



October 2, 2020

**Via Electronic Mail**

Secretary Aida Camacho-Welch  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, NJ 08625-0350  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

**Re: *Investigation of Resource Adequacy Alternatives*; NJBPU Docket No. EO20030203**

Dear Secretary Camacho-Welch:

Enclosed for filing please find the **Natural Resources Defense Council and Sierra Club (Collectively, “Public Interest Organizations” or “PIOs”) Supplemental Comments Regarding Resource Adequacy Alternatives** in the above referenced matter. These comments are being submitted pursuant to the August 20, 2020 Supplemental Notice of Technical Comments. Thank you for your consideration and assistance.

Respectfully submitted,

/s/ Danielle C. Fidler

Danielle C. Fidler  
Staff Attorney, Clean Energy Program  
Earthjustice  
1001 G Street NW, Suite 1000  
Washington, DC 20001  
(202) 667-4500, Ext. 1439  
[dfidler@earthjustice.org](mailto:dfidler@earthjustice.org)

***Counsel for Sierra Club***

**BEFORE THE  
NEW JERSEY BOARD OF PUBLIC UTILITY**

**In the Matter of** )  
**Investigation of Resource** )  
**Adequacy Alternatives** )

**Docket No. EO20030203**

**PUBLIC INTEREST ORGANIZATIONS'  
SUPPLEMENTAL COMMENTS REGARDING RESOURCE ADEQUACY  
ALTERNATIVES**

Danielle C. Fidler  
Staff Attorney, Clean Energy Program  
Earthjustice  
1001 G Street NW, Suite 1000  
Washington, DC 20001  
(202) 667-4500, Ext. 1439  
[dfidler@earthjustice.org](mailto:dfidler@earthjustice.org)

Casey Roberts  
Senior Attorney  
Sierra Club  
1536 Wynkoop St., Suite 200  
Denver, CO 80202  
[casey.roberts@sierraclub.org](mailto:casey.roberts@sierraclub.org)  
*Attorneys for Sierra Club*

Thomas Rutigliano  
Senior Advocate  
Natural Resources Defense Council  
1125 15th Street NW, Suite 300  
Washington DC 20005  
[trutigliano@nrdc.org](mailto:trutigliano@nrdc.org)  
*For Natural Resources Defense Council*

October 2, 2020

**TABLE OF CONTENTS**

I. NJBPU should begin to develop regulations to implement Fixed Resource Requirement.....1

II. The Board should keep in mind the wider range of benefits to the state as it determines how its clean energy procurement mechanisms should evolve. ....3

III. Environmental regulations can help to achieve clean energy goals, but are unlikely to be a primary mechanism.....4

IV. Conclusion. ....5

**PUBLIC INTEREST ORGANIZATIONS’  
SUPPLEMENTAL COMMENTS REGARDING RESOURCE ADEQUACY  
ALTERNATIVES**

Pursuant to the New Jersey Board of Public Utility’s (“BPU” or “Board”) August 20, 2020 Supplemental Notice of Technical Comments, the Natural Resources Defense Council (“NRDC”) and the Sierra Club (collectively, “Public Interest Organizations” or “PIOs”) submit these supplemental comments in the above-captioned matter.

The PIOs commend the Board for the success of the technical conference held on September 18, 2020. The Board members and staff and the panelists each raised important, substantive questions and thoughtful ideas regarding the ability of New Jersey to reach its clean energy and environmental objectives in light of the current resource adequacy paradigm. Many of the ideas raised across the different panels are promising and deserve further exploration. However, as explained herein, most of these paths to a low-carbon future will require many years to implement and require the participation of all of PJM’s stakeholders, whose willingness to agree to them is uncertain. State leadership will be critical to the success of efforts such as capacity market reform and PIOs encourage New Jersey to engage with PJM and with other stakeholders in pursuing those necessary reforms. However, success on these and other fronts such as carbon pricing or a forward clean energy market is uncertain. What is clear is the knowledge that MOPR impacts will severely impair New Jersey’s ability to reach its clean energy and environmental objectives in the near future. PIOs thus continue to urge the Board to prepare for the likely significant harms of the MOPR by commencing the FRR election process.

