

**STATE OF NEW JERSEY**  
**BOARD OF PUBLIC UTILITIES**  
**Request for Written Comments**  
**Investigation of Resource Adequacy Alternatives**  
**Docket No. EO20030203**

**Reply Comments of the PJM Power Providers Group**

The PJM Power Providers Group (“P3”) appreciates the opportunity to submit these reply comments to further supplement its May 20, 2020 initial comments and respond to other comments received in this investigation of resource adequacy alternatives.<sup>1</sup> The New Jersey Board of Public Utilities (“Commission”, “BPU” or “Board”) should be pleased with the numerous thoughtful comments it received in response to its questions. Both the quantity and the quality of the comments are noteworthy and impressive. The volume of comments speaks to the complexity of the issues, the consequences of certain decisions and the differing visions of New Jersey’s energy future. Few commenters question New Jersey’s decarbonization goals which in itself is noteworthy. Rather the questions in this docket revolve around how to achieve those goals, and most parties concur that working through and within PJM’s current market construct is the best way to achieve those goals.

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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.

The admonition of the New Jersey Division of Rate Counsel (“Rate Counsel”) that the Board should “proceed with caution”<sup>2</sup> is wise. The Fixed Resource Requirement (“FRR”) while perhaps intriguing on some levels offers false hope and serious risk of things going terribly wrong. There is no need for New Jersey to go down this path. Apart from PSEG/Exelon’s self-serving attempt to peddle a construct that shamelessly favors its resources with little or no accountability, few parties argue that the FRR is a wise path. Most parties prefer another path that involves capturing the benefits of PJM’s wholesale markets while still achieving New Jersey’s environmental goals. P3 would urge the Commission to further explore this path.

Based on the record in this proceeding, the Board should refocus this inquiry on solutions that do not include a FRR. By narrowing the issues and taking FRR off the table, the Board can forge a construct to “foster competition, avoid enhancing market power, and protect New Jersey ratepayers from excessive rates,”<sup>3</sup> while meeting the Governor’s goals. The Board has a terrific opportunity to take advantage of the robust record to refocus the proceeding on a market-based construct as the means to meet New Jersey’s goals while sending a clear message to PSEG/Exelon that New Jersey is not going to allow them to manipulate the current situation to defile the generation market so that they can re-establish monopoly-esque control over power production.

To further enhance the record in support of a market-based approach for New Jersey, P3 is pleased to offer the attached affidavit from former PJM Chief Economist Dr. Paul Sotkiewicz explaining the multiple challenges associated with an FRR-based approach to resource adequacy

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<sup>2</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, New Jersey Division of Rate Counsel Comments, May 20, 2020, (“Rate Counsel Comments”), at pg 1.

<sup>3</sup> Rate Counsel Comments at pg. 3

and specifically debunking several specific arguments offered by certain parties. Dr. Sotkiewicz's testimony adds to the already robust record evidence supporting the conclusion that the BPU should dismiss the FRR as an ill-advised path forward for New Jersey. Specifically, Dr. Sotkiewicz explains how certain FRR proposals could cost New Jersey consumers about \$700 million a year compared to much smaller costs associated with offshore wind revenue not receiving PJM capacity payments as a result of the MOPR.

### **1. A Broad Array of Interests Expressed Serious Reservations about a FRR**

The vast majority of parties in the proceeding expressed serious reservations or unqualified opposition to the FRR. The Board should specifically note the breadth and the depth of the opposition as many of the parties that agree that FRR is ill-advised for New Jersey often disagree on other matters. Many of these FRR-opposing parties have vastly different views on FERC's MOPR decisions and are actively litigating different positions on the underlying issues associated with those decisions. Speaking for consumers, the New Jersey Large Energy Users Coalition ("NJLEUC") appropriately described FRR as a, "largely untested, uncertain and risky remedy" that "would represent a clear case of the prescribed 'cure' being far worse than the disease."<sup>4</sup> The NJLEUC went on to describe the FRR as "tremendous leap of faith into the unknown."<sup>5</sup> Similarly, on behalf of residential consumers, Rate Counsel expressed concerns about a hasty move to an FRR and AARP offered that it, "is not convinced of the need for an alternative to the PJM capacity market."<sup>6</sup>

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<sup>4</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel's Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, New Jersey Large Energy Users Coalition Comments, May 20, 2020, ("NJLEUC Comments"), at pg 1

<sup>5</sup> NJLEUC Comments at pg. 4.

