

**STATE OF NEW JERSEY**  
**BOARD OF PUBLIC UTILITIES**

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

**Post Work Session Comments**  
**of the PJM Power Providers Group**

To date in this proceeding the PJM Power Providers Group (“P3”)<sup>1</sup> has filed four sets of comments and presented oral testimony on September 30. In each opportunity to offer comment, P3 has consistently advised the Board to pursue clean energy objectives through means that embrace the benefits of competitive markets so that the goals can be achieved with the lowest impact on consumers. In this, our fifth time commenting to the Board, we reiterate our position that FRR represents a flawed and expensive path to achieve New Jersey’s clean energy goals. Nothing has changed except the addition of two more FRR proposals from PSEG that suffer from similar defects as its first proposal.

Unsurprisingly, the latest proposals put forth by PSEG on October 2, 2020, suffer from similar infirmities that impaired the proposal put forth on May 20, 2020. FRR in any flavor

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<sup>1</sup> P3 is a non-profit organization that supports the development of properly designed and well-functioning markets in the PJM region. Combined, P3 members own approximately 67,000 megawatts of generation assets, produce enough power to supply over 50 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit [www.p3powergroup.com](http://www.p3powergroup.com). The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

remains a risky venture into the unknown with enormous downside risk to consumers, significant upside potential for PSEG and market power and legal problems that cannot be brushed under the carpet. While PSEG's revised efforts address some issues associated with its initial FRR foray, P3 remains unconvinced that there is light at the end of the FRR tunnel and thinks the Board would be well served to listen to the consumers and competitive suppliers that are calling for a definitive statement that FRR is not in the best interest of New Jersey. Illinois Governor Pritzker has already done this in Illinois.<sup>2</sup> The BPU could easily follow his lead and pivot the conversation toward more realistic resource adequacy solutions.

PSEG has put forth two new "solutions" to address a problem that is speculative at best. PSEG conceded at the working session that the nuclear units in New Jersey face a low probability of not clearing future PJM capacity auctions. Renewable resources will either not be subject to the MOPR or be in a position to likely clear PJM's Capacity auctions based on FERC's recent approval of PJM's MOPR compliance filing.<sup>3</sup> With the recent announcement of two PJM capacity auctions in 2021, the Board will soon have better insights into the exact implications of the MOPR decision.<sup>4</sup> Regarding the offshore wind projects, P3 submitted testimony indicating the consumer impact of offshore wind facilities not clearing in 2025 is \$17 million and in 2030 is \$55 million dollars – assuming the offshore wind projects remain on schedule.<sup>5</sup> Any delays in construction or operations would simply reduce the impact to consumers. Given the high likelihood of FRR leading to higher prices versus the impact of

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<sup>2</sup> [https://www2.illinois.gov/IISNews/21974-Putting\\_Consumers\\_Climate\\_First-Governor\\_Pritzkers\\_Eight\\_Principles\\_for\\_a\\_Clean\\_Renewable\\_Illinois\\_Economy.pdf](https://www2.illinois.gov/IISNews/21974-Putting_Consumers_Climate_First-Governor_Pritzkers_Eight_Principles_for_a_Clean_Renewable_Illinois_Economy.pdf)

<sup>3</sup> See FERC Order at 173 FERC ¶ 61,061, EL16-049-003, (October 15, 2020)..

<sup>4</sup> PJM scheduled the 2019 BRA for May 2021 and the 2020 BRA for December 2021. See, <https://insidelines.pjm.com/pjm-reestablishes-capacity-auction-schedule/#:~:text=PJM%20has%20scheduled%20the%20next,4%20p.m.%20on%20June%202.>

<sup>5</sup> [https://www.nj.gov/bpu/pdf/ofrp/Supplemental%20Comments/PJM%20Power%20Providers%20Group%20\[July%2023,%202020\].pdf](https://www.nj.gov/bpu/pdf/ofrp/Supplemental%20Comments/PJM%20Power%20Providers%20Group%20[July%2023,%202020].pdf) at page 4, 14.

