historically have, rather than pursue a strategy of bidding at high prices to prevent clearing so they may receive higher Zero Emission Credits payments,<sup>9</sup> they will continue to clear. This is not news: as the BPU discussed in its ZEC Order last year, PJM’s independent market monitor determined that New Jersey’s nuclear units receive adequate revenues participating in PJM’s markets, including the capacity market.<sup>10</sup> The only advantage to New Jersey opting into the FRR is that the shareholders of these companies will continue to get a better return on their investment at the expense of the New Jersey consumers. Their management would not be advocating that the FRR is a superior option than the PJM capacity market if this were not the case, as management has a fiduciary duty to their shareholders.

2. The MOPRex Order will not impact the Energy Master Plan goals. There is nothing in the MOPRex Order that precludes New Jersey from continuing to procure and support the carbon-free resources to meet New Jersey’s aggressive low carbon goals.
3. The MOPRex Order will not impact the development and operation of off-shore wind in PJM. Nothing in the MOPRex Order impedes offshore wind projects’ ability to capture energy

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<sup>8</sup> *Limited Protest, Comments, and Request for Clarification of Exelon Corporation*, May 15, 2020, EL18-178-002, ER18-1314-003, EL16-49-002 (Consolidated) (Although Hope Creek is physically a single unit, PJM filed with FERC that Hope Creek and the two Salem units at Artificial Island are considered “existing dual unit” reactors for MOPRex purposes. *PJM Interconnection, L.L.C.*, Errata to PJM Compliance Filing re: Hope Creek Nuclear Plant, Docket Nos. ER18-1314 et al. (Mar. 25, 2020).

<sup>9</sup>N.J.S.A. §§ 48:3-87.3 – 87.7 (“the ZEC Act”).

<sup>10</sup> <sup>10</sup> I/M/O THE IMPLEMENTATION OF L. 2018, c. 16 REGARDING THE ESTABLISHMENT OF A ZERO EMISSION CERTIFICATE PROGRAM FOR ELIGIBLE NUCLEAR POWER PLANTS; And; APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 1 NUCLEAR POWER PLANT; APPLICATION FOR ZERO EMISSION CERTIFICATES OF SALEM 2 NUCLEAR POWER PLANT; APPLICATION FOR ZERO EMISSION CERTIFICATES OF HOPE CREEK NUCLEAR POWER PLANT (New Jersey BPU Docket Nos. E018080899; E018121338; E018121339; E018121337) (April 18, 2019).

revenues, which along with renewable credits, which are by far the major source of financing of these projects.

4. The MOPRex Order will not impact New Jersey jobs. Nothing in the MOPRex impacts jobs related to existing and future projects the state chooses to pursue.
5. The MOPRex Order will not save coal plants. The MOPRex Order does not prop up coal plants at the expense of intermittent resources. Coal plants in the PJM region depend heavily on energy revenues as their primary source of financing. As we have seen in PJM over the last several years, coal plants are being dispatched less frequently and revenues continue to decrease due to declining natural gas costs. Coal plants will likely continue to retire in PJM regardless of their opportunity to clear the PJM capacity auction due to financial stress.
6. The MOPRex Order is not likely to result in New Jersey customers over-paying for capacity in the long term. The Energy Master Plan contemplates 7,700 MWs of offshore wind, which will have a capacity value of approximately 1,355 MWs. This means only 17.6% of offshore wind would even be eligible to qualify as capacity. Moreover, given performance risks associated with clearing capacity bids, prudent risk management would likely result in an even lower percentage of MWs being bid into the PJM auction. These MWs are not likely to be added to the system until 2023 at the earliest, and as described in detail below, their capacity value is likely to decline over time.

So what is the impact of the MOPRex Order that is driving consideration of the FRR alternative? It is the belief that New Jersey customers will have to pay twice to procure reliable capacity. First, customers would pay for offshore wind capacity that has been contracted and will be prevented from clearing the capacity auction, and secondly, for capacity needed to support reliability in the New Jersey region and that does clear the auction. LS Power believes

the exclusive focus on the “double-capacity” issue is misplaced and ignores that New Jersey customers will still receive the benefits for what they are paying for if they remain in PJM’s capacity market. Offshore wind resources simply do not provide the needed reliability at an economic price, so consumers are not being required to pay twice for “their reliability.”

