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VIA ELECTRONIC MAIL

Secretary Aida Camacho-Welch
New Jersey Board of Public Utilities
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Re: Investigation of Resource Adequacy Alternatives
Docket No. EO20030203
Comments of the Retail Energy Supply Association

Dear Secretary Camacho-Welch:

On behalf of the Retail Energy Supply Association (“RESA”),¹ please accept these comments in response to the Board of Public Utilities’ (“Board’s or BPU’s”) March 27, 2020, solicitation of comments as part of its Resource Adequacy Alternatives Investigation (“RAAI”). RESA would urge the Board to continue to seek responses from a broad spectrum of stakeholders as it investigates the impact on New Jersey’s clean energy policies in relation to PJM’s current Reliability Pricing Model (“RPM”). As an active participant in New Jersey’s competitive energy marketplace and prior proceedings regarding the development of the renewable energy market in New Jersey, RESA appreciates the opportunity to provide written comments.

RESA notes at the outset of these comments that the Electric Discount and Energy Competitive Act (“EDECA”) favors market driven approaches to energy procurement and retail

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

supply. Specifically, the Legislature declared that it is the policy of New Jersey to “place 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”, and “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”.²

The variety and robust nature of the competitive electricity supply market in New Jersey is clearly evident as New Jersey’s Third Party Suppliers (“TPSs”) are offering residential, commercial and industrial (“C&I”), and municipal aggregation customers countless services and products that are not available from the state’s electric public utilities. TPSs offer tailored products for C&I customers that allow customers to select various pricing and service options. In addition, residential products that include “green” energy products, flat rate pricing for unlimited usage, and variable priced products from TPSs are also meeting customer needs. In addition, it is only the state’s TPSs that are offering municipalities price guaranteed and enhanced renewable energy options in their municipal aggregation offerings.

Unfortunately, the two key suggested changes contained in the Board’s March 27th request for comments do not support a market-based solution to New Jersey’s resource adequacy concerns. Both the proposed “deluxe” BGS and the Fixed Resource Requirement (“FRR”) alternative would place even less reliance on competitive markets and would likely result in higher customer prices and reduced choice in the energy marketplace.

Significantly, RESA is concerned that the FRR alternative will likely reduce market competition and have an adverse financial impact on customers as well as TPSs. RESA members are concerned about the likely increase in costs under an FRR alternative due to the impacts of reduced competition and distortion of market power. An individual utility’s FRR capacity

² N.J. Stat. § 48:3-50(a)(2) and (b)(4).

procurement will be smaller than the PJM capacity market and as such will likely attract fewer offer bids from generation resources and result in increased capacity prices within each utility's FRR zone.

As the Board created discussion questions and topics, RESA is including those questions to which it has comments in this document, for ease of review.

Can New Jersey Utilize the Fixed Resource Requirement (“FRR”) Alternative to Satisfy the State’s Resource Adequacy Needs?

RESPONSE: RESA members are deeply concerned that the FRR alternative is impractical, unworkable, and inconsistent for a state like New Jersey that has a competitive restructured electricity market. Specifically, adopting the FRR alternative would likely result in higher prices for New Jersey customers than would occur through a PJM competitive auction process.

If New Jersey implements an FRR alternative, the state's electric utilities will procure capacity for their BGS customers as well as for the customers of TPSs.³ Since the FRR alternative will require contracts for five years in length, with electricity generators committing to being available three years in the future, RESA fears that FRR will have a detrimental impact on competitive retail suppliers and costs and energy product choices for customers. Should New Jersey decide to pursue the FRR alternative it will involve the utilities procuring bundled products on behalf of all customers which will likely result in higher capacity costs to customers.

Furthermore, significant changes will be needed in New Jersey's statutes and regulations governing retail electricity competition and BGS procurement in order to implement an FRR alternative. When New Jersey restructured its electricity market, it generally relinquished the Board's ability to review the cost of electricity service procured by TPSs. In order to implement

³ Section D.8 of Schedule 8.1 of the PJM Reliability Assurance Agreement states, “In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail.”

the FRR alternative, New Jersey would need to establish a more detailed and complex regulated construct to review the appropriateness and costs of the electric utility's capacity procurement. This would result in the Board establishing complicated proceedings with multiple parties and interests to determine the reasonableness and prudence of all capacity contracts entered into under the FRR alternative. Under an FRR alternative, the Board and the utilities will need to take on the responsibilities that PJM is currently handling, including qualification of new resources and conducting a capacity procurement process or auction. The Board would also need to take over the responsibility of monitoring and mitigating non-competitive behavior in the procurement of capacity since the market would no longer be regulated by PJM's market mitigation strategies, including PJM's complex and effective Three Pivotal Supplier Test. The increased administrative and regulatory costs of these additional Board responsibilities that are necessary for implementing an FRR alternative are likely to become quite costly to the state in addition to requiring amendments of the statutes and regulations governing the Board's authority.