“paying twice” for this offshore wind capacity, it is not surprising the consumers are lining up in opposition of FRR.

We urge the Board to recognize what the PJM IMM said in May, “The idea that there is a mysterious good FRR design that no one has yet described is fallacious. There is no good FRR design.”<sup>6</sup> The Board can continue to take input and P3 will be pleased to provide it, but at some point discussions should move on to policies that enjoy support from parties other than just PSEG. However, should the BPU continue to move this “spaghetti against the wall” exercise forward, P3 offers the following initial comments on both the proposed RPM Derivative Pricing and the Sealed Bid FRR.

**I. PSEG’s Proposals Beg the Question – How Much Money Do They Want for their Nuclear Plants?**

It is telling that PSEG does not want to acknowledge the link between FRR and ZECs. The two are inextricably linked because they both provide compensation to PSEG’s nuclear facilities in Salem County. Under PSEG’s initial FRR proposal, PSEG would determine the capacity payment made to its own facilities and thereby eliminate the need for the ZEC payment. Since PSEG could name its number (which was never revealed and is still not a part of this record), the ZEC payment would be unnecessary. Under the RPM Derivative Pricing proposal discussed at the working session, PSEG would “accept” the PJM capacity price, whatever that may be, and retain the ZEC. Under either approach, the result is the same – PSEG would be placing the Board in the position of providing the company a certain undisclosed level of

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<sup>6</sup> <https://www.utilitydive.com/news/ditching-pjm-capacity-market-could-cost-new-jersey-386m-through-2022-mark/577998/>

revenue that they, not the Board, deem appropriate in order to avoid the shuttering of their nuclear facilities.

The capacity market, which determines the capacity price PSEG is willing to accept, can fluctuate significantly. Assuming a capacity clearing price of \$166/MW Day which was the EMAAC price in the 2018 Base Residual Auction, PSEG's New Jersey nuclear units would receive about \$206 million dollars a year if capacity prices remains static. However, capacity prices in PJM have cleared as high as \$245/MW Day, which would yield \$305 million dollars for PSEG's plants, and as low as \$16/MW Day, which would result in less than \$20 million in capacity payments supporting these plants.

While recognizing that capacity prices can fluctuate, PSEG represented that it is "mathematically impossible" for the capacity market to generate sufficient revenues to cover the expectations of PSEG.<sup>7</sup> This statement should give the Board tremendous pause. If capacity payments at their highest level and the ZEC payments at the highest level are not sufficient revenues for these proposed Tier 1 resources, how are New Jersey's clean energy goals going to be met? The answer seems to point to an even higher ZEC or capacity payment which again will have to be paid by New Jersey consumers.

If the Board feels like it is being set up, there is good reason for that. The Board is being set up to continually make the difficult decision to acquiesce to PSEG's ZEC and/or Capacity Revenue demands or face the prospect of PSEG threatening to close the plants because they are not generating enough money for them. The Board has already been put in an untenable position by PSEG regarding the ZEC. FRR just makes it worse in that the Board would then have to face

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<sup>7</sup> See <https://register.gotowebinar.com/recording/6192203607892933388> at 2:24:00 and 2:36:00.

similar questions about revenues to PSEG's nuclear facilities from the capacity market. RPM Derivative Pricing may "help" in that it does not require the Board to set the capacity price; however, as PJM capacity price fluctuate and PSEG continues to seek compensation for "market risk," pressure on the Board and/or the legislature to expand the ZEC will only increase.

