

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

**In the Matter of** )  
**Investigation of Resource** ) **Docket No. EO20030203**  
**Adequacy Alternatives** )

**SIERRA CLUB COMMENTS ON STAFF’S 2022 PROGRESS REPORT ON NEW  
JERSEY’S RESOURCE ADEQUACY ALTERNATIVES**

Pursuant to the Board’s notice issued September 22, 2022,<sup>1</sup> Sierra Club respectfully submits these comments on the 2022 Progress Report on New Jersey’s Resource Adequacy Alternatives, published in September 2022.<sup>2</sup>

Sierra Club appreciates the efforts of the New Jersey Board of Public Utilities and its staff to explore innovative policy designs for rapidly decarbonizing electric supply in the state and region. This particular proceeding has been an important venue for discussion of these ideas of value to the entire region. Sierra Club has filed several sets of comments in this particular proceeding concerning resource adequacy alternatives,<sup>3</sup> offering perspectives that remain relevant here. For instance, Sierra Club supports continued efforts by states, including New Jersey, to support investment in clean energy resources that meet high labor standards and attract investment to underserved and overburdened communities. As such, any centralized clean energy procurement mechanism should provide a carve-out mechanism that enables states and

---

<sup>1</sup> Notice, In the Matter of the New Jersey Investigations into Resource Adequacy: 2022 Progress Report, Docket No. EO20030203 (Sept. 2, 2022).  
<sup>2</sup> N.J. Bd. of Pub. Utils., 2022 Progress Report on New Jersey’s Resource Adequacy Alternatives: Update Regarding Staff’s Investigation of Resource Adequacy Alternatives, Docket #EO20030203 (Sept. 2022) (“Staff Progress Report”).  
<sup>3</sup> See Initial Comments of Public Interest Organizations Regarding Resource Adequacy Alternatives (filed May 20, 2020); Public Interest Organizations’ Response to Comments Regarding Resource Adequacy Alternatives (filed June 24, 2020); Public Interest Organizations’ Supplemental Comments Regarding the Integrated Clean Capacity Market (filed Mar. 5, 2021).

clean energy buyers to procure specific types of resources or those meeting particular standards, alongside the opportunity to procure the lowest-price clean energy attributes. Given current technologies, a diversity of clean energy resources is likely important to the reliability of the grid, and is a legitimate objective for states and clean energy buyers, alongside managing costs. Sierra Club urges the Board to ensure that any forward clean energy procurement mechanism enables carveouts for specific resource types or legacy procurements.<sup>4</sup>

In these comments, Sierra Club offers its perspective on two specific issues raised in the Staff Progress Report: the proposal to implement a clean capacity credit purchase requirement for New Jersey load-serving entities, and the governance and jurisdiction issues presented by the dual paths before the Board of pursuing implementation by PJM and implementation through a multi-state agreement.

### **A. Clean Capacity**

Sierra Club strongly endorses Staff's expressed objective of shifting the capacity mix in New Jersey, in addition to measures to reduce emissions from in-state fossil resources. Full decarbonization will require the development of non-emitting resources, including generation, storage, and demand-side, that support resource adequacy in all hours of the year and in all parts of the state. Thus, it is important for New Jersey and other states in the PJM region to consider market reforms and policy mechanisms that will support the development of an appropriate mix of resources to support resource adequacy. To do otherwise risks deepening the state's exposure

---

<sup>4</sup> Furthermore, Sierra Club does not support the development or continued operation of some resource types that may be considered "renewable" or "emission-free" under various state policies, including but not limited to nuclear energy and new large hydroelectric facilities. See Sierra Club, *Energy Resources Policy* (as amended Apr. 21, 2016), [https://www.sierraclub.org/sites/default/files/Energy-Resources-policy\\_0.pdf](https://www.sierraclub.org/sites/default/files/Energy-Resources-policy_0.pdf).

to volatile fuel prices and extending the harms imposed on communities near fossil-fuel generation and infrastructure. Work to shift the capacity serving the state should proceed in parallel with measures to rapidly reduce emissions. Staff has rightly identified that many resources that will be important to the clean energy transition, such as energy efficiency, demand response, and energy storage are not compensated for their clean energy attributes under current policies and may be more appropriately compensated for the capacity value they offer.

However, the Board should also consider how previously contemplated variations on the FCEM, such as those involving dynamic Clean Energy Attribute Credits (“CEACs”), could attract investment in resources able to supply electricity when the system is currently most reliant on highly polluting fossil fuel plants.<sup>5</sup> The dynamic CEAC market could create a similar investment incentive for resources that can supply electricity at times when wind and solar may not.

Sierra Club has concerns about how well the proposed clean capacity credit (“CCC”) mechanism may work to shift the capacity mix serving the state. The Staff Progress Report does not address key issues about how the CCC mechanism would interact with PJM’s capacity market, other than to note that New Jersey load-serving entities must demonstrate procurement of adequate CCCs (or payment of alternative compliance payments).<sup>6</sup> For the CCC mechanism to achieve its goal of substituting clean for carbon-emitting capacity, it would seem to matter that the CCCs procured also obtain obligations in PJM’s capacity market. Otherwise, the CCC mechanism could support the addition of new capacity in the region, but may not necessarily drive the retirement of existing emitting resources (or forestall the entry of new ones). Yet any

---

<sup>5</sup> See, e.g., Kathleen Spees, Samuel A. Newell, Walter Graf, Emily Shorin, *How States, Cities, and Customers Can Harness Competitive Markets to Meet Ambitious Carbon Goals Through a Forward Market for Clean Energy Attributes* (Sept. 2019), at 34-38.