Because of its costs, offshore wind will always need contractual financing, either through the construct of a bilateral contract or Offshore Wind Renewable Energy Certificate support, and the so-called “lost capacity revenues” are de minimis in the context of overall costs. Moreover, New Jersey ratepayers still benefit from providing the financial support to build and operate these offshore wind plants: the plants will continue to displace higher fuel emission plants, and recoup robust revenues from the energy market. Indeed, offshore wind electricity will be compensated through the energy market at times that a resource with higher capacity value (i.e., is more reliable), is not. Additionally, if the BPU does not pursue the FRR option, New Jersey ratepayers would continue to pay for capacity at the most economically efficient costs available, and not at some inflated rate.

#### The Value Proposition of Intermittent Resources

LS Power has been involved with power plant development and financing for nearly 30 years, including wind projects. The capacity value of wind projects is so low that revenues from that market are incremental, and not the driver of development. The same is true for solar projects, and New Jersey has had a very successful solar program that has not relied on capacity payments from PJM. Nonetheless, after a few years of these resources being subject to competitive pressure, many are now economic enough to clear the PJM capacity auction. The offshore wind plants should be viewed in this same light. Customers are paying for the exclusive benefit of these resources: clean energy production, not for their reliability benefits. Over time,

these resources may in fact become more cost competitive, but as additional offshore wind resources are developed, their value as a reliability resource will diminish even further as explained below.

Intermittent resources do not provide a reliable supply of power and therefore are not valued in the capacity market as much as non-intermittent, dispatchable resources. PJM derates an intermittent resource capacity contribution to a lesser percentage of the overall MW size of a facility. By way of example, the only operating offshore wind plant is in New England, Block Island, which has an installed capacity rating of 29.25 MW, but can qualify only 5.7 MW as capacity in the New England market.<sup>11</sup>

Moreover, the capacity rating of such a resource is likely to decrease further over time because of PJM's proposed changes to the capacity calculation for resources that cannot run more than ten hours consecutively. In recognition of increasing intermittent and energy storage penetration impacts on reliability, PJM and its stakeholders intend to implement a new methodology to value such capacity resources in the market, known as the Effective Load Carrying Capability ("ELCC"). The ELCC will value the contribution of each MW of intermittent resource to maintaining peak load. Seemingly counterintuitive, a threshold exists beyond which additional MWs of intermittent resources actually *reduce* the overall capacity value of such resources, instead of increasing them. PJM presented an example using the ELCC methodology showing that with 10,000 MWs of intermittent resources on its system, the capacity value of such resources would be overall around 27%, and with 30,000 MWs of intermittent

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<sup>11</sup>See ISO-NE 2020 *Capacity, Energy, Loads, and Transmission (CELT) Report*, <http://www.iso-ne.com/system-planning/system-plans-studies/celt>, dated April 30, 2020



resources on its system, the overall value goes down to 16%.<sup>12</sup> So for 20,000 of additional MWs of intermittent generation, only approximately 10% of those MWs would have any reliability benefit, and with more penetration, the value further decreases. This is important to note as the PJM states strive for clean energy goals and thousands more MWs of intermittent resources (in addition to the 30,000 MWs in the example above) would have to be added to the system to achieve these goals. What this means is that each year as new intermittent resources are added to the PJM system, the system reliability they provide actually diminishes as non-intermittent, dispatchable resources are “pushed out” of the market and therefore the capacity value of both the new and existing renewable resources decreases. Playing this out, at some point, any new intermittent resources added to the system actually have zero capacity benefit and become a burden on the electric system, requiring the additional procurement of firm capacity resources to operate the electric system reliably. Taken to the extreme, an electrical system consisting of 100% renewable resources would be assured of consistent blackouts when the sun wasn’t shining or the wind wasn’t blowing<sup>13</sup>. There is no way to get around the fact that as New Jersey makes progress in achieving its 100% clean energy goals, in the long term New Jersey customers will pay separately for resources that produce emissions free electricity and resources that maintain grid reliability.

As discussed further below, we have seen this play out in California where additional procurement of fossil-fueled resources was mandated to overcome grid instability issues resulting from significant intermittent generation penetration. New renewable development has

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<sup>12</sup> See <https://www.pjm.com/-/media/committees-groups/task-forces/ccstf/2020/20200407/20200407-item-04-effective-load-carrying-capability.ashx>

<sup>13</sup> Not to mention the physical space requirements for 100% renewables would be very impactful on a geographically small state such as New Jersey.

limited contribution to participants' capacity resource plans. The ELCC recognizes and accounts for this phenomena of decreasing reliability with greater penetration, thereby maintaining the system reliability. It is not yet clear how the ELCC will be calculated for an FRR entity. Potentially, if the FRR entity were to satisfy its capacity needs relying on a substantial amount of offshore wind, it would have to procure additional MWs of non-intermittent resources in even higher amounts (requiring an increase in the Installed Reserve Margin above the current 15% - 16% that erroneously is expected to provide savings by opting into FRR as discussed below) because the load against which it would be measured would be significantly smaller than the entire RTO.

Alternatively, if the ELCC methodology is not implemented, high intermittent penetration will require the procurement of additional capacity resources to compensate for the challenges of running a grid with high intermittent penetration. The New York Independent System Operator ("NYISO") does not use the ELCC methodology for intermittent resources, but one similar to PJM's current approach. The New York System Reliability Council recently published a study demonstrating that adding a hypothetical 12,000 MW (4,000 MW each of PV, onshore wind, and offshore wind) increases the installed reserve margin needed to meet New York State's reliability standards by 24.3 percentage points, from the 18.6% 2020 IRM Study preliminary base case value to 42.9%.<sup>14</sup>

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<sup>14</sup> See New York System Reliability Council, *High Renewable Resource Modeling White Paper* (January 7, 2020), available at: <http://www.nysrc.org/PDF/MeetingMaterial/ECMeetingMaterial/EC%20Agenda%20249/4.3%20High%20Renewable%20Resource%20Modeling%20White%20Paper%20v1.1%201-7-2020-Attachment%204.3.pdf>

These predictions are not purely theoretical: California offers an illustrative real world example of the challenges of maintaining a reliable system with increased intermittent resource penetration. California’s electricity grid has achieved an approximate 35% intermittent resource penetration, well short of the goal envisioned under the Energy Master Plan. The highest intermittent penetration in 2019 was in May where 80.3% of the grid was served by renewable resources. But during the peak hour for that same year, this amount was drastically reduced to 26.5% as the intermittent resources were not available. Because grid reliability could not continue to be maintained through the current portfolio mix and increasing additions of intermittent resources, the California Public Utilities Commission (the “CPUC”) significantly overhauled its resource procurement rules for 2021-2023. The CPUC ordered that 3,750 MWs of fossil fired generation’s scheduled retirement be delayed for a few years, and that load serving entities procure an additional 3,000 MWs of power “with an eye towards grid resiliency.”<sup>15</sup>

The above is illustrative of the reliability challenges the electric grid faces as it incorporates intermittent and newer technologies. As stakeholders, we can afford to disagree about policies and cost allocation, but we cannot quibble with the basic tenets necessary to maintain reliability on our system, nor should we want to do so. PJM is far better suited to deal with the integration of these technologies in a cost-efficient and reliable manner than any single FRR entity could be. Offshore wind is a more efficient wind resource than on shore in NJ due to

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<sup>15</sup> CPUC Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements, Decision requiring Electric System Reliability Procurement for 2021-2023, (Rulemaking 16-02-007) (November 13, 2019), available at: <http://www.caiso.com/Documents/Nov13-2019-DecisionRequiringElectricSystemReliabilityProcurementfor2021-2023-R16-02-007.PDF>

the higher energy production it can create, but is not an economically efficient capacity resource and more importantly, it has a limited reliability contribution – i.e., capacity value.

The costs to achieve the required reliability standards under an FRR construct may be far higher than the cost of capacity that offshore wind may not receive in the near term.<sup>16</sup>

1. As discussed above, it is unlikely that the resources would bid all their qualifying MWs into the PJM auction because of associated performance risks.
2. Under PJM’s proposed ELCC methodology, with the expected offshore wind penetration, the actual value of capacity related to those projects will decline over time necessitating additional capacity procurement.
3. It is likely that nuclear units will command higher rates under an FRR than if they bid economically and cleared in the PJM capacity market.
4. It is unlikely that a resource owner will sell its capacity to an FRR entity for less than what it would expect to receive from its participation in the PJM capacity market. NJ ratepayers would lose the competitive cost benefits of participating in the PJM capacity auction.