## **II. Generators Will Prefer to Participate in RPM Rather than FRR**

In order for any of PSEG's FRR proposals to work they will require participation from non-PSEG suppliers whose capacity will be required in order to meet the reliability requirements. However, under the RPM Derivative Pricing approach these generators will have a material incentive to participate in the RPM auctions, rather than the RPM Derivative Pricing approach, because they will have the ability to submit bids consistent with their going forward costs – something they cannot do under the RPM Derivative Pricing approach that requires bids based on a percentage of an unknown number at the time the bid is submitted. For example, if a nuclear or gas plant has going forward costs of \$180/Mwday, that generator would assume a tremendous risk if it submits a bid of 105% of the RPM clearing price and the auction eventually clears at \$120/MWday. Under RPM Derivative Pricing that unit would be forced to supply capacity at something below its going forward costs. This risk of clearing below a unit's going forward costs provides an economic incentive for a unit to prefer RPM auctions over the RPM Derivative Pricing FRR approach. With the FRR election being a minimum 5-year commitment, the yearly risk of insufficient participation in the FRR is yet another problem associated with this FRR approach.

The sealed bid approach seemingly addresses this problem in that generators can bid the "price that they are willing to supply capacity"; however, this approach creates an entirely new set of problems for consumers. Generators in RPM auctions have strict rules under which they

can offer into capacity markets that the BPU would be severely challenged to replicate. First, RPM generators have a must offer obligation that New Jersey, according to PSEG, does not have the ability to impose on FRR capacity suppliers. Secondly, generator bids are subject to rigorous and complex offer caps (and floors) where deviations are subject to an extensive review by PJM and the PJM IMM to determine the appropriate offer cap. With the absence of the must offer obligation, generators would have the upper hand in any “sealed bid” negotiations with the BPU as there is nothing to prevent them from simply refusing to submit a bid if the BPU does not provide what in their mind is a satisfactory bid cap – something a generator cannot do in PJM.

Further, the sealed bid approach puts the BPU in an untenable position of trying to predict RPM clearing prices. The sealed bid approach would require the BPU to evaluate FRR capacity offers against unknown RPM capacity prices for that given year, since FRR plans must be submitted in advance of the Base Residual Auction. While sealed bid offers may appear reasonable compared to last year’s capacity prices, that does not in itself mean it is good for consumers to execute an FRR plan on those offers, as the current year capacity prices could turn out significantly lower than last year’s, as year-to-year changes in market rules and entry and exit decisions impact market dynamics. Unsubsidized resources have no reason to participate in FRR unless they expect to earn more from the FRR than RPM. While FRR advocates have argued that FRR can still be advantageous even if the BPU needs to pay a premium over RPM prices, the BPU is unlikely to be well-matched against companies who have sophisticated modeling teams and tools to develop their own view of RPM clearing prices. Again, the BPU would be thrusting itself into a spot that it should do everything it can to avoid – negotiating with capacity suppliers that are needed and have every incentive to seek as high a number from the BPU as possible and who can walk away from the table at any point.

### **III. PSEG's Proposals Have Legal Issues that Demand Further Vetting**

As the New Jersey Ratepayer Advocate informed the Board, PSEG relies on misinterpretations of pre-restructuring case law to arrive at the flawed conclusion that the Board can order one of its utilities to enter an FRR without any additional legislative authority.<sup>8</sup> P3 supports the Ratepayer Advocate's view and thinks the Board would be well-served by concluding that legislative action would be required for FRR to be instituted anywhere in New Jersey. Doing so would send a helpful signal to the participants in this proceeding that the Board is not interested in litigating any questions related to its authority to order an FRR.

Furthermore, it is not clear, as least in P3's mind, that there are not several other legal infirmities associated with PSEG's latest proposal. The *Hughes* case was cited several times in the working session as reason that New Jersey could not require a must offer obligation on FRR resources. The Board should have a clear understanding of any other limitations on its authority under federal law should it choose to pursue a PSEG-promoted FRR. Currently, PSEG has not provided its view except for this reference to the must-offer requirement in the working session.

