



Agenda Date: 3/27/20  
Agenda Item: 2H

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF BPU INVESTIGATION OF )  
RESOURCE ADEQUACY ALTERNATIVES )  
)  
)  
)  
ORDER INITIATING  
PROCEEDING  
  
DOCKET NO. EO20030203

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) formally initiates a proceeding to examine whether New Jersey can achieve its long-term clean energy and environmental objectives under the current resource adequacy procurement paradigm and, if not, recommend how best to meet New Jersey’s resource adequacy needs in a manner consistent with the State’s clean energy and environmental objectives, while considering costs to utility customers.

**BACKGROUND**

On January 27, 2020, Governor Murphy released the 2019 Energy Master Plan: Pathway to 2050 (“EMP”). In establishing the pathway to a 100% Clean Energy future, the EMP recognizes that the Federal Energy Regulatory Commission (“FERC”) is “actively attempting to support fossil fuel interests in the PJM Interconnection L.L.C. (“PJM”) region under the guise of promoting ‘fair’ competition.” EMP at 108. As a “[c]ase in point,” the 2019 EMP specifically references a December 19, 2019 Order (the “December 19 Order”) from the Federal Energy Regulatory Commission (“FERC”) that establishes a dramatically expanded minimum offer price rule (“MOPR”) with the intent of limiting the transition to a clean energy future. See *ibid.*

PJM’s capacity market, the Reliability Pricing Model (“RPM”), has included a MOPR since it began procuring resource adequacy for the PJM region in 2006. Although FERC has revised the MOPR over the years, it consistently applied the MOPR to those resources most capable of exercising market power, not renewable resources. However, the December 19 Order reverses FERC’s long-standing presumption that renewable resources in PJM do not present a threat to the integrity of the capacity market and broadly imposes a MOPR on all resources receiving state support – no matter how tenuous the linkage between that support and alleged price suppression in the capacity market. Calpine et al. v. PJM Interconnection, 169 FERC ¶ 61,239 at P. 67 (Dec. 19, 2019), *pending rehearing by Order dated Feb. 18, 2020.*

The December 19 Order's expanded MOPR potentially disrupts a number of New Jersey's efforts to shape its electric generation resource base. New Jersey uses renewable energy certificates ("RECs") to support its renewable portfolio standard ("RPS"). N.J.S.A. 48:3-87(d). The Offshore Wind Economic Development Act, N.J.S.A. 48:3-87d(4) to -87.2, mandated that the Board establish a separate certificate program to support electricity generation from offshore wind projects. The Zero Emission Certificate ("ZEC") program recognizes the environmental attributes of nuclear resources and provides compensation to nuclear units for those environmental attributes, similar to the REC programs for renewable energy resources. N.J.S.A. 48:3-87.3(b)(3). New Jersey also has programs to support demand side energy programs. N.J.S.A. 48:3-87(g). Collectively, these programs date back more than 20 years, at least to the passage of the Electric Discount and Energy Competition Act of 1999 ("EDECA"), as amended, N.J.S.A. 48:3-49 to -87.12, and rest on the premise that states have jurisdiction over their resource mix. All of these programs are impacted by the December 19 Order.

While the 2019 EMP recognizes the December 19 Order as a direct attack on the State's clean energy programs, the December 19 Order may go even further. For example, FERC's application of the MOPR may implicate the Regional Greenhouse Gas Initiative ("RGGI"), which New Jersey recommitted to through final rules that become operative in June 2019. 51 N.J.R. 992(a) (2019). FERC's application of the MOPR may also implicate the Board approved Basic Generation Service ("BGS") Auction as well as other states' default service programs. Although the Board and other parties have sought rehearing and clarification, FERC has issued a tolling order delaying action on those requests indefinitely.

The Board cannot sit idle while FERC considers rehearing and clarification. The 2019 EMP makes plain New Jersey's commitment "to exploring all possible options . . . to ensure that the State can realize a clean energy future at reasonable prices." EMP at 108. The 2019 EMP further states that the Board may initiate a proceeding to explore "how to best meet New Jersey's resource adequacy needs, consistent with the State's clean energy goals and environmental values." Ibid. The 2019 EMP acknowledges the Board's discretion to initiate such a proceeding and the Board's authority to make the appropriate determination.

### **SCOPE OF PROCEEDING**

The courts have long recognized that the Board has broad regulatory authority under Title 48. The Board has the authority to initiate an investigation into "*any matter concerning any public utility.*" N.J.S.A. 48:2-19(a) (emphasis added). The Board also has the authority to "require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State." N.J.S.A. 48:2-23. These powers have continued even with the restructuring of the industry.