<sup>6</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel's Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, AARP Comments, May 20, 2020, ("AARP Comments") at pg. 2.

Likewise, renewable energy developers offer that, “FRR poses a significant risk of undermining the state’s ability to take advantage of regional benefits, including clean energy diversity” and “FRR will take considerable time to design and implement and, as noted previously, will likely be subject to regulatory and legal risk.”<sup>7</sup> Similarly, Atlantic Shores Offshore Wind, a New Jersey off shore wind developer, states that New Jersey should only pursue an FRR if there is “a clear net economic benefit for New Jersey’s retail customers.”<sup>8</sup> Even the advocates for FRR in this proceeding cannot offer a clear showing of such a benefit and the PJM IMM’s analysis shows a net cost to New Jersey’s ratepayers that could top \$300 million a year. In fact, the attached affidavit offered by Dr. Sotkiewicz describes how the FRR approach advocated by PSEG and Exelon could cost New Jersey consumers over \$700 million a year.<sup>9</sup>

Despite this broad trepidation surrounding the FRR, only one set of comments, the PSEG/Exelon submission, advance a tangible proposal to move New Jersey to an FRR construct (“PSEG Proposal”).<sup>10</sup> Not surprisingly, the PSEG Proposal is enormously complex, brazenly tilted in the company’s favor and glaringly void of any protections for consumers. This PSEG Proposal would come at a hefty cost to New Jersey ratepayers and the attached affidavit offered

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<sup>7</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Advanced Energy Economy American Wind Energy Association, Mid-Atlantic Renewable Energy Coalition, Solar Energy Industries Association Comments, May 20, 2020, (“AWEA et al Comments”) at pgs. 25-26.

<sup>8</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Atlantic Shores Offshore Wind L.L.C. Comments, May 20, 2020, (Atlantic Shores Offshore Wind Comments”), at pg. 2.

<sup>9</sup> Dr. Paul M. Sotkiewicz Affidavit, June 24, 2020, Attachment to P3 Reply Comments (“Sotkiewicz Affidavit”) at P. P 84.

<sup>10</sup> The Natural Resources Defense Council and the Sierra Club offer support for FRR, but do not put forth a tangible proposal for the Board to consider, but rather offer possible reforms like a state power authority and a price on carbon. Note that P3 supports a price on carbon and could likely find an agreeable path forward in New Jersey that involved a price on carbon.

by Dr. Sotkiewicz describes how those costs could top \$700 million a year.<sup>11</sup> The Board needs to send a resounding message that the PSEG Proposal is unacceptable.

## **2. The PSEG Proposal Places the Utility in Charge of the Generation Business with Virtually No Accountability**

The PSEG Proposal purports to do great things such as reduce carbon emissions and save consumers money; however, at the end of the day, the proposal is a blatant attempt by PSEG and Exelon to assert their monopoly control over power generation. If the proposal is adopted, PSEG, as the designated FRR entity, would “buy” capacity from “clean” resources that all of the state’s consumer would be forced to pay for. Of course, PSEG would “attempt” to buy as much capacity from Tier 1 resources which, not surprisingly, includes 3400 MW of its nuclear capacity which it co-owns with fellow commenter, Exelon.<sup>12</sup> Alarming, subsidized offshore wind and solar resources would clearly be subject to a cap whereas PSEG’s nuclear resources, which no longer would be receiving a ZEC payment under the PSEG Proposal, would not clearly be subject to a cap. Moreover, even if there were a Tier 1 Cap on Salem and Hope Creek, the PSEG Proposal offers no process by which that cap would be set and given that there would be no competition among those nuclear resources any such “cap” would be a de facto administratively determined price.