Moreover, PSEG's latest proposal seems to suggest a consumer benefit from price suppression in other parts of PJM from the establishment of one FRR zone in New Jersey. To the extent that the purported benefits of PSEG's FRR rely on the "benefit" of capacity market price suppression in other parts of the state or PJM, New Jersey is opening itself up to potential challenges before FERC or perhaps the courts. New Jersey has already travelled that road during the LCAPP discussions in 2011 and 2012 which resulted in significant legal costs and a

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<sup>8</sup> [https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document\\_id=1228701](https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1228701)

Supreme Court defeat. Again, the Board should fully explore and understand these concerns before moving forward.

#### **IV. PSEG's Capacity Performance Risk Analysis Glosses Over Serious Problems**

In PSEG's October 2, 2020, filing and its subsequent comments at the working session, PSEG takes a very confused and incomplete approach to the discussion of Capacity Performance penalties in an effort to suggest that FRR somehow benefits the questions surrounding risks of non-performance. In the October filing, PSEG argues that non-performance penalties would be the responsibility of the FRR capacity resource<sup>9</sup>, while later arguing that wind and solar resources would benefit from shifting non-performance risk to the FRR utility (JCP&L).<sup>10</sup> Unfortunately, FRR does not work that way and the non-performance risk is something that does not fit neatly into a contrived win-win narrative. The reality that PSEG ignores is that capacity performance risk is likely to drive capacity resources away from the FRR unless consumers absorb some or all of the risk.

If Capacity Performance penalties are the responsibility of the FRR supplier (as would be the case in RPM), all risks of non-performance would rest with the supplier. However, under a FRR, wind and solar resources would lose the flexibility to manage that non-performance risk should they elect to participate in that FRR plan. Replacement capacity would be more readily available in a larger market that would allow an intermittent resource to better manage its risks. For instance, a resource in MAAC in a JCP&L FRR plan could source any needed replacement capacity from another resource in MAAC, but that is more limited set of options than that of the

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<sup>9</sup> See Post-Technical Conference Comments of PSEG, New Jersey Board of Public Utilities Commission Investigation of Resource Adequacy Alternatives, Docket No. E020030203, October 2, 2020, at page 9.

<sup>10</sup> *Id.* at page 12.



equivalent resource clearing in RPM, since MAAC does not tend to price-separate. In addition, resources that clear in the BRA can cover any needed replacement capacity by transacting in Incremental Auctions, but resources in an FRR plan do not have that option. For these reasons, wind and solar resources may be more inclined to participate in the PJM capacity market rather than the FRR procurement – particularly if those resources are likely to clear the capacity auction. From this perspective, the only resources that would be incented to participate in the FRR are those resources that are unlikely to clear a PJM capacity auction because of MOPR and, as was established multiple times in this proceeding, those resources are relatively few.

Under the scenario in which suppliers would not shoulder capacity performance risk, shifting that risk to the FRR utility certainly helps intermittent resources and other resources participating in the FRR, but it does so at a cost to consumers. Under this approach, the utility would face the prospect of significant non-performance penalties in the event that any of its FRR resources did not perform during a capacity performance event. JCP&L has clearly said that if it were the FRR entity it would need a mechanism for the “timely recovery” of any penalties for non-performance the utility would be required to pay meaning that ultimately consumers are bearing the risk.<sup>11</sup>

Moreover, as part of the penalty conversation, New Jersey needs to soberly think about the prospect of sustained outages at nuclear facilities dedicated to an FRR. While the performance of Salem County units has been generally strong, the nature of nuclear generation is that outages can be extended. For example, the Davis-Besse Nuclear Station in Ohio was

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<sup>11</sup>[https://www.nj.gov/bpu/pdf/ofrp/Comments/Jersey%20Central%20Power%20and%20Light%20Company%20\[May%202020,%202020\].pdf](https://www.nj.gov/bpu/pdf/ofrp/Comments/Jersey%20Central%20Power%20and%20Light%20Company%20[May%202020,%202020].pdf) at 3.

shuttered for two years when a hole was discovered in a reactor head.<sup>12</sup> In the event of a similar extended shut down at a resource that was committed to a FRR plan, New Jersey's utilities and consumers could all be exposed to significant costs and compromised reliability.

