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October 25, 2022

VIA ELECTRONIC MAIL ONLY

Carmen Diaz, Acting Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, NJ 08625
Board.secretary@bpu.nj.gov

**Re: Comments of Jersey Central Power & Light Company on the
September 22, 2022 Progress Report Issued by Board Staff
Investigation of Resource Adequacy Alternatives
BPU Docket No. EO20030203**

Dear Acting Secretary Diaz:

On behalf of Jersey Central Power & Light Company (“JCP&L”), please accept this letter as JCP&L’s comments on the 2022 Progress Report on New Jersey’s Resource Adequacy Alternatives (the “Progress Report”), which was issued by Staff of the New Jersey Board of Public Utilities (“Board” or “BPU”) on September 22, 2022. The Progress Report summarizes the actions taken by Board Staff in support of its prior recommendations related to a regional Integrated Clean Capacity Market and further recommends that the Board proceed with developing a New Jersey Forward Clean Energy Market (“FCEM”), which it intends to incentivize the further development of clean capacity resources in the State.

JCP&L supports the clean energy targets and environmental objectives included in New Jersey’s Energy Master Plan and is invested in New Jersey’s success in achieving those goals. At the same time, JCP&L’s focus remains on: (1) providing safe and reliable service to its customers at a reasonable price; and (2) ensuring that the Company’s customers are not disproportionately impacted as a result of any alternative capacity procurement plan designed to attain New Jersey’s clean energy objectives.

JCP&L thanks the Board and Board Staff for the opportunity to provide comments on the Progress Report. As indicated in its previous comments in this proceeding, JCP&L supports the Board’s continued use of a comprehensive statewide analysis and collaborative process to evaluate New Jersey’s options for its clean energy future. In this instance, however, stakeholders have been provided only a very limited period of time to review the recommendations within the Progress Report and provide feedback. Prior to requiring that any proposal be implemented, JCP&L encourages the Board to institute working groups and/or convene additional stakeholder proceedings to further develop and evaluate any proposal it believes may have merit.

To that end, and keeping in mind the Company's primary focus of providing reliable service to its customers and ensuring that they are not disproportionately impacted by the cost of New Jersey's clean energy transition, JCP&L offers the following comments on the Progress Report.

I. The Board should clarify whether its intent is to have load serving entities procure clean capacity or to further subsidize incremental new investment in clean energy projects.

This proceeding was initiated, at least in part, as a result of actions taken by the Federal Energy Regulatory Commission ("FERC") to expand the Minimum Offer Price Rule ("MOPR") to cover clean energy resources, which the State was concerned may jeopardize their ability to receive capacity revenues and potentially causing New Jersey's customers to incur "double payments" for these resources. As the Progress Report notes, however, "PJM has since repealed the most egregious aspects of the 2019 Expanded MOPR rules and launched a good-faith investigation into how to most efficiently incorporate clean energy demand into the wholesale market."¹ As such, concerns over the potential for "double payments" associated with the MOPR to support these resources should be mitigated at this juncture.

Board Staff's proposal to establish a New Jersey FCEM for the procurement of clean capacity credits, however, again raises concern of "double payment". As members of PJM and signatories to the Reliability Assurance Agreement, New Jersey's electric distribution companies ("EDCs") have an obligation to procure sufficient capacity to serve their retail customers through the PJM markets unless procuring capacity through an alternative method approved under PJM's Tariff, such as through a Fixed Resource Requirement ("FRR"). Accordingly, regardless of the locational nature of the clean capacity credits procured from projects through the FCEM,² the EDCs will continue to have an obligation to procure capacity through the PJM Base Residual Auction. This appears to raise the same "double payment" concern that gave rise to this proceeding in the first instance. Still, if this is what Board Staff intends with this recommendation, JCP&L encourages the Board to further contemplate several critical legal and technical issues that may arise with implementing an FCEM, as set forth below.