While the PSEG Proposal pays lip service to the notion that FRR capacity would be competitively procured, the proposal also clearly says that PSEG (the utility) would “first attempt” to enter an agreement with PSEG (the generation owner) that New Jersey is somehow supposed to believe is a fair and arm’s length transaction. As the PSEG/Exelon pleading states,

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<sup>11</sup> Sotkiewicz Affidavit at P 84

<sup>12</sup> Note that PSEG is also attempting to acquire a quarter interest in the Orsted 1100 MW offshore wind project. See, <https://www.njspotlight.com/2019/10/pseg-looks-to-become-active-player-in-offshore-wind-development/>

“Offshore wind projects qualifying for ORECs, new grid-connected solar resources qualifying for state support, and the **nuclear plants selected to receive ZECs** would compete to sell their capacity and attributes, bundled together, for an all-in price fixed at the outset of a long-term contract.”<sup>13</sup> The only units that have been selected to receive ZECs are PSEG/Exelon’s New Jersey units. In effect, PSEG has put forth a proposal in which PSEG would be both the buyer and the seller in a transaction in which PSEG, the buyer, is legislatively required to enter into a long term contract with itself without adequate regulatory review of the transaction. Such an approach is so advantageous to PSEG that they are willing to put on the table that their already rich \$300 million annual ZEC subsidy on top of its current profits would no longer be necessary.<sup>14</sup> After the Board has gotten over the shock of such a self-serving, consumer-fleeing proposal, it should reject the PSEG Proposal outright for this reason alone.

### **3. The PSEG Proposal Robs New Jersey Ratepayers of Benefits of Markets**

P3 and other parties, in this proceeding and others, have detailed the numerous benefits of markets to New Jersey consumers. The metrics of an electric market – reliability, price and emissions – have all done extremely well under the current construct. Wholesale prices in PJM in 2020 are the lowest they have ever been, reserve margins are robust and emissions are dramatically falling. By all reasonable measures, the market has been a success.

The PSEG Proposal, if enacted, will rob New Jersey of these benefits – particularly as it relates to price. Instead of resources competing to serve consumers at the lowest possible price, under the PSEG proposal, resources will be seeking to get a contract from PSEG. The

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<sup>13</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Joint Comments of PSEG and Exelon Generation Company LLC, May 20, 2020, (“PSEG/Exelon Comments”), at pg 3 (emphasis added).

<sup>14</sup> According to Dr. Paul M. Sotkiewicz, the ZEC payment, when computed to a capacity value, is an additional \$233.71 over and above the current capacity clearing prices. Sotkiewicz Affidavit at P. 22.

motivation to be efficient will transition to a motivation to get selected. The capacity market operated by PJM and overseen by the Independent Market Monitor (“IMM”), will be replaced by a vague process in which resources will attempt to get a contract from a utility that owns resources competing for those same contracts. The notion that competition will be preserved under such a construct is simply laughable.

Moreover, a principal benefit of a competitive market construct is a shift of risk from consumers (under a regulated regime) to suppliers. Again, the PSEG Proposal seems to turn this proposition on its head. First, PSEG proposes that FRR contracts be awarded on a “pay as bid” basis. Pay as bid markets have been universally panned as inefficient and ill-advised. Pay as bid markets incent suppliers to try to “guess” the clearing price and come as close as possible without going over as compared to single clear price auctions that incent suppliers to bid as low as possible. With a cap in place on offshore wind and solar and a market that is short on supply of those resource, it is reasonable to expect that parties will bid in the cap. When supply is low and demand is high, “clean” resources will act in an economically rationale way and submit high bids.

Ironically, PSEG is a long-standing critic of pay as bid markets. As they offered to the Pennsylvania Public Utility Commission, “[T]he single clearing price model is firmly grounded in economic theory and can be expected to yield the lowest costs to consumers over the long run. The pay-as-bid model endorsed by certain parties, at best, reflects a misunderstanding of how development decisions are made in efficient markets where energy margins and capacity payments are linked.”<sup>15</sup> PSEG appears to have abandoned its traditional, economically sound

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<sup>15</sup>*Reply Comments of PSEG Energy Resources & Trade LLC To the November 6, 2008 Public Hearing Pennsylvania Public Utility Commission, Current and Future Wholesale Electricity Markets, Docket No. M-2008-2066901 November 18, 2008, pg 3.*

view of markets in favor of one that allows it to charge monopoly rents without regulatory oversight.