Ultimately, under the PJM RPM construct, the risk of non-performance squarely rests on one entity – the capacity supplier. These suppliers who are in the PJM market have many tools in which to manage that risk and can appropriately judge how much risk they are willing to absorb and how much they would like to mitigate. Under FRR, the risk question grows much more difficult as the options for managing that risk shrink and unless consumers are willing (or forced) to assume a piece of the risk equation. As a result, suppliers – particularly renewable suppliers – will be incented to remain in the PJM capacity market.

## **V. PSEG's Proposals Presume a Permanent ZEC Payment**

All of PSEG's proposals assume that New Jersey is committed to providing a ZEC payment to its nuclear facilities for the length of the FRR plan. As the Board knows, FRR is a minimum commitment of five years. As the Board also knows, it is required to review every three years whether PSEG's nuclear facilities require a ZEC payment in order to sustain operations. In the event the Board determines that the ZEC payment is no longer necessary at some point, approximately 3400 MW's of Tier 1 capacity would no longer exist as those resource would no longer be "New Jersey supported clean energy resources." At that point, in theory, the nuclear units would then move to Tier 2 or decide to not participate in the FRR at all. Regardless, the Board should recognize that a decision to move to a RPM Derivative Pricing

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<sup>12</sup> <https://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation.html>. For additional examples, see, <https://www.eia.gov/todayinenergy/detail.php?id=8611>

construct likely carries with it an obligation to continue to approve a ZEC payment as the ZEC supported units represent nearly all of the Tier 1 capacity.

## **VI. Conclusion**

Moving forward, P3 continues to believe that the Board would be well served by discontinuing the FRR discussion and refocusing the conversation on means of achieving New Jersey's energy goals within a market-based construct. Short of that, P3 offers three specific suggestions to the Board as next steps:

1. In the near term, the BPU should render a legal opinion on whether it has the authority to enter FRR without legislation. If the Board decides to continue to evaluate the FRR option (which P3 does not recommend), it should consider offering an interim opinion on whether the Board believes it has the legal authority to do so without legislation. P3 agrees with the conclusion of the Rate Payer Advocate that the Board cannot under current law require New Jersey's utilities to enter into an FRR arrangement and finds PSEG arguments in support of the opposite conclusion to be thin. That said, if the FRR discussion is going to continue, it would help to focus the conversation if the Board offered its view on the question of legal authority under current law.
2. The BPU should offer an opportunity to comment on additional filings from Northbridge in the event such filings are made. At the working session, PSEG's consultant from Northbridge presented a slide presentation that provided a lot of information but did not contain the data and other analytics to support the multiple conclusions. P3 and other parties could likely challenge the assumptions and conclusions presented by Northbridge; however, it is difficult to do so with the largely unsupported materials currently in the

docket. In the event that this important detailed information becomes available, parties should have an opportunity to provide additional comment.

3. The BPU should consider other working sessions on ideas PJM is considering to meet New Jersey's clean energy goals via resource adequacy and other market-based mechanisms. While PSEG is the only entity that has put forth and advocated for a specific FRR proposal, there are other ideas that are worthy of the Board's consideration that will allow New Jersey to meet its clean energy goals with the current market framework. Both Carbon Pricing and the Clean Energy Standard should be afforded their own working sessions. P3 and its members would welcome the opportunity to participate.<sup>13</sup>

Respectfully submitted,

On behalf of the PJM Power Provider Group

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<sup>13</sup> P3 member Vistra presented to PJM stakeholders a carbon pricing proposal that attempts to mitigate the impacts of leakage (which many cite as the reason why carbon pricing would not work effectively in New Jersey). While P3 as an organization has yet to endorse the Vistra proposal, the organization does believe that a BPU working session focused on the Vistra proposal would be beneficial.