The Progress Report also discusses Board Staff's prior recommendation to have a load serving entity or entities enter into an FRR and actually procure capacity from these clean energy resources on behalf of all its customers.³ Before continuing with that approach either at the State or regional level, JCP&L encourages the Board to consider all of the potentially complicating legal and technical issues that must be decided before proceeding down this path, as set forth in the prior comments of various stakeholders and in the Company's comments submitted on November 23, 2020, March 5, 2021 and April 5, 2021. As set forth in those comments, resolving these important technical questions and issues will require extensive stakeholder involvement and engagement. Accordingly, should the Board decide to pursue an option necessitating the use of an FRR, JCP&L

¹ Progress Report at 5.

² Progress Report at 40.

³ See Progress Report at 12.

encourages the Board to establish working groups to further evaluate proposals and resolve these items prior to proceeding with implementation.

II. There are important legal and technical questions about a New Jersey FCEM that must be answered prior to implementation.

As indicated in prior comments on the various proposals in this proceeding, JCP&L believes it is important for the Board and interested stakeholders to more fully work through critical legal and technical issues in order to properly evaluate whether any proposal, including an FCEM, may be beneficial to New Jersey. Below are examples of several questions and/or issues that must be resolved to accurately understand how the proposed FCEM will function and the potential costs, risk, and benefits of the Proposal.

- How will an FCEM operate within the Basic Generation Service (“BGS”) construct? Will customers be paying multiple times for environmental attributes (once through the FCEM and again to meet the requirements of statutorily-mandated renewable energy credit programs?)
- How will the FCEM account for New Jersey’s statutory restrictions on the costs to be paid by customers for certain clean energy attributes? *See N.J.S.A. 48:3-87(d)(2)*, which requires, in part, that the “board shall ensure that the cost to customers of the Class I renewable energy requirement . . . shall not exceed nine percent of the total paid for electricity by all customers in the State for energy year 2019, energy year 2020, and energy year 2021, respectively, and shall not exceed seven percent of the total paid for electricity by all customers in the State in any energy year thereafter . . .” Will an FCEM cause the shifting of costs from compliance with the statutorily-capped RPS requirements to this new market?
- Does the Board have legal authority to create a new market for energy attributes that are not contemplated by statutory authorization?
- Does FERC have jurisdiction over a market designed to compensate a project for environmental attributes associated with its capacity, much like it does over the wholesale capacity market?
- Will penalties be assessed if a project participating in the FCEM fails to deliver the necessary clean capacity in the delivery year? If so, in what amount and how will they be enforced? Does the Board have sufficient statutory authority to enforce any penalty? Alternatively, would each purchaser in the FCEM (including New Jersey’s EDCs who would be mandated to participate under the proposal in the Progress Report) be required to pursue private actions against a project that fails to perform? If so, how will costs be recovered if a project fails to pay damages (perhaps because the project never came to fruition)?

JCP&L Comments on Investigation of Resource Adequacy Progress Report

BPU Docket No. EO20030203

October 25, 2022

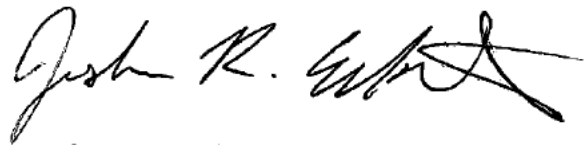
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As it has done with other proposals in this proceeding, JCP&L offers the above considerations related to the FCEM proposal in the Progress Report not to challenge an FCEM as a potential option for New Jersey, but, rather, to highlight some of the difficulties associated with designing a practical, comprehensive, and cost-effective market. Such an effort requires extensive planning of every detail to ensure that no unexpected issues arise and unnecessarily add to the costs for New Jersey's customers. JCP&L is also concerned about the potential for "double payment" for the clean energy attributes of these generation resources, given the existing methods of providing for such compensation, as such additional cost would ultimately fall upon New Jersey's ratepayers. Should the Board decide to take this path, JCP&L encourages it to continue utilizing a comprehensive and methodical stakeholder process to develop these details and promote a successful, cost-effective implementation.

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JCP&L again thanks the Board for the opportunity to provide this feedback on the Progress Report and for its continued commitment to an open and transparent process while it continues to contemplate New Jersey's clean energy future. If you have any questions about these comments, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Josh R. Eckert", with a stylized flourish at the end.

Joshua R. Eckert
Counsel for Jersey Central Power & Light Company