Comments of New Jersey Conservation Foundation, New Jersey Sustainable Business Council and Pinelands Preservation Alliance
on PSEG's proposed BRA-derivative pricing FRR concept
Investigation of Resource Adequacy Alternatives

Docket No. EO200203

November 23, 2020

At its September 18, 2020 Technical Conference in the above referenced matter, PSEG representatives raised a new concept for procurement of unforced capacity (UCAP) to meet a Fixed Resource Requirement (FRR) alternative to participation in PJM's Reliability Pricing Model (RPM) capacity market. Such an alternative may be warranted if PJM's Minimum Offer Price Rule (MOPR), as most recently applied by FERC to state-supported clean energy resources, prevents specific state-supported clean energy resources from clearing in the RPM, which would increase the cost to state energy consumers of New Jersey's clean energy initiatives, by requiring them to effectively pay twice for the amount of UCAP provided by the specific resources so affected. Indeed, avoiding such excessive payments is a fundamental reason for the current investigation in this docket.

PSEG representatives suggested that, under its new approach, suppliers would bid to provide UCAP at a price no greater than a specified percentage of the clearing price of UCAP in the subsequent Base Residual Auction (BRA) auction. PSEG called their proposal *RPM derivative pricing,* in that the price charged by each FRR provider, and paid by New Jersey electricity consumers, would be derived formulaically from the actual clearing price in one or more subsequent BRAs.[1] Exelon joined and supported PSEG's proposal. The Board of Public Utilities (BPU) scheduled a working session on November 9, 2020, at which representatives from PSEG explained their proposal, which had previously been made available to participants in written format, and responded to clarifying questions asked by working session participants. The BPU also invited written comments on the PSEG proposal. The New Jersey Conservation Foundation (NJCF) and New Jersey Sustainable Business Council (NJSBC) respectfully offer these comments on the proposal.

I. Background. In initial comments of May 20, 2020 in this docket, NJCF, NJSBC and the New Jersey League of Conservation Voters (NJCF et al.) suggested that the BPU consider issuing a conditional RFP for bids to supply UCAP to one or more New Jersey load zones for the 5-year term of an FRR, prior to making a determination regarding whether to adopt the FRR. The BPU would then base its decision regarding whether to support an FRR election for one or more load zones on whether there would be sufficient competitive UCAP offers at price levels the BPU deems to be reasonable, e.g., comparable to or lower than recent historical PJM capacity market prices in those load zones.

[1] PSEG appears to propose a pay-as-bid or discriminatory price approach, in which each supplier would "receive the price they bid as derived from the subsequent BRA." PSEG Proposal at p. 9.

The NJCF et al. proposal was intended to provide the BPU with means to achieve two important purposes. The first purpose is a way to continue to develop the FRR alternative, without first committing the state to an FRR in the absence of clear and compelling evidence that the price of UCAP under the FRR would remain affordable, relative to recent and expected BRA prices, and not be raised above acceptably competitive levels, e.g., due to the exercise of market power, which most parties agreed is a serious risk under a generic FRR approach due to structurally non-competitive conditions in the regional capacity market and local sub-markets. This purpose is important because an FRR that costs appreciably more than the BRA, even with the MOPR, would not be an attractive alternative way to meet the state's carbon reduction goals, relative to continuing to procure UCAP through the BRA.

The second purpose is to enhance the ability of the BPU and like-minded parties to bargain with PJM and its stakeholders to remove the Minimum Offer Price Rule (MOPR) from its tariff, or replace it with a revised bidding floor that would not discriminate against state-supported clean energy resources in terms of the levels at which they can bid into the capacity market, relative to comparable resources being developed without state support. This purpose is important because removing the MOPR from PJM's tariff, or modifying it to not discriminate in any way against state-supported resources, would not only support New Jersey's own decarbonization efforts, but would support the broader regional decarbonization efforts that are critical to addressing the climate crisis and which are, importantly, also envisioned and required by New Jersey's Global Warming Response Act (GWRA).

In these comments, NJCF, NJSBC and the Pinelands Preservation Alliance (PPA) continue to recommend the BPU pursue such changes in the PJM tariff as a preferable alternative to the FRR, while also continuing to pursue a credible and cost-limited FRR as an alternative in case PJM, its stakeholders, or the FERC do not support elimination or suitable modification of the MOPR. In particular, with the clear and definitive results of the recent election for US president, the prospects of removing or appropriately modifying the MOPR are better than ever, and thus we continue to urge the BPU to engage on both of these fronts, and in particular, to avoid selecting an FRR regardless of the prospects of eliminating or appropriately modifying the MOPR.

