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October 31, 2011

**VIA ELECTRONIC AND REGULAR MAIL**

The Honorable Kristi Izzo  
Secretary, New Jersey Board of Public Utilities  
44 South Clinton Avenue  
Trenton, NJ 08625

***Re: In the Matter of the Board's Investigation of Capacity Procurement and Transmission Planning, Docket No. EO 11050309 – Comments of the Retail Energy Supply Association***

Dear Secretary Izzo:

On behalf of the Retail Energy Supply Association (“RESA”),<sup>1</sup> please accept these letter comments in lieu of more formal comments in the above-referenced proceeding, addressing the Board’s investigation of capacity procurement and transmission planning. RESA is a broad and diverse group of retail energy suppliers who share a common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than do regulated utility providers. RESA continues to have concerns with this proceeding because it is inconsistent with the spirit of New Jersey’s competitive retail electricity market to implement a policy that burdens ratepayers with generation costs and the risk of the failure or success of a particular power plant, when those consumers have been empowered to choose the energy solution that best meets their needs from a broad variety of products and services.

The proposed questions from President Solomon’s September 27, 2011 “Order Setting Additional Hearing” largely bear upon PJM’s operation of the wholesale market, the functioning

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<sup>1</sup> RESA’s members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

of which has a direct impact on the retail electric supply market in New Jersey. In addition, one of the questions, Item 10 in President Solomon's Order Setting Additional Hearing, was of particular concern to RESA members because of the experience of third party suppliers ("TPSs") with the Fixed Resource Requirement in the PJM territory in Ohio. Item 10 specifically asks "[i]f present Board efforts fail to result in modification of the FERC's April 12, 2011 revised PJM Minimum Offer Price Rule ("MOPR"), should the State of New Jersey pursue the Fixed Resource Requirement ("FRR") alternative as a means of developing adequate new generation capacity resources? What changes to current PJM rules on FRR, if any, are needed to facilitate New Jersey pursuing this option? Would existing and new generation entities be amenable to executing long-term contracts to supply capacity to a State-sponsored FRR service area?" RESA urges the Board to disregard the FRR option, as FRR has impeded the efficient functioning of the competitive retail market in Ohio, and is generally inconsistent with competitive retail and wholesale markets.

RESA is not alone in its belief that FRR is not a viable alternative for developing new generation capacity resources in New Jersey.<sup>2</sup> The experience in Ohio illustrates the unintended consequences of utilizing this mechanism. As IEPNJ correctly point out in its comments, the FRR alternative was designed for vertically integrated utilities. Ohio, like New Jersey, is a restructured energy market and the utilities in both Ohio and New Jersey are no longer vertically integrated. Nonetheless, the utilities in Ohio became the FRR providers, and as a result, were able to pass through costs to customers regardless of the fact that other providers could have offered more competitive and less expensive options. Because the utilities in Ohio became the FRR providers and were entitled to recover the fully embedded costs of the generating resources, the end result was proposed capacity charges that far exceeded the market rate. As a result, TPSs (known as "CRES" in Ohio) were not able to provide the most cost effective and efficient solutions for their customers (as far as capacity is concerned), which undermined the retail

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<sup>2</sup> RESA believes it is important to note that there are many diverse participants in this capacity investigation process, with widely divergent views on whether and if New Jersey should pursue building additional capacity resources. The majority of the participants who offered comments on FRR, regardless of their support for or opposition to the Board's current action, believe that the FRR alternative is restrictive and should not be pursued. See Statement of Glen Thomas on behalf of the PJM Power Providers Group, I/M/O the Board's Investigation of Capacity Procurement and Transmission Planning, Docket No. EO 11050309, October 14, 2011, p. 7; Remarks of Stefanie A Brand, Director, Division of Rate Counsel, I/M/O the Board's Investigation of Capacity Procurement and Transmission Planning, Docket No. EO 11050309, October 14, 2011, p. 12; Comments of Jonathan A. Lesser, Ph.D., on behalf of Exelon Corporation, I/M/O the Board's Investigation of Capacity Procurement and Transmission Planning, Docket No. EO 11050309, October 14, 2011, pp. 8-10; Comments of Frank C. Graves, I/M/O the Board's Investigation of Capacity Procurement and Transmission Planning, Docket No. EO 11050309, October 14, 2011, pp. 6-7; Comments of the Independent Energy Producers of New Jersey in Response to I/M/O the Board's Investigation of Capacity Procurement and Transmission Planning, Docket No. EO 11050309, October 14, 2011, p. 4.

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market and the cost saving benefits which, without the imposition of FRR, consumers could have received.

RESA urges caution on the part of the Board, as any changes to the capacity market in this State can be potentially far-reaching, and can lead to results that are harmful to the existing competitive market and that the Board neither anticipated nor desired.

RESA appreciates the opportunity to participate in this proceeding. In the meantime, please do not hesitate to contact me should you have any questions.

Very truly yours,



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