In addition, in order to implement the FRR alternative, the Board would need to take over the responsibility from PJM of ensuring that the locational deliverability areas ("LDAs") within the utilities' service territories in New Jersey are satisfying their Minimum Internal Resource Requirements ("MIRRs"). The MIRRs require local generation resources to resolve transmission constraints between the LDAs and the rest of the PJM transmission grid, which means that a fraction of the procured capacity for those LDAs must be generated within the smaller geographic areas of those LDAs, which can lead to higher energy prices in those locations because higher priced, local generation must be used to meet demand in the LDAs where lower priced generation cannot freely flow due to the transmission constraints on the grid. Since these MIRRs limit the choice of generation resources to what is often only a few options within the limited geographic area of an LDA, there is a high risk that ownership of these generation resources will be concentrated among only a few entities, which often creates serious market power issues. Currently, PJM uses a Three Pivotal Supplier Test ("TPS Test") to ensure that transmission market

power is mitigated and a competitive transmission market exists.⁴ If New Jersey adopts the FRR alternative, PJM's Three Pivotal Supplier Test and other market power mitigation measures will no longer be enforced. In order to ensure that market power continues to be controlled under a new FRR alternative the Board would need to undertake creation of its own transmission market power mitigation process which would be a difficult and complicated process, and might be an impossible challenge to recreate on a state regulatory level.

Adoption of an FRR alternative is likely to significantly raise electricity prices for consumers in New Jersey, according to a recent report by PJM's independent market monitor ("IMM").⁵ As the report explains:

Based on the analysis, the creation of a New Jersey FRR, a PSEG FRR or a JCPL FRR, is likely to increase payments for capacity by customers in New Jersey. It is expected that the actual price for capacity in New Jersey would be the result of a negotiation between the owners of the required capacity, and the State of New

⁴ Mitigation and Shortage Pricing in PJM Interconnection Presentation, FERC Mitigation and Scarcity Workshop (Docket No. AD14-14-000: Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators) (October 28, 2014), available at: <https://www.ferc.gov/CalendarFiles/20141021114650-Keech,%20PJMI.pdf>. This PJM presentation explains the Three Pivotal Supplier Test as follows:

The TPS test examines the concentration of ownership of supply compared to demand and makes collusion more difficult. PJM and the Independent Market Monitor actively monitor the markets to ensure open, fair, and equitable access to all market participants. To prevent a supplier from exercising market power, defined here as the ability to raise energy prices in a specific area, PJM performs the TPS test. This automatic test determines whether the supply of any single generation owner, when combined with the two largest remaining suppliers, is necessary to meet the megawatt amount needed to relieve a transmission constraint. In other words, if the megawatt amount needed to relieve the constraint cannot be met when removing the supply of the owner being tested and the supply of the other two largest suppliers, then the supplier being tested is determined to be "pivotal." In this context, "pivotal" means that all three suppliers jointly have the potential to exert market power.

After removing the top two largest suppliers and the supplier being tested, if the generation within the constrained area is sufficient, the owner being tested passes the TPS test, and the resource will not be offer-capped. If the remaining generation is not sufficient, the owner being tested and the two largest resource owners fail the TPS test, all three generation suppliers are deemed pivotal, and their resources are offer-capped.

⁵ Monitoring Analytics, "Potential Impacts of the Creation of New Jersey FRRs" (May 13, 2020) ("IMM Report") available at: https://www.monitoringanalytics.com/reports/Reports/2020/IMM_Potential_Impacts_of_the_Creation_of_New_Jersey_FRRS_20200513.pdf

Jersey. The price for capacity resources could substantially exceed the capacity market clearing price and the capacity market offer cap.

Creation of an FRR creates market power for the small number of local generation owners from whom generation must be purchased in order to meet the reliability requirements of the FRR entities. All participants in the New Jersey, JCPL, and PSEG FRRs fail the one and three pivotal supplier test which reinforces the conclusion that there is structural market power in each case. A fundamental point about the FRR approach is that the FRR approach is a nonmarket approach. In the FRR approach, there is no PJM market monitoring of offer behavior by generation owners, there are no market rules governing offers, and there are no market rules requiring competitive behavior. In the absence of a competitive market that includes the FRR area(s), there is no competitive market reference point to define what a competitive offer would be from the FRR generation owners in a bilateral negotiation or what the competitive market price would be. Prior market results do not define a competitive outcome in subsequent periods because market dynamics and market outcomes may change significantly. As a result, even the higher estimates of the cost impact to the customers of New Jersey from the creation of an FRR are likely to be conservatively low. If New Jersey were to subsidize any generating units, the subsidy costs would be in addition to the direct FRR costs.⁶

The IMM Report further noted: “In New Jersey, there are not enough capacity resources to meet the PJM defined FRR UCAP obligation. In order to create a viable New Jersey FRR, LSEs in New Jersey would need to contract with other capacity resource owners in New Jersey, and capacity resource owners external to New Jersey, limited by Capacity Emergency Transfer Limit (CETL) and minimum internal resource requirement, to meet the FRR UCAP obligation for the load in New Jersey. There are shortfalls in internal capacity for a New Jersey FRR, a PSEG FRR and a JCPL FRR.”⁷

RESA would also note that if New Jersey decides to pursue capacity procurements through a mechanism other than the current PJM auction process, that decision could have a dramatic adverse financial effect on the state’s electricity customers. Therefore, RESA would urge a deliberate and cautious approach to any change in capacity procurement and to avoid any rush to

⁶ IMM Report at page 4.