Second, the PSEG Proposal glances over the significant concerns related to non-performance of FRR resources. Under FRR, the FRR utility will be responsible to PJM for curing any penalty when FRR resources fail to perform, which may be financial or require increased procurement obligations, either of which would further add to the high cost of FRR and potentially create reliability concerns. Specifically, if Hope Creek and Salem, as FRR resources in New Jersey, are offline during an extended capacity performance event the penalties would be enormous and the FRR utility, would ultimately be responsible to PJM to pay those penalties.<sup>16</sup> The cost of the penalties and the risks associated with incurring them would certainly flow back to the utility ratepayers as explained by Dr. Paul Sotkiewicz in the attached affidavit.<sup>17</sup> As Jersey Central Power and Light alerted the Board, “the Board needs to make clear that the EDCs will receive timely recovery of any such penalties and/or costs, to the extent that such penalties and/or costs are not recovered directly from capacity resources.”<sup>18</sup> When viewed in its totality, under the PSEG Proposal, an FRR resource that has structural market power would receive whatever price it asks for and then shift all the risks associated with non-performance (which could be enormous financial penalties) to the FRR entity’s captive ratepayers.

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<sup>16</sup> Note that the Davis Besse Nuclear Station in Ohio has maintenance issues that forced it out of operation for multiple years.

[https://en.wikipedia.org/wiki/Davis%E2%80%93Besse\\_Nuclear\\_Power\\_Station#2002\\_reactor\\_head\\_hole](https://en.wikipedia.org/wiki/Davis%E2%80%93Besse_Nuclear_Power_Station#2002_reactor_head_hole)

<sup>17</sup> Sotkiewicz Affidavit at PP 62-67.

<sup>18</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Jersey Central Power & Light Company Comments, May 20, 2020 (“JCPL Comments”), at pg. 3.

#### **4. The PSEG Proposal Dances Around Cost Impacts with Red Herrings and Half Truths**

The PSEG Proposal glosses over the significant cost implications of its proposal while conceding that the question requires “considerably more study.”<sup>19</sup> While PSEG is correct that some of New Jersey’s goals may come at a cost, that cost should not include the monopoly rents for generation that PSEG is clearly seeking to obtain in its proposal. As explained in the attached affidavit from Dr. Paul Sotkiewicz, these monopoly capacity rates would likely be around \$438.00/MW-day which well exceeds Net CONE in PSEG at \$311.13/MW-day and the EMACC clearing price in the last capacity auction at \$165.73/MW-day.<sup>20</sup>

PSEG/Exelon make clear that their proposal counts on capacity savings by lowering capacity payments to fossil resources that will be needed for reliability.<sup>21</sup> Such an assumption is completely bogus. As has been clearly stated in this proceeding by P3 and other parties, merchant generators cannot be forced to sell their capacity to an FRR utility and they certainly cannot be forced to sell capacity at below market rates to an FRR utility. New Jersey does not have the ability to force generators into FRR contracts and neither does PSEG. In fact, merchant generators, particularly those that are likely needed to meet local reliability requirements, will likely recognize their advantageous bargaining position and demand rates that are higher than the market price. Given the flexibility and other benefits of being non-FRR capacity, merchant generators will be already incented toward the market and away from the FRR.

To further add to the absurdity of the PSEG Proposal, the two subsidized nuclear units in New Jersey – Salem and Hope Creek – will not be prevented from clearing the PJM capacity

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<sup>19</sup> PSEG/Exelon Comments at p.12.

<sup>20</sup> Sotkiewicz Affidavit at P. 69.

<sup>21</sup> PSEG/Exelon Comments at pp. at 12-13.

auction by the MOPR. Under the likely soon to be approved PJM tariff rules, PSEG/Exelon will be able to bid 100% of the subsidized nuclear capacity in New Jersey into the capacity auction at zero. In other words, these units will receive capacity payments unless the owner chooses to bid them in at levels in which they do not clear. PSEG entirely understands this dynamic as it explained to investors that if FERC approves to the PJM compliance filing that it has “full flexibility for NJ nuclear units to bid in the upcoming capacity auction.”<sup>22</sup> Simply stated, if these units do not receive capacity revenues, it will be because of the decisions of their owners – not the FERC MOPR.

Moreover, PSEG, a long-time critic of long-term contracts, suddenly becomes an advocate for them when it becomes the entity that decides whether to grant them or not. While all developers have always desired a long term, ratepayer guaranteed contract, consumers have benefitted from avoiding these contracts that historically locked consumers into above market rates. PSEG clearly understood this reality prior to this filing, when they offered to the Pennsylvania Public Utility Commission, “History would suggest that 10-20-year contracts are too long, given the experience of stranded costs under QF contracts when market prices came down significantly. PSEG ERT would suggest three to five years as a maximum term.”<sup>23</sup>

Finally, it has been suggested multiple times by PSEG and other parties that the FRR can save consumers money because FRR entities do not have to procure as much capacity as is procured by PJM’s auctions. While it is true that FRR entities only need to procure capacity commitments to meet the installed reserve margin, there are several problems with this thesis.