II. PSEG's new proposal. PSEG's new proposal, submitted after the initial comments were filed in this proceeding, recognizes the high level of concern about market power articulated by many parties, and takes much appreciated steps to prevent its abuse as a condition precedent for the FRR's implementation. While PSEG's proposal is structurally somewhat different from the NJCF et al. "ex ante RFP" approach, it has much in common with it. Specific differences within common themes are as follows:

a. safe-harbor bid levels to limit market power. Specifically, under PSEG's proposal, the BPU would establish a safe-harbor bid level prior to issuing an RFP for FRR UCAP, whereas under the NJCF et al. proposal, the BPU would determine whether a safe-harbor price level had been produced after the bids were evaluated. Under the PSEG proposal, potential FRR suppliers would be invited to submit bids to accept payment for their FRR UCAP as a fixed percentage of whatever price the next BRA clears at.

PSEG would divide resource types into two or three tiers, with Tier 1 resources comprising all resources that are supported by New Jersey, and which therefore may be prevented from clearing in the BRA by the MOPR in the BRA. PSEG proposes an offer cap for Tier 1 resources of 100 percent of whatever may be the subsequent BRA price for the resource's load zone. Tier 2 resources would comprise clean energy resources that are not supported by New Jersey, and hence that may not be prevented from

clearing in the BRA.[2] PSEG suggests that a third tier could consist of gas resources, if needed to fill the FRR UCAP requirement. PSEG proposes that the BPU would accept bids from Tier 1 resources at levels of up to 100 percent of the next BRA price, while Tier 2 and Tier 3 resources, if any, could bid up to 105 percent of the next BRA price. Under the proposal, all Tier 1 bids would be accepted, in order of ascending bids, before any Tier 2 bids would be accepted.

PSEG's reasoning for these bidding cap levels is that resources which are prevented from clearing by the MOPR (Tier 1) would not receive any payments at all under the BRA, so they "should not need any additional incentives to participate in the FRR beyond being […] paid for their capacity value consistent with other capacity resources," while resources that would clear despite the MOPR would need something more than the BRA price "to provide an incentive to take an FRR obligation in lieu of clearing in RPM."[3]

PSEG does not address the possibility that clean energy resources receiving New Jersey support may qualify for a resource-specific exemption from the MOPR under PJM's final tariff, and thus may choose not to participate in the Tier 1 category.[4] or the fact that clean energy resources not receiving New Jersey support, but receiving such support from other states, may be prevented from clearing by the MOPR, and thus would be happy to participate at the Tier 1 level, and not need the additional incentive offered to Tier 2 resources.

b. Targeting a JCP&L-only FRR. The NJCF et al. initial comments recommended establishing an FRR for just the JCP&L zone, which would be large enough to absorb the UCAP provided by current and foreseeable New Jersey supported clean energy resources during a five-year FRR, as a lower cost and less risky alternative to a full state-wide FRR. The PSEG proposal similarly calls for a JCP&L FRR, and specifically notes that this smaller quantity of UCAP, relative to the larger amount held by a large number of potential sellers, should significantly reduce any structural market power issues in the FRR, since the more sellers there are of a given size, relative to the quantity of demand, the less pivotal any supplier or group of suppliers will generally be.

c. Additional layers of protection against market power abuse. While the NJCF et al. initial comments proposal would rely on the self-interest of FRR sellers to compete for the protection from FRR-related price suppression in the EMAAC and MAAC regions, the PSEG proposal would offer more concrete market power protection through the Tier 1 and Tier 2 percentage bid offer caps. Further, the PSEG proposal would base prices on the BRA clearing prices, which are themselves subject to extensive market monitoring and market power protections under the PJM's tariff, adding yet another layer of protection against higher prices. These additional and more concrete protections against the abuse of market power are appreciated, and may make the PSEG proposal more effective, in that regard, than the NCFJ et al. initial comments proposal.

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[2] Since resources in EMAAC and MAAC could bid into the FRR under PSEG's proposal, it is possible that clean energy resources bidding into the FRR, and not supported by New Jersey clean energy incentives or programs, could still be subject to the MOPR and thus not face the opportunity cost of foregoing BRA revenues.
[3] PSEG proposal, p. 9.
[4] As an example of how a resource that is not affected by the MOPR may nonetheless find the 100% bid cap attractive, PSEG itself stated at the working session that it would commit to bidding its New Jersey nuclear assets at the 100 percent of BRA price level, rather than the 105 percent level; and that it viewed the ZEC program as entirely separate from the FRR issue.

d. Off-ramp if bids are too high or FRR is not needed. The NJCF et al. initial comments proposal provides a clear decision point at which the BPU could, after evaluating the results from its RFP, determine whether to go forward with the FRR based on whether the quantities and prices bid into the RFP would result in FRR costs that are too high. Similarly, under the NJCF et al. proposal, the BPU could cancel the FRR, regardless of bid levels, if a suitable resolution of the MOPR conflict is reached in time.

PSEG clarified, in response to a question from BPU at the working session, that it intended for its proposal to have a somewhat similar feature to the NJCF et al. RFP review-based decision point. Specifically, the PSEG proposal would have the BPU review the RPM derivative bids and "approve the outcome."[5] It is unclear, however, from both PSEG's working session presentation and their written proposal, whether disapproval by the BPU would end the FRR, or simply result in it being carried out and funded, potentially at substantially more cost, bilaterally by the EDC in the affected load zone.[6]

III. NJCF, NJSBC and PPA comments and recommendations. NJCF sees PSEG's proposal, in most regards, as a positive development in this proceeding. In particular, its enhanced protection against market power is welcome and appears to be not only sound in concept, but to offer multiple, independent structural and behavioral protections for New Jersey electricity consumers. Several features of the proposal, however, do not appear to be fully developed or clear, and as such warrant additional exploration and refinement, if the BPU considers adopting or implementing the PSEG proposal or aspects of it. Specific further development or refinements include the following.

a. Refine the tiered auction design. As discussed above, the simple definitions of Tier 1 and Tier 2 may exclude, offer inefficient incentives to, or simply confuse a number of clean energy resources that could compete to provide UCAP to one or more New Jersey load zones under an FRR. These issues deserve clarification and a more fact-based review. In particular, more facts are needed to understand and address the implications of resource-specific MOPR exemptions and of resources that may be subject to the MOPR due to support from states other than New Jersey. Further, the implications for bidding behavior of a discriminating (pay-as-bid) auction versus a single price auction can be substantial, but cannot be summed up categorically since they may vary substantially depending on other auction design details. Accordingly, additional clarity in terms of the key features of the proposed auctions, and additional auction design expertise, are both likely to be necessary to more fully flesh out the PSEG proposal and evaluate its potential strengths and weaknesses.

b. Extend the contract term to protect consumers for the full five years of the FRR. PSEG proposes that FRR suppliers would rebid each year for the relevant BRA price. Since an FRR election is required to last for 5 years under the PJM tariff, and there are stiff penalties for an FRR entity that does not meet its FRR obligations during that term, annual bidding raises the possibility that one or several bidders could inadvertently or deliberately inflict, or threaten to inflict, such penalties on New Jersey electricity consumers by not bidding in a subsequent round. To prevent this, and to reduce risks to both suppliers

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[5] PSEG proposal, p. 11.

[6] See PSEG proposal at fn. 17.

and consumers, it may make more sense for the BPU to require bidders to bid a specific percentage of the BRA price for the entire five-year forward time period of the FRR.[7]

c. Establish an effective and transparent off-ramp from the entire FRR process if the bids are inadequate or if the MOPR is removed or appropriately modified. Despite its layers of protection, there are reasons why the bids offered under a refined version of PSEG's proposals may simply not support an efficient or affordable FRR going forward. For example, there may simply be insufficient bids received. Further, as discussed above, it is now more likely than ever that the MOPR will be revisited and potentially discarded or adapted to support state clean energy goals in the coming months. For both of these reasons, the BPU should, if it adopts any or all of the PSEG proposal, establish a clear and transparent decision point in the process, where the BPU will choose either to continue with or to exit from the FRR alternative, should it become desirable to do so on behalf of the state's energy consumers and broader environmental objectives.

The best place in the proposed RFP evaluation process for this off-ramp option to be located would be after bids have been received and evaluated, consistent with the NJCF et al. initial proposal. In our view, such a final decision to proceed or not proceed would fit well within the PSEG proposal, provided suitable early notice and full transparency regarding the process and the standards for the determination are provided to all bidders. We recommend that the standard for such a decision should be either or both of the following conditions: (a) insufficient bids were received at prices low enough to support the FRR decision; and (b) the MOPR has been eliminated or suitably modified so that the FRR is no longer needed to avoid MOPR-related costs and risks associated with the state's carbon emission reduction and clean energy goals.

[7] For example, if the BRA price is x in year one, y in year two, z in year three, m in year four, n in year five, an entity that bids 90% of the BRA price for the five-year duration would be paid 90% of x in year one, 90% of y in year two, and so on.