**I. NJBPU should begin to develop regulations to implement Fixed Resource Requirement.**

The first panel in the September 18 Technical Conference concerned the possibility for one or more New Jersey utilities to use the Fixed Resource Requirement (FRR) to ensure resource adequacy, rather than continuing to rely on PJM’s Reliability Pricing Model (RPM). Several speakers on this panel offered constructive ideas about how the FRR could be

implemented in a way that would benefit New Jerseyans, while others were reflexively opposed to a narrow utility-driven idea of the FRR and continued to advance myths that are rebutted in the record. The record in this proceeding offers a range of approaches to implementing the FRR, including designs which would minimize or eliminate affiliate issues and market power. For example, Sierra Club and NRDC suggested that the FRR be implemented in a manner that takes all procurement authority away from the utility, through third-party administration, or allowing competitive retail suppliers to bring their own capacity.<sup>1</sup> New Jersey Conservation Foundation and New Jersey Sustainable Business Council recommended using an ex ante RFP as a tool for the state to decide whether or not a particular utility should elect the FRR, which would also help to address market power by giving the procurement entity more negotiating leverage.<sup>2</sup> In written comments, PSEG presented a detailed proposal for integrated clean energy and capacity procurement, but at the technical conference also indicated more flexibility regarding FRR design that would not necessarily involve legislative action.<sup>3</sup> PSEG and Exelon's initial comments highlighted that both market power and affiliate concerns could be significantly lessened for certain utilities territories that may elect FRR.<sup>4</sup>

Concerns about the exercise of market power have been raised by all parties, but the record has demonstrated that FRR is not an automatic return to non-competitive markets. In fact, when pressed, the PJM Independent Market Monitor stated during the Technical Conference, that an adequate market power mitigation set of rules for an FRR "absolutely could happen."<sup>5</sup> The Board should further explore with Monitoring Analytics or other firms with market monitoring expertise how market power mitigation tools similar to those used in RPM could be developed for FRR procurement in New Jersey. An FRR in New Jersey could demonstrate an even more effective market power mitigation scheme, as the one for RPM is notoriously flawed.<sup>6</sup> The Board has a range of options to consider for addressing market power and while this topic will require further exploration and work, there is no evidence that market power could not be adequately mitigated in a New Jersey FRR.

Given the significant benefits that the FRR offers, especially in the case where FERC rejects all or part of PJM's compliance filing, the Board must move ahead with developing rules to implement the FRR in a manner that advances state policy goals including rapid development of clean energy resources, preservation and enhancement of retail competition, and ensures a procurement that does not favor resources owned by utility affiliates. Election of the FRR is not a turn away from wholesale markets or regional integration, and does not limit access to the

---

<sup>1</sup> See Initial Comments of Public Interest Organizations Regarding Resource Adequacy Alternatives, at 17–18 (May 20, 2020) ("Public Interest Organizations Initial Comments").

<sup>2</sup> Comments of New Jersey Conservation Foundation and New Jersey Sustainable Business Council, at 10–12 (May 20, 2020).

<sup>3</sup> Joint Comments of PSEG and Exelon Generation Company LLC (May 20, 2020) ("Joint Comments of PSEG and Exelon"); Technical Conference Comments of Lathrop Craig, PSEG Power Ventures (Sept. 18, 2020).

<sup>4</sup> Joint Comments of PSEG and Exelon, at 17–19.

<sup>5</sup> Technical Conference Replay at 2:18.

<sup>6</sup> See, e.g., Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47 (Feb. 21, 2019).

benefits of PJM's energy market, nor restrict reliance on external resources for capacity beyond the constraints already placed by the transmission system and reflected in RPM.

FRR remains the only proposal on the table in this proceeding that directly addresses resource adequacy and the harms caused by the MOPR. While some uncertainty remains regarding FERC's future response to PJM's compliance filing, even if it is accepted wholesale, effects of the proposed MOPR will begin to have significant impacts for New Jersey in short order. It is also clear that getting FRR right takes considerable time and effort, which is why it is critical that New Jersey move ahead with developing rules to implement an FRR that would protect consumers now, rather than attempting to throw something together in haste when the pressure of MOPR cost impacts could create a less attractive result. Should changed circumstances warrant it, there is no reason New Jersey could not decide to ultimately forego the FRR option if better alternatives exist at the time it is scheduled to go into effect.