With the transition to competitive markets pursuant to EDECA, the Legislature memorialized findings and declarations regarding the policy of the State. N.J.S.A. 48:3-50. 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." N.J.S.A. 48:3-50(a)(2) (emphasis added). It is also the policy of the State to "[p]rovide diversity in the supply of electric power" and "[p]revent any adverse impacts on environmental quality in this State as a result of the introduction of competition." N.J.S.A. 48:3-50(a)(7) and (9). It is also the policy of the state to "[e]nsure that improved energy efficiency and

load management practices, implemented via marketplace mechanisms or State-sponsored programs, remain part of this State's strategy to meet the long-term energy needs of New Jersey consumers." N.J.S.A. 48:50(a)(10). These policies, among others, are implicated by the December 19 Order.

The 2019 EMP does not predetermine a solution to the challenges presented by the December 19 Order. EMP at 108. Rather, the EMP discusses a variety of options for the Board's consideration. For one, the 2019 EMP discusses the possibility of "leaving the PJM capacity market," through a Fixed Resource Requirement ("FRR"). Ibid. The 2019 EMP also discusses the possibility of the State requiring "load serving entities to procure a higher percentage of clean energy" through a Clean Energy Standard. Ibid. The 2019 EMP also discusses the potential for "other clean energy markets or mechanisms to competitively source carbon-free energy and ensure appropriate decision-making for resource adequacy." Ibid. Ultimately, the 2019 EMP envisions an open and thorough proceeding that investigates "all possible options" and recommends further appropriate action.

Accordingly, the Board **HEREBY INITIATES** this Investigation of Resource Adequacy Procurement Alternatives. Through this proceeding, the Board **HEREBY DIRECTS** Staff to investigate whether New Jersey can achieve its long-term clean energy and environmental objectives under the current resource adequacy paradigm and, if not, recommend how best to meet New Jersey's resource adequacy needs in a manner consistent with the State's clean energy and environmental objectives, while considering costs to utility customers. Staff may conduct this investigation on behalf of the Board through technical conferences, public hearings, or written comments. The Board acknowledges that the first of these investigative actions is the request for written comments accompanying this Order.

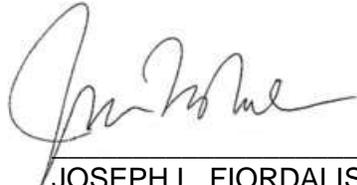
The Board **HEREBY DIRECTS** Staff to notify all affected and/or interested parties by posting this Order and any notices of this proceeding on the Board's website. The Board **FURTHER DIRECTS** all of its regulated electric public utilities in the State to post this Order and any accompanying notices in this proceeding on their respective website homepages within two (2) business days of the date of this Order. The Board **FURTHER DIRECTS** each of the regulated electric public utilities to electronically supply each of their respective BGS suppliers with a copy of this Order within two (2) business days of the date of this Order.

The Board **HEREBY DIRECTS** Staff to review all the data compiled and comments received by the Board in this proceeding and to issue a report with recommendations for any further appropriate action. The report shall be based upon Board Staff's review and analysis. The report shall be supported by a narrative explaining the recommendations as well as the rationale supporting the recommendations. Staff's recommendations will not be binding on the Board. The Board may accept or reject the Staff report and recommendations in whole or in part.

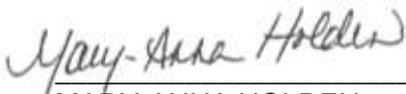
The effective date of this Order is March 27, 2020.

DATED: March 27, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

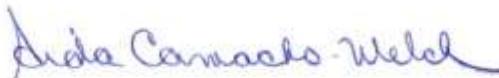


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY



Philip D. Murphy  
Governor

Sheila Y. Oliver  
Lt. Governor

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Joseph L. Fiordaliso  
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Mary-Anna Holden  
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Dianne Solomon  
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Upendra Chivukula  
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Bob Gordon  
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## **REQUEST FOR WRITTEN COMMENTS**

### **Investigation of Resource Adequacy Alternatives** **Docket No. EO20030203**

By Order dated March 25, 2020, the Board initiated the above captioned proceeding and directed Staff to conduct the investigation on behalf of the Board through technical conferences, public hearings, and written comments. At this time, Staff is requesting written comments on the following topics.

The topics to be addressed are as follows:

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

Staff seeks written comments to discuss the feasibility of establishing a (“FRR”) service area or areas in New Jersey. Suggested topics for inclusion in the comments are as follows:

- a. Discussion of the FRR requirements under the PJM Tariff and how they may be applied to a restructured state, New Jersey specifically.
- b. Discussion of any practical limits presented as a result of New Jersey’s geographic location along the Atlantic Ocean and along the NYISO Seam.
- c. Discussion of the pricing and/or rate implications associated with FRR.
- d. Discussion of whether and how the State could pursue an FRR construct under existing legislative and regulatory provisions.
- e. Discussion of any New Jersey legislative and regulatory limitations or potential amendments necessary to pursue FRR.
- f. Discussion of which entity would procure capacity under an FRR construct and whether capacity would be procured state-wide.
- g. Discuss the pros and cons of a State Power Authority (“SPA”), looking at examples from across the country, including discussion of any legislative and regulatory limitations and potential amendments necessary to pursue an SPA.

