



Agenda Date: 3/27/20  
Agenda Item: 2H

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF BPU INVESTIGATION OF )  
RESOURCE ADEQUACY ALTERNATIVES )  
)  
)  
)  
ORDER INITIATING  
PROCEEDING  
  
DOCKET NO. EO20030203

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) formally initiates a proceeding to examine whether New Jersey can achieve its long-term clean energy and environmental objectives under the current resource adequacy procurement paradigm and, if not, recommend how best to meet New Jersey’s resource adequacy needs in a manner consistent with the State’s clean energy and environmental objectives, while considering costs to utility customers.

**BACKGROUND**

On January 27, 2020, Governor Murphy released the 2019 Energy Master Plan: Pathway to 2050 (“EMP”). In establishing the pathway to a 100% Clean Energy future, the EMP recognizes that the Federal Energy Regulatory Commission (“FERC”) is “actively attempting to support fossil fuel interests in the PJM Interconnection L.L.C. (“PJM”) region under the guise of promoting ‘fair’ competition.” EMP at 108. As a “[c]ase in point,” the 2019 EMP specifically references a December 19, 2019 Order (the “December 19 Order”) from the Federal Energy Regulatory Commission (“FERC”) that establishes a dramatically expanded minimum offer price rule (“MOPR”) with the intent of limiting the transition to a clean energy future. See *ibid.*

PJM’s capacity market, the Reliability Pricing Model (“RPM”), has included a MOPR since it began procuring resource adequacy for the PJM region in 2006. Although FERC has revised the MOPR over the years, it consistently applied the MOPR to those resources most capable of exercising market power, not renewable resources. However, the December 19 Order reverses FERC’s long-standing presumption that renewable resources in PJM do not present a threat to the integrity of the capacity market and broadly imposes a MOPR on all resources receiving state support – no matter how tenuous the linkage between that support and alleged price suppression in the capacity market. Calpine et al. v. PJM Interconnection, 169 FERC ¶ 61,239 at P. 67 (Dec. 19, 2019), *pending rehearing by Order dated Feb. 18, 2020.*

The December 19 Order's expanded MOPR potentially disrupts a number of New Jersey's efforts to shape its electric generation resource base. New Jersey uses renewable energy certificates ("RECs") to support its renewable portfolio standard ("RPS"). N.J.S.A. 48:3-87(d). The Offshore Wind Economic Development Act, N.J.S.A. 48:3-87d(4) to -87.2, mandated that the Board establish a separate certificate program to support electricity generation from offshore wind projects. The Zero Emission Certificate ("ZEC") program recognizes the environmental attributes of nuclear resources and provides compensation to nuclear units for those environmental attributes, similar to the REC programs for renewable energy resources. N.J.S.A. 48:3-87.3(b)(3). New Jersey also has programs to support demand side energy programs. N.J.S.A. 48:3-87(g). Collectively, these programs date back more than 20 years, at least to the passage of the Electric Discount and Energy Competition Act of 1999 ("EDECA"), as amended, N.J.S.A. 48:3-49 to -87.12, and rest on the premise that states have jurisdiction over their resource mix. All of these programs are impacted by the December 19 Order.

While the 2019 EMP recognizes the December 19 Order as a direct attack on the State's clean energy programs, the December 19 Order may go even further. For example, FERC's application of the MOPR may implicate the Regional Greenhouse Gas Initiative ("RGGI"), which New Jersey recommitted to through final rules that become operative in June 2019. 51 N.J.R. 992(a) (2019). FERC's application of the MOPR may also implicate the Board approved Basic Generation Service ("BGS") Auction as well as other states' default service programs. Although the Board and other parties have sought rehearing and clarification, FERC has issued a tolling order delaying action on those requests indefinitely.

The Board cannot sit idle while FERC considers rehearing and clarification. The 2019 EMP makes plain New Jersey's commitment "to exploring all possible options . . . to ensure that the State can realize a clean energy future at reasonable prices." EMP at 108. The 2019 EMP further states that the Board may initiate a proceeding to explore "how to best meet New Jersey's resource adequacy needs, consistent with the State's clean energy goals and environmental values." Ibid. The 2019 EMP acknowledges the Board's discretion to initiate such a proceeding and the Board's authority to make the appropriate determination.