**II. The Board should keep in mind the wider range of benefits to the state as it determines how its clean energy procurement mechanisms should evolve.**

The second panel at the technical conference explored non-FRR procurement mechanisms for the state to accelerate progress toward its clean energy mandates, though relatively little attention was dedicated to how the various mechanisms under discussion would address the fundamental barriers created by PJM's current resource adequacy structure. The optimal clean energy procurement strategy for New Jersey cannot have resource adequacy as an afterthought. Moreover, as former Board president Scott Weiner observed, the cost-effectiveness of a particular resource choice must be assessed considering a broader range of economic and social benefits to the state, rather than being reduced to a single metric such as cost per ton of carbon avoided. These broader interests include economic development, promotion of jobs offering family-supporting wages, and improved health outcomes in overburdened communities. We urge the Board to keep this broader suite of interests at front of mind while determining New Jersey's path forward.

Some of the centralized mechanisms for procuring clean energy discussed in this proceeding, like the Forward Clean Energy Market (FCEM), could result in New Jersey forfeiting those broader interests. Significant changes to that proposal, such as allowing states to specify minimum labor standards for any clean energy procured on their behalf, may help to align this procurement mechanism with New Jersey's broader interests, but this topic has not been adequately explored. We also note that a key premise of the FCEM as a possible solution to the MOPR is that states would procure clean energy solely through the FCEM rather than through state-led procurements targeting particular resource needs. While an FCEM with adequate guardrails may be appropriate for some procurements needed to meet state policy goals, it should not be the only mechanism that states can use which would allow those resources to count towards resource adequacy.

For New Jersey to achieve its clean energy goals in the most cost-effective way, resource adequacy value must be integrated into how the state structures its clean energy procurements because one clean MWh does not necessarily equal another when full value--including resource adequacy--is considered. The state's offshore wind procurements are an excellent example of a

clean energy procurement that contributes significantly to resource adequacy, given offshore wind's relatively high capacity factors, well-established performance during winter storm events, and the fact that offshore wind is deliverable to New Jersey notwithstanding transmission constraints to other parts of the PJM region.

This proceeding and the discussion on Panel 2 at the technical conference also highlighted the resource adequacy contributions of demand response and distributed energy resources, which share the important benefit of being internal to New Jersey and therefore counting towards minimum internal resource requirements imposed under an FRR and generally helping to replace in-state capacity as fossil fuel plants are deactivated. We agree that these resources are a critical part of the picture and that any state-led procurement strategy must not define qualifications in a way that excludes these resources. The resource adequacy value offered by these resources becomes even higher once one moves away from a peak load-focused notion of resource adequacy towards a more dynamic system. In our reply comments, we noted a number of ways that an FRR procurement could be structured to enable full participation by demand-side resources in particular, such as procuring capacity unbundled from energy and maintaining alignment with technical specifications from PJM's market to the extent possible so as to reduce administrative burdens.<sup>7</sup>

Factoring resource adequacy value into clean energy procurements would also give resources an incentive to maximize their resource adequacy contribution, thereby increasing incentives for hybrid resources, and resources that undertake any additional costs to locate in zones that can meet New Jersey's internal resource requirements. Critically, however, if the state lacks the ability to ensure that the clean resources it procures can count towards the resource adequacy requirements of its utilities--due to the MOPR or related market designs--this careful procurement planning will all be for naught. New Jersey must assert a larger role in resource adequacy decisionmaking, first through the FRR and simultaneously by seeking structural and governance changes at PJM. As Travis Kavulla suggested at the technical conference, a model like the SPP Regional State Committee, which grants states a more prominent role in decision making on key wholesale market issues could help ensure state policies are harmonized with markets.<sup>8</sup> Overall, New Jersey must work to advance coordinated resource adequacy and clean energy procurement frameworks--an end goal that is not possible without a much more prominent role for states in resource adequacy decision-making.

### **III. Environmental regulations can help to achieve clean energy goals, but are unlikely to be a primary mechanism.**

---

<sup>7</sup> Public Interest Organizations' Response to Comments Regarding Resource Adequacy Alternatives, at 30–31 (June 24, 2020).

<sup>8</sup> This concept has been explored in more detail in two recent papers. *E.g.*, Ann McCabe, David A. Svanda & Betty Ann Kane, *Making Markets Work for PJM States: State Engagement Possibilities with PJM* (Oct. 2019), <https://opsi.us/wp-content/uploads/2019/10/Making-Markets-Work-for-PJM-States-10-14-19-1.pdf>; *see also* Jennifer Chen & Gabrielle Murnan, *State Participation in Resource Adequacy Decisions in Multistate Regional Transmission Organizations*, Duke Nicholas Institute Policy Brief (Mar. 2019), <https://nicholasinstitute.duke.edu/publications/state-participation-resource-adequacy-decisions-multistate-regional-transmission>.

We believe that state-driven greenhouse gas emission standards can help to promote some clean energy development by allowing netting of the emission rate of clean energy projects with the emission rate of the regulated facility, as currently being explored by the New Jersey Department of Environmental Protection. Our organizations anticipate full engagement with the DEP's upcoming PACT rulemaking, but for the purposes of the Board's resource adequacy investigation, we note that it is unclear whether renewable energy developed as a result of emission standards would avoid being slapped with the MOPR. As the Board is aware, FERC defined state subsidy in extremely broad terms and has applied it in surprising and counter-intuitive ways, such as to state default service auctions. Therefore it seems unlikely that any state policy that incentivizes clean energy development--even if it does not change the costs of the clean energy resource--would be subject to the MOPR. While application of the MOPR *may* be avoided depending on the structure of accountability mechanisms, we urge the state to not compromise its emission standard policy design with the hope that MOPR can be avoided. Emission standards are critical for the overall achievement of the state's greenhouse reduction goals, and especially for the protection of overburdened communities, and must be designed with the primary goal of achieving those purposes.

Carbon pricing is another environmental policy that has been discussed in this proceeding. However, carbon pricing will not solve the resource adequacy problems created by the MOPR nor the other capacity market flaws identified in our previous comments.<sup>9</sup> Despite this limitation, it may nevertheless be worth pursuing more aggressive carbon pricing as a complement to other state policies that directly drive investment in clean energy resources and address environmental impacts of generation in overburdened communities. Emission leakage somewhat limits the effectiveness of such a policy, though the practical impacts of leakage would be significantly reduced if Pennsylvania were to join the Regional Greenhouse Gas Initiative (RGGI). Any border adjustment mechanism will require FERC and PJM cooperation and will be resource intensive, and therefore should not be the highest priority for New Jersey and other RGGI states at this time. Finally, we note that New Jersey should oppose the two-way border adjustment mechanism that PJM is studying has the purpose of undermining state policy in order to protect other states from its influence--it would increase emissions both within the RGGI zone and across the RTO.<sup>10</sup>

#### **IV. Conclusion.**

For the reasons mentioned herein, PIOs urge the BPU to move forward without delay on preparing for the implementation of FRR in New Jersey as it works with other stakeholders to pursue other options to achieve its clean energy and environmental goals.

Respectfully submitted,

---

<sup>9</sup> Public Interest Organizations Initial Comments, at 34–35.

<sup>10</sup> PJM Carbon Pricing Senior Task Force, *Expanded Results of PJM Study of Carbon Pricing & Potential Leakage Mitigation Mechanisms*, at slide 48 (Aug. 21, 2020), <https://www.pjm.com/-/media/committees-groups/task-forces/cpstf/2020/20200821/20200821-item-03-pjm-study-results-de-md-nj-pa-va-il-scenario.ashx>.

/s/ Danielle C. Fidler

Danielle C. Fidler  
Staff Attorney, Clean Energy Program  
Earthjustice  
1625 Massachusetts Avenue, NW, Suite 702  
Washington, DC 20036  
(202) 667-4500, Ext. 1439  
dfidler@earthjustice.org

/s/ Casey Roberts

Casey Roberts  
Senior Attorney  
Sierra Club  
1536 Wynkoop St., Suite 200  
Denver, CO 80202  
casey.roberts@sierraclub.org

*Attorneys for Sierra Club*

/s/ Thomas Rutigliano

Thomas Rutigliano  
Senior Advocate  
Natural Resources Defense Council  
1125 15th Street NW, Suite 300  
Washington DC 20005  
trutigliano@nrdc.org

*For Natural Resources Defense Council*