The so-called “savings” from the requirement to procure only a 15% reserve requirement, as compared to the procurement of reserve requirements in excess of 15% when it is economically efficient to do so does not automatically mean New Jersey customers save money. The demand curve used to clear the capacity auction (the “VRR Curve”) was purposely designed such that as additional reserves are procured in the auction above the Installed Reserve Margin (“IRM”), the

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<sup>16</sup> Furthermore, and again somewhat ironically, if there is too much offshore wind, PJM may have to curtail its production and then the wind farms lose their main source of revenue: energy payments. It is not difficult to imagine a mild night in the Spring with very low load forcing PJM to curtail either nuclear or wind resources to balance the system for reliability purposes.

clearing price drops such that the overall cost to consumers **is less** than if the auction cleared at the IRM. This is a remarkable feature of the BRA where the consumers are actually getting additional reliability benefits at an overall lower cost.<sup>17</sup> The cost of capacity for existing FRR entities is significantly higher than clearing prices in the PJM capacity market.<sup>18</sup> Moreover, the market monitor for PJM, Monitoring Analytics, has published a paper on the impacts of and FRR on New Jersey customers demonstrating this fact.<sup>19</sup>

### Policy Issues

LS Power also urges the Commission to examine the policy consequences of an FRR. As has been demonstrated over the years, competitive markets have reduced emissions and costs very effectively. Some argue that they are not markets but administrative constructs. This misses the point that even if they are administrative constructs, they mimic market dynamics and with market oversight produce competitive results.

New Jersey has the benefit of hindsight with respect to prior efforts to pick specific resources on behalf of its customers. Less than ten years ago, New Jersey passed “LCAPP,”<sup>20</sup> which mandated the state contract with three natural gas resources. Ultimately, the courts voided the contracts or New Jersey would have once again been stuck with above market contracts for a long term. What happened? Three power plants were built without contracts, and cleared PJM’s

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<sup>17</sup> See *Viewpoint: The Variable Resource Requirement*, published by PJM September, 2018 and attached hereto.

<sup>18</sup> See <https://www.pjm.com/markets-and-operations/billing-settlements-and-credit/frr-lse-capacity-rates.aspx>

<sup>19</sup> Monitoring Analytics, *Potential Impacts of the Creation of New Jersey FRRs*, The Independent Market Monitor for PJM (March 13, 2020).

<sup>20</sup> The Long-Term Capacity Pilot Project Act (“LCAPP”), P.L. 2011, g.9 (January 28, 2011), was codified in the following sections of the New Jersey statutes: N.J.S.A. §§ 48:3-51, 48:3-60.1, 48:3-98.3, and 48:3-98.4.

capacity auction anyway. The decision to procure natural fired gas units was made less than ten years ago, yet it is unlikely that New Jersey would now choose to have its ratepayers support a fossil-fired plant. It is precisely this type of gamble -- that the state can predict accurately what it wants and its consumers should pay for – that is instructive of the huge risk ratepayers would face under an FRR construct where the state makes resource decisions.<sup>21</sup>

As noted above, the FRR was an accommodation to encourage vertically integrated utilities in states without any retail competition to join PJM. It was never intended for use in a state with competitive retail choice and competitive generation, some of which is affiliated with a utility. With approximately 70% of New Jersey load being served by competitive suppliers, the FRR is fraught with the risk of undermining such competition. First, a single entity would likely have to purchase on behalf of these suppliers. That single entity, especially if it were a utility, would likely need to be paid a fee to manage the procurement. Moreover, that entity would have to manage performance risk (e.g., procure additional capacity if there was non-performance), and thus require additional management fees. In a worst case scenario, that purchasing entity would bear the costs of non-performance, which would then be passed along to New Jersey ratepayers.

Choosing to fund specific offshore wind projects will upend the benefits to New Jersey ratepayers of PJM's competitive market by placing the financial risk of power plants back on those consumers. New Jersey customers know all about bearing the financial decisions of power plant owners: they have paid the price for nuclear units through stranded cost recovery.

Choosing specific “winners” also undermines the competition that drives to more advanced

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<sup>21</sup> At that time LS Power offered a solution for New Jersey to acquire new fossil fired plants through the BGS default service, and still believes BGS default service provides a potential route for reaching clean energy goals.

technologies and efficient pricing. In the past few years, there have been advancements in gas turbine technology that reduces emissions, improves efficiencies, etc. In only a few years, the PJM market has created a place for clean energy in its capacity market: energy efficiency, demand response, and battery storage are now active and important participants in the PJM capacity market. Thanks to New Jersey, PJM facilitated the growth of renewable energy plants through its ability to track them in its GATS system. And from that GATS system more states were able to pursue renewable portfolio standards and through competition the costs of solar and on-shore wind projects were driven low enough that they can now compete economically in PJM's markets. Under an FRR construct, however, an entity would determine which resources to contract with to meet the FRR reliability obligations annually for a five-year period, locking in technology choices, price and performance. These contracted resources would not have the incentive to compete with more efficient, equivalent power sources.

Other policy concerns include, as previously mentioned, that New Jersey's foray into the FRR alternative would be the first time FRR was used for a purpose not contemplated when FRR was adopted, namely by a deregulated state with retail access. There are serious FRR implementation issues and costs, such as how resources will be procured, by whom, and at what price to consider. There are serious market power/market manipulation concerns including affiliate abuse. These issues were raised in the Electric Discount and Energy Competition Act ("EDECA") and the "LCAP" proceeding,<sup>22</sup> and are still present today should the state choose to opt into FRR. Finally, there may be alternatives to the FRR construct that would better achieve

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<sup>22</sup> I/M/O THE LONG-TERM CAPACITY AGREEMENT PILOT PROGRAM, New Jersey Board of Public Utilities, Docket No. EO11010026 (March 29, 2011); Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. § 48:3-49, et seq.

the Master Energy Plan goals in a more cost effective manner. The BPU should take the time to explore these, which could include tax incentives, competitive procurements that are not technology or project specific, more efficient batching of projects to reduce offshore wind plant costs and redundancy with respect to interconnection and regional planning. In summary, the BPU must examine the trade-offs between locking in specific projects now through the FRR construct versus the efficacy of using the PJM competitive markets to drive lower emissions and lower cost as New Jersey has done so successfully to date.

The FRR Alternative is inconsistent with the legislative intent in passing the Electric Discount and Energy Competition Act (“EDECA”), which states in relevant part:

- b. The Legislature further finds and declares that:
  - (1) In a competitive marketplace, traditional utility rate regulation is not necessary to protect the public interest and that competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation;
  - (2) Due to regulatory changes, technological developments and other factors, a competitive electric generation and wholesale supply market has developed over the past several years;
  - (3) Electric power services are available in the wholesale markets at prices substantially lower than the current cost of electric power generation and supply services provided to retail customers by this State's electric public utilities;
  - (4) The traditional retail monopoly which electric public utilities have held in this State for electric power generation and supply services should be eliminated, so that all New Jersey energy consumers will be afforded the opportunity to access the competitive market for such services and to select the electric power supplier of their choice;
  - (5) The traditional electric public utility rate regulation which the Board of Public Utilities has exercised over retail power supply in this State requires reform in order to provide retail choice and bring the benefits of competition to all New Jersey consumers;
  - (6) Permitting the competitive electric power generation and supply marketplace to operate without traditional utility rate regulation will produce a wider selection of services at competitive market-based prices; ...

Clearly the New Jersey legislature appreciated the policy implications of utilizing PJM’s competitive wholesale market in order to provide superior benefits to customers, rather than relying on traditional rate making tools. The FRR alternative would revert back to those rate



making tools by having some entity determine at what price resources will be locked in by technology type and cost, denying customers the benefits of a competitive procurement.

EDECA envisioned using wholesale competitive markets to achieve environmental goals, and as noted above, that is exactly what has occurred in PJM, and can continue to occur for New Jersey customers on a least cost basis.

Finally, it appears that pursuant to C.48:3-56 8 (d) of EDECA, the Board must apply the criteria in section (c ) to determine whether to reclassify generation service based on it no longer being competitive. Section (c ) qualification do not provide criteria on which the BPU could rely in choosing the FRR alternative and re-regulating capacity procurements. The statute provides specifically that a service *would remain* (emphasis added) regulated for purposes of the public safety *and* welfare. There are no safety issues involved here that justified remaining regulated, let alone a reversion to procuring capacity on a regulated basis.<sup>23</sup>

#### Conclusion:

LS Power believes that the benefits to New Jersey customers through their participation in PJM's capacity market far outweigh the creation of an FRR entity. There is nothing in the MOPRex Order that impedes, let alone prevents the pursuit of emission reduction goals under the Energy Master Plan, including financing offshore wind power plants. That said, it is incumbent upon the BPU to vet thoroughly all the issues raised by LS Power and other participants in the proceeding before making a final determination that involves hundreds of millions, if not billions of ratepayer money. Given the expected delivery dates of the offshore wind projects that are under consideration, there is no reason for BPU to rush to make a final

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<sup>23</sup> Id.

decision in the near term for five years forward that could set in stone an energy agenda that New Jersey ratepayers will later regret.

Again, LS Power is appreciative of the opportunity afforded to it to provide its comments.

Respectfully submitted,

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