### **SCOPE OF PROCEEDING**

The courts have long recognized that the Board has broad regulatory authority under Title 48. The Board has the authority to initiate an investigation into "*any matter concerning any public utility.*" N.J.S.A. 48:2-19(a) (emphasis added). The Board also has the authority to "require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State." N.J.S.A. 48:2-23. These powers have continued even with the restructuring of the industry.

With the transition to competitive markets pursuant to EDECA, the Legislature memorialized findings and declarations regarding the policy of the State. N.J.S.A. 48:3-50. It is the policy of the State to "[p]lace greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers *in greater variety and at lower cost* than traditional, bundled public utility service." N.J.S.A. 48:3-50(a)(2) (emphasis added). It is also the policy of the State to "[p]rovide diversity in the supply of electric power" and "[p]revent any adverse impacts on environmental quality in this State as a result of the introduction of competition." N.J.S.A. 48:3-50(a)(7) and (9). It is also the policy of the state to "[e]nsure that improved energy efficiency and

load management practices, implemented via marketplace mechanisms or State-sponsored programs, remain part of this State's strategy to meet the long-term energy needs of New Jersey consumers." N.J.S.A. 48:50(a)(10). These policies, among others, are implicated by the December 19 Order.

The 2019 EMP does not predetermine a solution to the challenges presented by the December 19 Order. EMP at 108. Rather, the EMP discusses a variety of options for the Board's consideration. For one, the 2019 EMP discusses the possibility of "leaving the PJM capacity market," through a Fixed Resource Requirement ("FRR"). Ibid. The 2019 EMP also discusses the possibility of the State requiring "load serving entities to procure a higher percentage of clean energy" through a Clean Energy Standard. Ibid. The 2019 EMP also discusses the potential for "other clean energy markets or mechanisms to competitively source carbon-free energy and ensure appropriate decision-making for resource adequacy." Ibid. Ultimately, the 2019 EMP envisions an open and thorough proceeding that investigates "all possible options" and recommends further appropriate action.

Accordingly, the Board **HEREBY INITIATES** this Investigation of Resource Adequacy Procurement Alternatives. Through this proceeding, the Board **HEREBY DIRECTS** Staff to investigate whether New Jersey can achieve its long-term clean energy and environmental objectives under the current resource adequacy paradigm and, if not, recommend how best to meet New Jersey's resource adequacy needs in a manner consistent with the State's clean energy and environmental objectives, while considering costs to utility customers. Staff may conduct this investigation on behalf of the Board through technical conferences, public hearings, or written comments. The Board acknowledges that the first of these investigative actions is the request for written comments accompanying this Order.

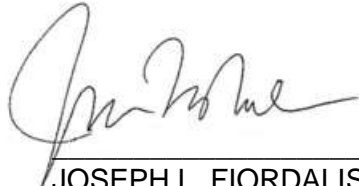
The Board **HEREBY DIRECTS** Staff to notify all affected and/or interested parties by posting this Order and any notices of this proceeding on the Board's website. The Board **FURTHER DIRECTS** all of its regulated electric public utilities in the State to post this Order and any accompanying notices in this proceeding on their respective website homepages within two (2) business days of the date of this Order. The Board **FURTHER DIRECTS** each of the regulated electric public utilities to electronically supply each of their respective BGS suppliers with a copy of this Order within two (2) business days of the date of this Order.

The Board **HEREBY DIRECTS** Staff to review all the data compiled and comments received by the Board in this proceeding and to issue a report with recommendations for any further appropriate action. The report shall be based upon Board Staff's review and analysis. The report shall be supported by a narrative explaining the recommendations as well as the rationale supporting the recommendations. Staff's recommendations will not be binding on the Board. The Board may accept or reject the Staff report and recommendations in whole or in part.

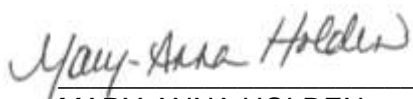
The effective date of this Order is March 27, 2020.

DATED: March 27, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

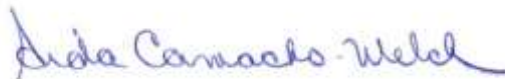


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY