

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

I/M/O the Board's Investigation of Resource Adequacy Alternatives)))))	Docket No. EO20030203
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COMMENTS OF CALPINE RETAIL HOLDINGS, LLC

Calpine Retail Holdings, LLC ("Calpine Retail") hereby responds to the request for comments issued by the Board of Public Utilities (the "Board") regarding the possibility of utilizing the Fixed Resource Requirement ("FRR") alternative established under the tariff of PJM Interconnection, LLC ("PJM") to satisfy New Jersey's needs for adequate electricity resources. Calpine Retail is the retail arm of Calpine Corporation, which has made a separate filing herein which Calpine Retail supports. Calpine Retail is making this separate filing in light of its long history supporting retail choice and its benefits for New Jersey customers.

For the reasons that follow, Calpine Retail submits that the FRR alternative cannot co-exist with a vigorous competitive retail market, in which companies like Calpine Retail, who are not looking to shift their demand-based wholesale risk onto all captive distribution rate customers of the utility, wish to continue to offer innovative products and services to customers based on their own needs and demands.

By way of background, Calpine Retail, through its various operating subsidiaries, is one of the largest retail providers in the United States. It competes in every state that is open to electric retail competition and is a longstanding (over 19 years) licensed competitive third-party Electric Power Supplier ("TPS") in New Jersey. It is also a separate Load Serving Entity ("LSE") and member of PJM Interconnection LLC. With a sales office located in Woodbridge,

New Jersey, serving the entire eastern seaboard portion of the United States, Calpine Retail is serving and soliciting customers throughout New Jersey. Calpine Retail currently offers a wide variety of demand-related and energy-related products and services beyond simple energy procurement, including load and risk management as well as bespoke renewable energy solutions. All designed to meet the individualized needs and demands of Calpine Retail's customers and capture the benefits of the competitive wholesale energy environment and bring those benefits forward into to New Jersey's competitive retail electric market.

1. General Overview of FRR

The Board has posed a series of questions related to the FRR construct, as follows.

- a. FRR requirements under the PJM Tariff and how they may be applied to a restructured state, New Jersey specifically.

The Fixed Resource Requirement ("FRR") Alternative is an artificial construct under which only certain LSEs would have to take a prescribed obligation of Unforced Capacity,¹ in lieu of what already has been established as reliable capacity in the PJM Region under the current construct. The FRR construct developed by PJM is complicated, antithetical to competition and completely at odds with the way New Jersey's electric market has been run for approximately 20 years.

The details are included in Schedule 8.1 of PJM's Reliability Assurance Agreement ("RAA"). Among the details for the Board to keep in mind are these:

¹ "Unforced Capacity" is defined by PJM as "the MW value of a capacity resource in the PJM Capacity Market. For generating units, the unforced capacity value is equal to installed capacity of the unit multiplied by (1- the unit's EFORD). For demand resources and energy efficiency resources, the unforced capacity value is equal to demand reduction multiplied by Forecast Pool Requirement. Although the use of the term in the context of FRR is confusing, it is clearly referring to the aggregate Unforced Capacity of all available generation, demand resources and energy efficiency resources.

- A Party is eligible to select the FRR Alternative if it (a) is an IOU, Electric Cooperative, or Public Power Entity; and (b) demonstrates the capability to satisfy the Unforced Capacity obligation for all load in an FRR Service Area, including all expected load growth in such area, for the term of such Party's participation in the FRR Alternative. At the present time, and absent necessary legislation, there is no single entity eligible to serve the entire State.
- A Party satisfying the eligibility criteria as set forth above may select the FRR Alternative *only* as to *all* of its load in the PJM Region. The only exception to this is that a Party may select the FRR Alternative for only part of its load in the PJM Region if (a) the Party elects the FRR Alternative for **all load** (including all expected load growth) in one or more FRR Service Areas; (b) the Party complies with the rules and procedures of the Office of the Interconnection and all relevant Electric Distributors related to the metering and reporting of load data and settlement of accounts for separate FRR Service Areas; and (c) the Party separately allocates its Capacity Resources to and among FRR Service Areas in accordance with rules specified in the PJM Manuals.
- Any Party seeking to use the FRR Alternative must commit to it for a minimum of five years.
- Only one Load Serving Entity is responsible for meeting the capacity obligations of load in an FRR Service Area.

b. Practical limits presented as a result of New Jersey's geographic location along the Atlantic Ocean and along the NYISO Seam.

To the extent New Jersey needs to be a power importer, there are only certain locations from where that power can come, i.e., primarily Pennsylvania and other points west. If the desire is to encourage more renewable generation to be located in New Jersey, depriving that generation

from the opportunity to clear in the Base Residual Auction, and giving it only one possible purchaser of its capacity (the FRR LSE) would be unduly restrictive, narrow and circumscribed.

c. Pricing and/or rate implications associated with FRR.

Removing competitive discipline, creating single entity participation at the wholesale level and allowing for mandatory take and pay at the retail level is cause for serious concern. Certainly the recent analysis by the Independent Market Monitor regarding the potential impacts of the creation of one or more New Jersey FRRs adds to these concerns.² More fundamentally, the Board needs to consider whether the “all the eggs in one basket” approach that underlies the FRR construct really makes sense when the future is proving to be so hard to predict. One should only imagine what the situation would look like in New Jersey right now if a 5-year FRR commitment had been made last year, before the onslaught of the COVID-19 pandemic, with its shockwaves to New Jersey’s economy.

New Jersey separated the generation, transmission and local distribution functions of its public utilities and unbundled the competitive portions of the New Jersey electricity sector from the natural monopoly portion and opened its retail electric market following passage of the landmark Electric Discount and Energy Competition Act (“EDECA”) legislation in 1999. Notwithstanding certain issues with any one individual sector of retail electric competition, New Jersey has not only had a successful Basic Generation Auction for competitively pricing and

² See Monitoring Analytics (The Independent Market Monitor for PJM), Potential Impacts of the Creation of New Jersey FRRs, May 13, 2020. The IMM looked at six different scenarios. Scenarios 1 and 2 would require legislation to create an entity eligible to assume the FRR obligation for all of New Jersey. Scenarios 3 through 6 could in theory be implemented for individual EDC footprints, but all of these scenarios predict significant increases in capacity for the affected ratepayers, and a decrease in costs for ratepayers outside of New Jersey.

reliably delivering its default service but it also has a successful competitive retail market for the Commercial and Industrial rate classes for approximately two decades.

Moving to an FRR construct presents a number of challenges that will harm the retail market and could end retail electric competition in longstanding markets that bring products and services including more efficient use of existing resources as well as renewable products and services that are under competitive forces. Should Third Party Suppliers – and by extension their customers - be required to take and pay for a “slice of the system” from the incumbent utility or a single prescribed LSE for capacity, these costs are no longer based on a competitive market, and the customer may incur costs which include out of market rents and may be exaggerated. Furthermore, if every TPS faces the same cost curve, the opportunity to be innovative and creative in the procurement of capacity and other wholesale services and the opportunity to bring those benefits forward will be eviscerated.

In support of Calpine Retail’s concern and by way of stated customer group concerns, the FRR framework has harmed the competitive market in Ohio and resulted in significantly higher rates to customers.³ Currently, through a negotiated stipulation and subsequent tariff changes, competitive suppliers must pay a capacity charge to AEP Ohio in order to serve customers in AEP Ohio’s service territory. By demanding artificially high prices for capacity, more than 20 times higher than the PJM RPM rate in some cases, AEP Ohio has effectively priced competitive suppliers out of the market because the above market capacity have more than offset the savings a competitive retail supplier can offer customers.⁴ More importantly, AEP’s actions have greatly

³ See The Ohio Manufacturers’ Association, “AEP Ohio’s Electricity Rate Case & Capacity Pricing Case: What Manufacturers and Policy Makers Need to Know,” available at <https://www.ohiomfg.com/grip-assets/pdf/Energy/aep-rate-cases-narrative-6.1.12-2.pdf>

⁴ In addition to AEP Ohio, another relevant example of where FRR v. RPM leads to higher rates is APCO v. Dominion in Virginia. Same state, same ISO, two different capacity constructs.

(Footnote continued on next page)

diminished customers' ability to manage their PJM demand based charges as well as the risk of rate impacts by contracting with third-party suppliers.

- d. Whether and how New Jersey could pursue an FRR construct under existing legislative and regulatory provisions.
- e. Any New Jersey legislative and regulatory limitations or potential amendments necessary to pursue FRR.

Calpine Retail responds to these two questions together, because they are completely intertwined. EDECA clearly requires that all end users must have a choice of electric power suppliers. N.J.S.A. 48:3-53. The FRR construct is entirely inconsistent with this statute. It discriminates against competition and requires that a specific type of Load Serving Entity shall be responsible for capacity for all load in an FRR Service Area. Therefore, at a very minimum this portion of EDECA would need to be repealed to allow the FRR construct to be pursued in New Jersey.

The Tariff Rate Comparison is as follows.

Planning Year 2019/20: APCO FRR Rate: \$403.35/MW-Day | Dominion VA RPM Capacity Rate: \$98.07/MW-Day (311% increase vs RPM)

Planning Year 2018/19: APCO FRR Rate: \$435.86/MW-Day | Dominion VA RPM Capacity Rate: \$164.70/MW-Day (164% increase vs RPM)

PJM posted RPM results: <https://www.pjm.com/markets-and-operations/rpm.aspx>

2018/19 Dominion rate was \$164.70/MW-Day - <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2018-2019-auctions-results-for-base-residual-auction-and-all-incremental-auctions.ashx?la=en>

2019/20 Dominion rate was \$98.07/MW-Day - <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2019-2020/2019-2020-third-incremental-auction-results.ashx?la=en>

PJM posted FRR results: <https://www.pjm.com/markets-and-operations/billing-settlements-and-credit/frr-lse-capacity-rates.aspx>

2018/19 APCO rate was \$435.86/MW-Day - <https://www.pjm.com/-/media/markets-ops/settlements/frr-lse-capacity-rates/capacity-formula-rate-summary.ashx?la=en>

2019/20 APCO rate was \$403.35/MW-Day - <https://www.pjm.com/-/media/markets-ops/settlements/frr-lse-capacity-rates/2019-capacity-formula-rate-summary.ashx?la=en>

- f. Which entity would procure capacity under an FRR construct, and would capacity be procured state-wide?

There is no provision in the FRR construct for any of the existing eligible Load Serving Entities to serve the entire state. Each investor-owned utility (“IOU”) would need to be confined to its own existing service territory.

Even within a single IOU’s territory, the idea that a single entity would be responsible for procuring capacity is antithetical to retail competition. Third Party Suppliers should be able to purchase capacity to serve their customers’ loads. No single TPS shares the exact same load nor do they have the same products and services or operational expertise. Yet the FRR construct eliminates this important opportunity for TPS’s to compete.

- g. 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.

Calpine Retail reserves the right to address this issue in its reply comments.

- h. Affiliate relations or market power concerns related to implementation of FRR in New Jersey.

As previously stated, the FRR construct raises serious concerns about market power at the retail level. In cases where the incumbent utility has affiliates, or contracts or agrees with a single outside retail provider to possibly side step an affiliate designation, the potential for cross subsidization and cost shifting is evident and ripe for abuse. The FRR utility may have both the incentive and the opportunity to direct assets to undercut the retail market. There is no substitute for a competitive market forces and a level playing field to prevent market power. Market participants who are afforded certain unfair advantages must not be allowed to compete in the retail market. There is too much opportunity for self-dealing and cross subsidizing with affiliates or affiliate proxies to undercut the competitive market and remove market efficiencies. For this

reason, FRR should not be allowed in New Jersey nor should any utility affiliate or affiliate proxy be allowed to participate in New Jersey's competitive retail electric market.⁵

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

The Board has asked a series of questions related to 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.

Pursuing New Jersey's renewable energy goals is not necessarily in conflict with its retail electric competition policies. Setting the quantity requirement for each retail market participant (i.e., each TPS and BGS auction winner) will allow the market to meet the requirements for additional renewables as long as there is appropriate access to the renewables in the market and they are not withheld. It takes time to build renewables and until such time as there is enough in the market then there has to be an Alternative Compliance payment, as is provided for in current New Jersey law.

a. Is FRR a viable construct to assist New Jersey in achieving its clean energy goals?

For the reasons explained above, achieving clean energy goals at the retail level is not dependent on a take and pay FRR. Having multiple suppliers competing for renewable resources is the best way to ensure that providers of renewable resources are appropriately incentivized and ratepayers are not overpaying for renewables.

b. Could any FRR be structured to ensure procurement of clean energy resources to meet resource adequacy needs in line with the 2019 EMP objectives?

⁵ In Virginia, Appalachian Power Company (AEP) capacity prices are administratively set. Competitive forces have been removed. As a result any capacity cost savings a customer would be able to normally enjoy in a competitive market from efficiently managing their load through the applicable wholesale market is removed effectively removing cost savings which is one of the tenants of creating a competitive wholesale and retail markets for electricity.

Calpine Retail's position is that the FRR construct would make it more difficult to achieve these objectives as efficiently as possible because important elements of competition would be removed from the market. Calpine Retail leaves it to others to address alternative models for placing a value on carbon emissions.

- c. Are there any other models for meeting New Jersey's resource adequacy needs and advancing its clean energy agenda?

Calpine Retail strongly believes that any approach which relies on market forces to the greatest extent possible will be preferable to any sort of "command and control" approach.

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

The Board has asked a series of questions related to the feasibility of modifying the Basic Generation Service ("BGS") construct in New Jersey.

- a. Would a portfolio manager approach provide for a wider range of resource options?

The BGS Auction works as it was intended. The auction has brought cost efficiency to the provision of default service in New Jersey. The BGS Auction has more transparency than inserting a portfolio manager into the provision of the default service. There needs to be a level playing field for all who offer to provide the default service product. A level playing field for all who bid to provide the BGS default service is paramount as it ensures competition and prevents favoritism. In terms of resource options, they can be stipulated prior to the auction in both the auction rules and its overall design and the standardized supply master agreement.

- b. Would potential changes to the BGS competitive processes facilitate procurement of resources that meet the State's long-term clean energy objectives? What are the efficiency implications of each option?

The BGS auction can be adaptive. Reverse auctions have been used for a number of policy goals by a number of states over the years without being disruptive to the existing retail markets. RPS goals need to be reflected in the requirements of the BGS suppliers to allow the wholesale competitive price discipline to work in meeting the renewable policy of New Jersey for its default service customers. The RPS requirement will set the quantity but not a specific price that bidders are paying for the renewable generation thereby ensuring that the renewable energy is provided at a competitive price subjected to the parameters established in advance of the auction. In the event there is a resource availability issue then an ACP needs to be used in the alternative.

- (i) Clean Energy Standard, utilizing certificates to demonstrate compliance.

This has been a successful approach to date. Default service providers have to meet state RPS standards both in New Jersey and in other states already.

- (ii) Obligations on BGS Bidders to procure clean capacity resources, potentially with locational requirements.

Prohibiting BGS Bidders from using certificates could drive bidders from the market place and potentially threatening the number of bidders in the BGS auction. There is no reasonable cost efficiency basis to place different values on renewable resources based on location. All offshore wind generation is going to be, by definition, offshore, yet it has the potential to benefit all of New Jersey. Similarly, solar will inevitably need to be deployed in portions of New Jersey that have more open space. But the benefits of such generation will be for all of New Jersey.

- (iii) Billing capacity obligations to BGS Bidders from a state FRR portfolio.

In contrast to competitive retail electric markets in New Jersey, BGS Bidders have a prescribed number of predisposed parameters set in advance of the auction. They are bidding to supply a set amount of energy tied to a standardized supply master agreement and it is a one-size-

fits-all approach based on the utilities' load obligations as the supplier of last resort. Because of its single standardized default parameters, it could be further tailored based on additional standardized default criteria.

With that said, the standardized BGS default service product is completely different from a competitive retail electric product. The FRR would not work for the competitive retail market. Each retailer's load obligations, business plans, contract terms, operational expertise and risk as well as management decisions for their own corporate products and service offerings are different and retailers compete on that basis. For the retail competitive market, the FRR scenario which also contemplates an entire area in a one-size-fits-all approach fails to recognize that not all retailers and their products, terms and services are the same. There are over 100 different TPS's and with that comes a multitude of products as well as contractual commitments, including multi-year agreements pursued under the current EDECA statutes, and rules established by the Board, which have been relied upon for decades. An FRR approach that would be applied to the competitive retail electric market would disrupt and harm multiple aspects of the retail market including operations, contracting, offerings and choices that are available to New Jersey customers.