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<sup>22</sup> [https://s24.q4cdn.com/601515617/files/doc\\_presentations/2020/05/WEBCAST-SLIDES-1Q-2020-Earnings-Release-FINAL-050420-715AM.pdf](https://s24.q4cdn.com/601515617/files/doc_presentations/2020/05/WEBCAST-SLIDES-1Q-2020-Earnings-Release-FINAL-050420-715AM.pdf) at 7.

<sup>23</sup> *Reply Comments of PSEG Energy Resources & Trade LLC To the November 6, 2008 Public Hearing Pennsylvania Public Utility Commission, Current and Future Wholesale Electricity Markets, Docket No. M-2008-2066901 November 18, 2008, pg 9.*

Most importantly, while PJM may procure more megawatts than the reserve margin requires, it only does so when it can save consumers money.<sup>24</sup> As LS Power observes, “The demand curve used to clear the capacity auction (the “VRR Curve”) was purposely designed such that as additional reserves are procured in the auction above the Installed Reserve Margin (“IRM”), the clearing price drops such that the overall cost to consumers is less than if the auction cleared at the IRM. This is a remarkable feature of the BRA where the consumers are actually getting additional reliability benefits at an overall lower cost.”<sup>25</sup> LS Power also attached a two-page explanation from PJM explaining how the demand curve works to save consumers money.<sup>26</sup> Since the FRR envisioned by PSEG would be based on pay as bid contracts and not sloping demand curve, it is highly unlikely that consumers would enjoy this benefit under the PSEG proposal.

##### **5. Market Power Concerns Can Not Be Brushed Aside.**

Another serious concern glossed over by PSEG and Exelon is the market power concern presented by FRR. Both Rate Counsel and the IMM expressed and emphasized their concerns over market power. As Rate Counsel stated: “[T]here appears to be no feasible route to a New Jersey FRR that does not implicate significant market power issues. If we allow this level of market power, these increases will likely be just the beginning. There will be no competition or market oversight to prevent the exercise of that market power later to increase prices to the detriment of New Jersey’s citizens.”<sup>27</sup> Rate Counsel also highlights that this market power

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<sup>24</sup> Sotkiewicz at PP 47-49.

<sup>25</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Comments of LS Power Development L.L.C. Comments, May 20, 2020, (“LS Power Comments”), at pp. 12-13.

<sup>26</sup> LS Power Comments, Attachment, “View Point – The Variable Resource Requirement (VRR) Curve How the shape saves money and increases reliability”, PJM, September 2018.

<sup>27</sup> Rate Counsel Comments at pg 2.

concern has been a long standing concern as it relates to the FRR, stating, “This is not the first time the notion that New Jersey might use the FRR alternative has arisen. In an order issued April 12, 2011, FERC accepted changes to the RPM MOPR that were opposed by New Jersey, and suggested New Jersey could pursue state policy initiatives while satisfying the state’s capacity obligations through the FRR alternative. At that time, the Division of Rate Counsel explained that the FRR alternative was not in fact a viable option for New Jersey, primarily due to the substantial market power that a New Jersey FRR entity would face in attempting to build an FRR Capacity Plan, among other barriers. Nothing has substantially changed since that time.”<sup>28</sup>

Similarly, as highlighted by Rate Counsel, the IMM, recently completed an analysis of the potential impacts of statewide or zonal FRR in New Jersey. The IMM noted that the prices an FRR entity would pay would result from bilateral negotiations to which no market power mitigation would apply, and as a result, the actual prices “could substantially exceed” both of the price assumptions used in the analysis.<sup>29</sup> Therefore, Rate Counsel concludes that “a New Jersey FRR entity would face substantial market power in attempting to construct an FRR Capacity Plan,”<sup>30</sup> and states that the IMM Report “recognized this, and concluded that to construct a New Jersey FRR Plan, ‘the price for capacity resources could substantially exceed the capacity market clearing price and the capacity market offer cap,’ that is, the prices assumed in the [IMM] Report’s FRR scenarios. The [IMM] Report provided standard measures of the concentration of generation ownership that indicate the presence of market power.”<sup>31</sup>

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<sup>28</sup> Rate Counsel Comments at pg. 17.