<sup>6</sup> Staff Progress Report, *supra*, at 43.

requirement that CCCs arise only from resources that have cleared the capacity auction risks being found preempted by a federal court.<sup>7</sup> The Board should therefore seek to understand, in pursuing this option, the extent to which the CCC mechanism would be successful in achieving the stated objectives even if CCCs are sold by resources that ultimately do not clear the capacity auction.

As part of further exploring the CCC mechanism, Staff should evaluate its likely cost. The Staff Report suggests that an alternative compliance payment, or ACP, should be part of any CCC mechanism to avoid excessive costs, but does not talk about how such an ACP should be established. The CCC mechanism is intended to drive development of non-emitting capacity resources that would not otherwise occur. Thus, it would be helpful to better understand the extent to which PJM's existing capacity mechanisms already support entry by non-emitting capacity resources and what is needed to accelerate that entry. It may be that there are barriers to these resources being able to offer their full capacity value into the market, or disincentives to doing so. Or the problem may be that capacity revenues (in combination with energy and ancillary service revenues) are too unpredictable to support development of relatively high capital cost resources like storage? Understanding these questions will not only inform advocacy the Board might undertake at PJM to improve the existing capacity market's ability to support reliable decarbonization, but also point to how much additional revenues non-emitting resources are likely to require for their CCCs to truly bring about change in the capacity resource mix serving New Jersey.

---

<sup>7</sup> *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 166 (2016) (noting that state programs that “do[] not condition payment of funds on capacity clearing the auction” would not suffer from the same defect as the Maryland program held to be preempted in that case).

## **B. Governance of centralized clean attribute and clean capacity markets**

The Staff Progress Report properly focuses on the minimum governance requirements for any PJM-administered market; we agree that “a strong State-led governance model will be critical to giving New Jersey and other states the confidence to participate in a long-term clean energy market.”<sup>8</sup> A key element of this confidence is that the creation of the long-term clean energy market and its operation should not in any way threaten states’ jurisdiction over clean energy policies, including the ability to update them to reflect changing circumstances. Staff sets out several principles for a workable governance model, noting that it must:<sup>9</sup>

- ▶ Provides state regulators a clear role in overseeing any market comparable to the rights exercised by the existing PJM Board of Directors, including appropriate filing rights at the Federal Energy Regulatory Commission;
- ▶ Provides participants in the clean energy market, including buyers, sellers, consumer advocates and state regulators with a dominant share of stakeholder votes;
- ▶ Ensures that states retain primary jurisdiction over their clean energy policies;
- ▶ Relies, as much as possible, on the existing PJM system for tracking environmental attributes, known as the PJM Generator Attribute Tracking System (“GATS”); and
- ▶ Includes a fully qualified and equipped market administrator, potentially a neutral, third party, to conduct the design work and run the auction.

Staff further notes that two different models could satisfy these criteria: (1) a multi-state agreement similar to the one governing the Regional Greenhouse Gas Initiative (“RGGI”), and (2) working within the existing PJM system. We note that the first and second of these principles are relevant only for a market that would be administered by PJM—only then must states concern themselves with claiming certain filing rights at FERC,<sup>10</sup> or having a substantial share of stakeholder

---

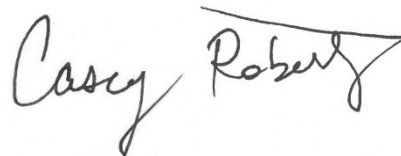
<sup>8</sup> Staff Progress Report, *supra*, at 36.

<sup>9</sup> *Id.* at 36.

<sup>10</sup> The notion that FERC approval would be needed for any implementation or modification of the centralized clean energy market raises questions as to how much states would retain their primary jurisdiction over clean energy policies.

votes. A market administered by an independent administrator pursuant to an agreement among states does not face these formidable legal hurdles. While states may be able to obtain sufficient stakeholder voting weight and filing rights in order to make states comfortable pursuing a PJM-administered market, there would be tradeoffs in doing so, in terms of how quickly the new market could be launched. For this reason, Sierra Club concurs with staff that it is prudent for the Board to direct staff to develop a regional voluntary clean energy market. Doing so presents the opportunity for New Jersey and other states and clean energy buyers to avoid conflicts with PJM and its existing governance process, and minimize risks to the state's continued jurisdiction over markets for clean energy attributes.

Respectfully submitted,

A handwritten signature in black ink that reads "Casey Roberts". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Casey A. Roberts  
Senior Attorney, Sierra Club  
1536 Wynkoop St., Suite 200  
Denver, Colorado, 80202  
T: (303) 454-3355  
[casey.roberts@sierraclub.org](mailto:casey.roberts@sierraclub.org)

October 25, 2022