(iv) Other potential BGS construct modifications to meet the state's resource adequacy needs and advancing the state's clean energy agenda.

Calpine Retail does not see a need to modify the current BGS construct but can adapt it to achieve the State's goals and keep intact the successful longstanding BGS auction as the mechanism to achieve these goals.

c. What are the pros and cons of modifying the BGS construct to facilitate the State's long-term clean energy objectives?

The BGS Auction is an effective mechanism to maximize output per ratepayer dollar expenditure to procure supplier of last resort service (including renewable energy) for the default

service. The auction requires private sector companies who compete with each other to submit bids that in effect stipulate the minimum price level they will accept.

- d. What are the legislative and regulatory limitations and potential necessary amendments 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?

Calpine Retail believes that the current BGS construct is fully consistent with the State's long term energy goals, and can be adapted through its bidding requirements to meet any additional renewable energy goals, understanding that an alternative compliance payment may be needed in due to lack of built out supply. New Jersey is well positioned and experienced in carrying out successful BGS auctions and therefore it would not be administratively burdensome to adjust parameters to carry this out.

- e. Affiliate relations or market power concerns related to any proposed changes to the BGS construct.

Please see Calpine Retail's comments to Question 1(h) above.

- f. Whether the BGS construct can ultimately get New Jersey to achieve the totality of the 2019 EMP goals?

In concert with changing the RPS quantities (ratcheting up) that need to be provided by the retail electric market, New Jersey could reach its EMP goals as well as keep the benefits of price, product and service competition

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

The Board has asked a series of questions related to 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.

- a. Are there alternative competitive processes to facilitate the State's long-term clean energy objectives?
- b. What are the pros and cons of various alternative market constructs to achieve a clean energy future?

As noted above, any regulatory construct that does not rely on competitive forces is less likely to achieve a successful outcome with greatest efficiency and at the least possible cost.

- c. What are the legislative and regulatory limitations and potential amendments necessary to advance alternative market mechanisms to achieve the 2019 EMP goals?

As explained above, staying the course but ratcheting up the RPS requirements does not require any legislation, and only minor regulatory revisions. Alternative approaches – such as eliminating customer choice of supplier and/or creating a New Jersey Power Authority, would require significant and controversial legislative efforts.

- d. Affiliate relations or market power concern related to proposed alternative mechanisms.

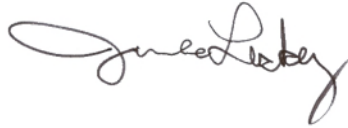
Please see Calpine Retail's response to Question 1(h) above.

Conclusion

The importance of timing, cost and implementation of any changes through a transition cannot be understated. The competitive retail market and the creation of the BGS auction took years and a very deliberative approach, as did the earlier enactment of New Jersey's electric restructuring laws. None of those previous efforts took place during a world pandemic. Comments on an initial PJM compliance filing were just filed at FERC on May 15th and another compliance filing under the latest FERC order is due June 1st. This is all prior to the next base residual auctions. In short, the questions posed by the Board require more time and study to avoid what could be harmful and costly changes to meet New Jersey's renewable energy goals. It is, however, almost a foregone conclusion that an FRR construct would hold customers captive to above market rates which would increase costs substantially for all customers. Such increases would undermine New Jersey's competitiveness and further diminish capital investments, worker training, job retention and creation during an economic crisis.

In light of COVID 19 and the very real economic impacts to New Jersey's citizens and businesses, in addition to any projected supply and demand imbalances, Calpine Retail submits that it would be more prudent to purposefully extend any regulatory process to more fully assess these issues in light of new economic conditions for New Jersey. Certainly, it is especially important not to harm or diminish the commitments market participants have already made in good faith based on the RPS rules that were in place at the time the commitments were made.

Calpine Retail appreciates the opportunity to express its comments, and looks forward to participating in the remainder of this proceeding.

	Respectfully submitted, 
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