<sup>29</sup> Rate Counsel Comments at pg. 8, citing IMM Report, Monitoring Analytics Potential Impacts of the Creation of New Jersey FRRs, May 13, 2020.

<sup>30</sup> Rate Counsel Comments at pg. 16.

<sup>31</sup> *Id.*

Furthermore, the IMM states that, “The FRR construct raises serious issues of market power in New Jersey,”<sup>32</sup> and that “[c]reation of an FRR creates market power for the small number of local generation owners from whom generation must be purchased in order to meet the reliability requirements of the FRR entities.”<sup>33</sup>

Dr. Sotkiewicz expounds upon the market power concerns of Rate Counsel and the IMM noting that FRR provides “the illusion of control, but, in reality, it results in creating opportunities to exercise market power for ‘chosen’ resource owners where prices will likely be negotiated in a non-transparent manner leading to higher costs for consumers.”<sup>34</sup> Dr. Sotkiewicz explains that FRR creates the ideal environment for supply-side market power<sup>35</sup> and the potential for market power is real.<sup>36</sup> He also details how the PSEG/Exelon proposal creates tiers further entrenching the market power problem.<sup>37</sup> Regarding Tier 1 he explains that if the PSEG/Exelon Proposal was adopted “the Tier 1 resources would include the New Jersey nuclear units at 3,458 MW ICAP and an estimated 3,389 MW UCAP. For the 2022/2023 and the 2023/2024 BRAs there are no other major new renewable resources projected to come on-line. Only the Orsted offshore wind project which is scheduled to come online in 2024 with 1,100 MW ICAP (about 286 MW UCAP capacity value) would only be available for the 2024/2025 BRA. The easy implication is that PSEG/EXC hold **all the eligible Tier 1 capacity** up to the 2024/2025 BRA.”<sup>38</sup> Dr. Sotkiewicz points out that “even beyond the 2024/2025 BRA they would control **94 percent of the eligible Tier 1 capacity**.”

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<sup>32</sup>*In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel’s Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM Comments, May 20, 2020 (“IMM Comments”), at pg. 3.

<sup>33</sup> IMM Comments at pg. 4.

<sup>34</sup> Sotkiewicz Affidavit at P.9.

<sup>35</sup> Sotkiewicz Affidavit at PP. 33-36.

<sup>36</sup> Sotkiewicz Affidavit at PP. 37-40.

<sup>37</sup> Sotkiewicz Affidavit at PP. 73-78.

<sup>38</sup> Sotkiewicz Affidavit at PP. 73-74

From an HHI perspective, taking the PSEG/EXC units as under common ownership (since they are working in concert on these proposals and co-own some of the nuclear resources in question), the HHI is 10,000 for the 2022/2023 and 2023/2024 BRAs. That is, they are a monopolist and can name their price.”<sup>39</sup> Dr. Sotkiewicz further addresses concerns with the Tier 2 resources noting that “[i]ncluding these additional resources does nothing but exacerbate the market power problem as they are also owned by PSEG/EXC and still leaves New Jersey with the same Market Power Problem.”<sup>40</sup>

P3 agrees with the Rate Counsel, the IMM and Dr. Sotkiewicz. The market power concerns associated with FRR in general and the PSEG Proposal specifically are substantial and not easily cured. In the end, these market power concerns will most certainly reveal themselves to consumers in the form of higher prices.

#### **6. There is Broad Support to Work Within the Existing Market Structures to Achieve New Jersey’s Clean Energy Goals.**

Fortunately, the Board is not constrained to pursuing the FRR path as presented in the PSEG proposal. As numerous parties offered to the Board, New Jersey has several paths forward that allow it to retain the benefits of markets and achieve its policy goals. As Atlantic Off-Shore Wind commented to the Board, “All of these ideas provide the potential to generate substantial value for New Jersey’s retail customers that exceed any benefits the state might obtain through creating FRR service areas.”<sup>41</sup>

This sentiment was shared by AWEA/SEIA/AEE/MAREC who concisely recommended “that New Jersey partner with other states with a similar vision to drive reforms within the PJM

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<sup>39</sup> Sotkiewicz Affidavit at P. 74 (emphasis added.)