- h. Discussion of any affiliate relations or market power concerns related to implementation of FRR in New Jersey.
- i. Discussion of any related topics.

## **2. Can New Jersey Utilize the FRR to Accelerate Achievement of New Jersey Clean Energy Goals?**

Staff seeks written comments to discuss whether establishing FRR service area or areas in New Jersey would accelerate achievement of the State's clean energy goals, including those set forth in the 2019 Energy Master Plan. Suggested topics for inclusion in the comments are as follows:

- a. Discuss whether FRR is a viable construct to assist New Jersey in achieving its clean energy goals.
- b. Discuss whether any FRR could be structured to ensure procurement of clean energy resources to meet resource adequacy needs in line with the 2019 EMP objectives.
  - (i) How would procuring greater numbers of clean energy resources affect pricing outcomes?
  - (ii) Could the State require that procurements "internalize" the value of anticipated carbon emissions during the delivery year, subject to a true-up?
  - (iii) How could New Jersey determine what such a reference carbon value could be, addressing both price and environmental considerations?
  - (iv) How would preferentially procuring clean energy resources affect reliability outcomes?
- c. Discuss whether the State should consider adopting an energy market carbon dispatch price, in addition to RGGI, in lieu of an FRR approach.
  - (i) How would such an approach work?
  - (ii) Discuss whether such a carbon price is a viable construct to ultimately get New Jersey to achieve the totality of the 2019 EMP goals.
- d. Discuss whether there are any other models for meeting the state's resource adequacy needs and advancing the state's clean energy agenda.

## **3. Can Modifications to the Board's Basic Generation Service Construct Facilitate Resource Adequacy Procurements aligned with the EMP Clean Energy Objectives?**

Staff seeks written comments to discuss the feasibility of modifying the Basic Generation Service ("BGS") construct in New Jersey. Suggested topics for inclusion in the comments are as follows:

- a. Discussion of a portfolio manager approach as a means of providing for a wider range of resource options.
- b. Discuss potential changes to the BGS competitive processes to facilitate procurement of resources that meet the State's long-term clean energy objectives. Discuss efficiency implications of each option.
  - (i) Clean Energy Standard, utilizing certificates to demonstrate compliance.
  - (ii) Obligations on BGS Bidders to procure clean capacity resources, potentially with locational requirements.
  - (iii) Billing capacity obligations to BGS Bidders from a state FRR portfolio.
  - (iv) Other potential BGS construct modifications to meet the state's resource adequacy needs and advancing the state's clean energy agenda.
- c. Discussion of the pros and cons of modifying the BGS construct to facilitate the State's long-term clean energy objectives.

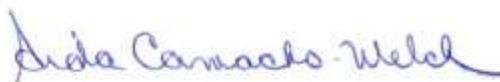
- d. Discussion of legislative and regulatory limitations and potential amendments necessary to enable the BGS construct to effectively facilitate the State's long term clean energy objectives, through the options recommended above or other options presented.
- e. Discussion of affiliate relations or market power concerns related to any proposed changes to the BGS construct.
- f. Discussion of whether the BGS construct can ultimately get New Jersey to achieve the totality of the 2019 EMP goals.
- g. Discussion of any additional related topics.

**4. Can Other Mechanisms, such as a Clean Energy Standard or Clean Energy Market, Facilitate Achievement of New Jersey Clean Energy Goals?**

Staff seeks written comments to discuss the feasibility of implementing a Clean Energy Standard, Clean Energy Market or other mechanisms to competitively source carbon-free energy and ensure appropriate decision-making for resource adequacy aligned with state public policy goals. Suggested topics for inclusion in the comments are as follows:

- a. Discussion of alternative competitive processes to facilitate the State's long-term clean energy objectives.
- b. Discussion of implementation of a Clean Energy Standard.
- c. Discussion of the pros and cons of various alternative market constructs to achieve a clean energy future.
- d. Discussion of legislative and regulatory limitations and potential amendments necessary to advance alternative market mechanisms to achieve the 2019 EMP goals.
- e. Discussion of affiliate relations or market power concern related to proposed alternative mechanisms.

Written comments on this investigation should be filed with the Board by April 29, 2020. Comments should be filed electronically with the Board Secretary electronically at the following email address: [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov). Comments shall be considered filed with the Board once the commenter receives an electronic confirmation. Please note that these comments may be considered "public documents" for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 to -13. Commenters may identify information that they wish to keep confidential by submitting them in accordance with the confidentiality procedures set forth in N.J.A.C. 14:1-12.3.



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Aida Camacho-Welch  
Secretary of the Board

Dated: March 27, 2020