⁷ IMM Report at page 6.

removing New Jersey's capacity load from the upcoming PJM 2022-2023 Capacity Action, which is a decision that New Jersey would need to make in less than 4 months under PJM's rules regarding the FRR Alternative.⁸

Can Modifications to the Board's Basic Generation Service Construct Facilitate Resource Adequacy Procurements Aligned with the EMP Clean Energy Objectives? Can Other Mechanisms such as a Clean Energy Standard or Clean Energy Market Facilitate Achievement of New Jersey's Clean Energy Goals?

RESPONSE: EDECA intended the TPS market to develop new and innovative ideas, products, and services, and over the last two decades it has been the competitive market in New Jersey that has delivered those products and services, including enhanced renewable offerings. RESA believes that altering the BGS construct is contrary to EDECA's intent which was to allow customers to have a default basic service option if those customers choose to not shop for competitive TPS products. In fact, the Legislature expressed a clear intent in EDECA that BGS would serve as only a temporary transition measure until retail electricity choice could be fully implemented in New Jersey. *See* N.J.S.A. § 48:3-57(a)(1). EDECA also addressed the creation of stranded costs as the result of the transition to New Jersey's restructured energy market, and RESA fears that a BGS long term contracting requirements for renewable energy could also result in the need to address stranded costs created by the shift in BGS procurement.

The suggestion of utilizing only the BGS construct to achieve the state's clean energy goals ignores approximately 40% of the state's retail supply electricity load which is provided by TPSs in New Jersey's competitive supply market. In fact, it is the TPS's products and services that are currently assisting the state in meeting the EMP's clean energy objectives.

Rather than altering the BGS construct in a way that would expand the basic services offering far beyond its intended statutory purpose, RESA members urge the Board to implement

⁸ There is no legitimate reason for New Jersey to rush into adopting an FRR Alternative because PJM's Independent Market Monitor has concluded that FERC's December 19, 2019, Minimum Offer Price Rule (MOPR) Order "is not expected to have an impact on the clearing prices and auction revenues in the 2022/2023 RPM BRA". 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

policies that stimulate the competitive electric supply market and promote clean energy and energy efficiency products and services offered by the TPSs. These policies would include the establishment of an AMI Data Stakeholder Process as it is the customer's access to AMI data that will allow the state to meet many of the clean energy goals laid out in the EMP. AMI data would allow TPSs to tailor more specific clean energy products and services of interest to customers. Green energy municipal aggregations and the state's community solar initiatives would also be advanced by the use of AMI data. In addition, the availability of more granular AMI data would allow renewable energy project developers to create DER hosting capacity maps.

Furthermore, RESA has long sought the unbundling of transmission charges for both BGS and TPS suppliers through a non-bypassable charge in the utilities' distribution rate. This change would provide customers greater price transparency and would ensure consistent collection of these charges. In addition, modifications to the BGS process to shorten the three-year procurement cycle and to place the BGS and TPS products on an equal price footing would assist both customers and retail suppliers in efforts to offer tailored clean energy products and services of interest to New Jersey customers.

RESA has been critical of many aspects of New Jersey's BGS default service option and sees no reason to even continue the BGS-CIEP construct when the overwhelming majority of CIEP customers have and continue to choose retail supply as their best option. However, the BGS product has an almost two-decade history and altering it now to create a "BGS Deluxe" offering that would include clean energy requirements above the state's current RPS obligations would clearly result in unnecessary price increases and the distortion of the competitive market.

If the Board makes a policy determination to increase the state's commitment to the production of renewable energy, the best solution is not to single out one segment of the market for different treatment, but rather to increase the state's RPS obligations by amending the current RPS statute. This process would ensure that all suppliers and providers have an equal commitment to RPS procurement, which should also result in competitive pricing neutrality between TPS and

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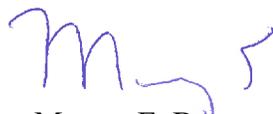
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BGS procurement. In addition, a legislative process would ensure that there is a robust discussion and consideration of the cost implications of an RPS increase.

RESA believes that consideration of other alternatives like a Clean Energy Standard or Clean Energy Market requires careful analysis by the Board. If these are realistic policy considerations, RESA would urge the Board to convene a stakeholder process to carefully review these options.

RESA looks forward to continued participation in this Resource Adequacy Alternatives Investigation. Please do not hesitate to contact me with any questions. Thank you.

Very truly yours,


Murray E. Bevan



cc: Paul Flanagan
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