<sup>40</sup> Sotkiewicz Affidavit at P.76

<sup>41</sup> Atlantic Off-Shore Wind Comments, at p. 3.

market and within PJM states that will facilitate a more cost-effective and reliable transition to clean energy across the entire PJM footprint...the Board should proceed with the goal of prioritizing de-carbonization in the most cost-effective, reliable manner possible, by harnessing the benefits of joining a regional market to find the best position for New Jersey to meet these objectives.”<sup>42</sup> Similarly, the Environmental Defense Fund, which is often at odds with P3, stated, “The BPU should maintain its commitment to competitive markets not only by urging FERC to correct the errors of its recent orders, as it has already done, but by working with PJM and stakeholders on both incremental and more fundamental capacity market reform.”<sup>43</sup> Finally, by raising serious concerns about the FRR and pointing to the benefits of BGS auctions, Rate Counsel and the NJLEUC, as the voices of consumers, point to market-based path as well.

P3 believes that there is sufficient common ground among consumers, environmental advocates, renewable generation advocates and merchant generators who are committed to a market-based path forward in New Jersey to build a proposal that is good for New Jersey moving forward that does not involve FRR. While views of the merit and impact of the FERC MOPR order may vary among these parties, and all parties agree that FRR is an available path forward, few believe that FRR is advisable. There are many important details to be worked out and compromise may be necessary, but the Board should be comforted by the broad support for markets over FRR.<sup>44</sup> The Board should take advantage of this high level agreement and redirect the conversation away from FRR and challenge the parties to develop a workable construct that

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<sup>42</sup> AWEA et. al Comments, at pp. 6-7.

<sup>43</sup> *In the Matter of the BPU Investigation of Resource Adequacy Alternatives Rate Counsel's Response to Staff Request for Written Comments BPU Docket No.: EO20030203*, Environmental Defense Fund Comments, May 20, 2020, at pg. 4.

<sup>44</sup> As Dr. Paul Sotkiewicz offered, “The FRR alternative is the anthesis to competition and competitive outcomes.” Sotkiewicz Affidavit at P. 35.

allows New Jersey to meet its goals, stay in the PJM capacity market, comply with the FERC order and avoid the risky and costly FRR.

## 7. Conclusion

FRR is an expensive and risky proposition for New Jersey to solve what is currently projected to be a \$21 million “problem.”<sup>45</sup> It’s a dangerous and unproven path that has serious consequences if things go wrong. The cautions of NJLEUC are well-placed and should be heeded— “Before the State gives serious consideration to adopting the FRR or other alternatives-- that represent a dramatic and potentially risky departure from the status quo--we should all take a collective deep breath. Decisions made in haste or anger likely will not reflect the careful consideration that this moment requires. ‘Too good to be true’ alternatives proposed by opportunistic stakeholders must receive the close scrutiny they deserve.”<sup>46</sup>

The PSEG Proposal is exactly the opportunistic proposal that NJLEUC forebodes. The PSEG proposal puts the state on a path of slouching toward a bastardized form of reregulation that will contain none of the basic protections of regulation. The message to ratepayers from the utility would be “trust us”, as regulators would have no visibility into the cost of generation facilities, the debt-equity structures or the appropriate returns on investment of FRR resources that have market power. Instead, the incumbent utility would be in the position of accepting or rejecting bids based on some ill-defined cap that the utility would not even apply to the facilities it owns. The PSEG proposal is good for PSEG and what is good for PSEG in this case, is not good for New Jersey.

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<sup>45</sup> Sotkiewicz Affidavit at P. 87.

<sup>46</sup> NJLEUC Comments, at p. 4.

Instead, the BPU should look closely at the comments of those parties who suggest solutions that can coexist with PJM's existing market structures. As detailed in this organization's initial comments and confirmed by multiple other parties in this docket, P3 believes there are numerous paths forward that allow New Jersey to meet its decarbonization goals that allow the state to remain in PJM's capacity market and comply with the FERC's MOPR order. P3 recommends a further exploration of those ideas as there is a broad set of interests that clearly believe the solution lies down a market-based path rather than a FRR-path that is fraught with great risk to consumers and a single incumbent utility that decided to remain in the generation business and is intent on improving its balance sheet at the expense of its consumers.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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